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## **The Municipality of The Hague and Rule of Law promotion**

Can the Municipality of The Hague respond to the new development cooperation policy regarding Rule of Law promotion to further develop as City of Peace and Justice?

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## Executive Summary

The Hague has over the decades evolved into the City of Peace and Justice where multiple non-governmental organisations (NGOs) working on promoting the RoL have situated themselves. In order to maintain the brand name 'Peace and Justice', adapting to current developments is crucial for the municipality of the City. An idea is to focus more on RoL promotion, a topic that has become a spearhead in the Dutch development cooperation policy. The Municipality of The Hague wants to have a better view on what RoL promotion entails, where this promotion takes place, which organisations are involved, and what the new development cooperation policy entails. This all leads to the following central question: *can the Municipality of The Hague respond to the new development cooperation policy regarding Rule of Law promotion to further develop as City of Peace and Justice?*

After extensive desk research and interviews with experts, the following conclusion has been drawn: the Municipality can respond to the new development cooperation policy regarding RoL promotion to further develop as City of Peace and Justice, but to a certain extent. Logically, it is the government that decides which areas have priority and what is invested in. With the establishment of RoL as a spearhead within the national development cooperation policy, the timing is right. Moreover, there are opportunities for the Municipality to function as a facilitator, accommodator and stimulator of this developing process.

To respond to the development cooperation policy, the City should cooperate as much as possible with the partners involved (e.g. ministries, organisations). For the Municipality to actually do so, it is crucial to participate as much as it can in the knowledge platform, which aims to bring together organisations involved in RoL promotion. The first step would likely be to become a permanent member of the platform. It is likely that the Municipality could in this way make the work of organisations involved easier, e.g., by stimulating partnerships and improving communication between the stakeholders. The Municipality can also stimulate the establishment of a suitable environment for RoL initiatives. It could organise, e.g., lectures, debates and expert meetings that revolve around RoL issues. The celebrations of '100 years Peace Palace' at the end of 2013, could be a great opportunity to do this. Moreover, the idea is to have 'The Hague principles' or the 'The Hague approach', as a result of a research conducted by The Hague Institute for Global Justice. It is plausible that having such an approach creates a link between the City of The Hague and RoL promotion. This could again contribute to the establishment of the City strategy expansion. Ideally, RoL promotion would become a topic of priority within the 'International City' investment programme, so that initiatives developing within this area of expertise receive special attention. Having the City Council, alderman and the Mayor fully informed and 'on board' is crucial.

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## Introduction

Central question: Can the Municipality of the Hague respond to the new development cooperation policy regarding Rule of Law promotion to further develop as City of Peace and Justice?

Assignment provider – Department of International Affairs, Municipality of The Hague: “Enhancing the international character as The Hague as City of Peace and Justice is a core task of the department of international affairs. It actively consolidates the ties between many involved parties and facilitates and accommodates the many international organisations, institutions and embassies in The Hague (“Mission of the Department of International Affairs”, 2012, para. 1).

In a world that is changing faster than ever before, and with the Arab Spring still taking place, more states need and seek help in rebuilding their political and judicial system. The fact that over 150 new constitutions have been created since 1975 speaks for itself (“Constitution-making for Peace”, 2011, “More and more societies..” section, para. 1). According to the Organisation for Economic Co-operation and Development (OECD), 70% of fragile states have experienced conflict at some time since 1989 (“A New Deal for Engagement in Fragile States”, n.d., para. 2.). Countries where the RoL is not upheld face development issues in many areas. William H. Neukom (as cited in Agrast, Botero & Ponce, 2011, p.1), President and Corporate Executive Officer of the World Justice Project (WJP), describes the importance of the RoL as follows: “The Rule of Law is the foundation for communities of opportunity and equity— it is the predicate for the eradication of poverty, violence, corruption, pandemics, and other threats to civil society”. More than one billion people live in areas affected by conflict or fragility, and none of the fragile countries has achieved a single United Nations (UN) Millennium Development Goal (MDG) (World Bank, 2011, p.1).

A solid establishment of the RoL is not only beneficial to the states in question. The Netherlands gains from core values such as uncontrolled acting of the government, transparency, responsibility and participation being respected, because the Dutch economic interests are intertwined with that of other countries, due to globalisation (Knapen, 2012, p. 3). Moreover, assisting in promoting the international legal order coincides with a national tradition; it is embedded in our national constitution (“Grondwet”, n.d., “2. Overige bepalingen” section, para. 90).

The Hague has over the decades evolved into the City of Peace and Justice, with many ad hoc tribunals and courts, NGOs, and knowledge institutes situated in the City. With the establishment of the International Criminal Court in 2002, the first permanent court for war criminals is a fact. The decline of ad-hoc tribunals seems therefore likely. Additionally, more and more institutes that

deal with RoL issues have established themselves in The Hague over the last years. A shift seems to be taking place. All these contemporary factors make it inevitable for The Hague to adapt to current development and expand its approach and reach. An idea of the Department of International Affairs of the Municipality of The Hague is to establish this is by starting to focus more on RoL promotion than it has done until now.

Over the last years, the Dutch government has developed a new development cooperation policy which is built on setting priorities, and focussing on areas in which the Netherlands is relatively 'good at'. Governmental reports have particularly mentioned the field of security, legal expertise and the RoL as so called 'niches' for The Netherlands to further develop. Furthermore, several reports have concluded that the communication and cooperation between theory and practice is poor, and that coordination is missing within the field of expertise regarding the RoL in the Netherlands (*Adviesnota*, 2011, p.6). It is clear that the opportunities are there to further develop the City's reputation as 'Legal Capital' of the world. Whether it is feasible for the Municipality of The Hague to respond to the new development cooperation policy has not yet been researched. Furthermore, the Municipality wants to have a better view on what RoL promotion entails, where this promotion takes place, which organisations are involved in these kinds of operations, and what the new development cooperation policy practically entails. All of these reasons make up the motivation of the Department of International Affairs of the Municipality of The Hague to request for a research on how to respond to the new development cooperation policy. This all leads to the following central question:

*Can the Municipality of The Hague respond to the new development cooperation policy regarding Rule of Law promotion to further develop as City of Peace and Justice?*

To provide a clear answer to the central question, the following sub-questions have been arranged:

*Why is The Hague City of Peace and Justice?*

*What does the new Development Cooperation Policy entail?*

*Why does it want expand its approach by focusing more on promoting the Rule of Law?*

*What is the Rule of Law?*

*What is a fragile state?*

*Which actors are active in Kunduz within the Dutch programme for RoL promotion?*

*What are recommendations for the City of The Hague to start focusing more on promoting the Rule of Law?*

In order to answer these questions and to ensure a solid theoretical framework, extensive desk research has been executed. Several official UN documents, Dutch policy documents, NGO-reports, news articles, journals and other researches on this topic will be conducted. Moreover, several experts have been interviewed about the plans of the City and how to establish them in the best possible way.

In the first chapter of this research, the historical and current development of The Hague as City of Peace and Justice is described. The second chapter revolves around the new Development Cooperation Policy, and explains how it developed and what it practically entails. Then, in the third chapter, the RoL is defined in order to know exactly what is referred to when speaking about the RoL in the thesis. In the fourth chapter, fragile states, the states in which RoL promotion is needed, are defined. The final and fifth chapter of this research revolves around the Dutch programme for developing the RoL in Kunduz, Afghanistan. This is done to provide the assignment provider with an insight of the relevant stakeholders in a current situation of RoL promotion of the Dutch government.

## 1. The Hague City of Peace and Justice

In the first chapter of this research it is explained how The Hague developed into the City of Peace and Justice and what this brand name means for the City as we know it today. This is done in the first paragraph of this chapter. In the second paragraph, the recent developments of the city are described.

### 1.1. Historical Development

The Hague has a long tradition in international law, often referred to as the ‘The Hague Tradition’. The official promotion of this tradition starts with Hugo de Groot, mostly known as ‘Grotius’, and his famous work titled ‘De Jure Belli ac Pacis’ – on the law of war and peace – dating back to 1625. With this work, he made a highly important contribution to the development of international law, and he is seen nowadays as the father of The Hague as City of Peace and Justice (Tek, den. 2012, para 6.).

The development of The Hague as City of Peace and Justice really took off at the end of the 19<sup>th</sup> century, when the Russian Czar Nicholas II took the initiative for a Peace Conference (Schlinder & Toman as cited in “Final act of the International Peace Conference”, n.d.). Partly because The Netherlands were not involved in the in the French-German war (1870-1871) that caused turmoil all over Europe, the Czar choose The Hague as host city due to its neutral position (Groen, n.d.p.3). The central location of The Netherlands and The Hague within Europe can perhaps be seen as one of the motives as well. Hundreds of delegates from 26 countries were present at the conference which took place at the royal residence ‘Huis ten Bosch’ (“First and Second Peace Conferences”, 2009, para. 1). The Czar (Schlinder & Toman as cited in “Final act of the International Peace Conference”, n.d.) called for the conference “with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and, above all, of limiting the progressive development of existing armaments”. The Conference gave birth to the Permanent Court of Arbitration (PCA), to facilitate arbitration and other forms of dispute resolution between states (“About Us”, n.d., para. 1.). This convention is nowadays known as the ‘Law of The Hague’ or the ‘The Hague Convention’ (Groen, n.d.p.3).

The convention and regulations adopted at the First Conference were further revised at the Second Peace Conference, held in the Hall of Knights of The Hague in 1907. President of the United States of America Theodore Roosevelt was the first initiator of this Conference (“Final Act of the Second Peace Conference”, n.d., para. 1). The two conventions resulting from the Peace Conferences are considered the basis for customary international law (“Convention (II) with Respect to the Laws and Customs of War on Land and its annex”, n.d.).

The building of the Peace Palace started between the First and Second Peace Conference, to function as the home for the PCA (Groen, n.d.p.3). Wealthy steel magnate Andrew Carnegie donated 1.5 million dollars to finance the construction of a ‘world peace centre’ and the palace opened its doors in 1913 (“A man of Peace”, n.d., para. 2.). The conferences and the subsequent conventions can be seen as the cornerstone and beginning of *the era of (peaceful) dispute settlement* for The Hague. In 1922, the same Peace Palace became the seat of the Permanent Court of International Justice of the League of Nations, established by the League of Nations (“The Legal Capitol of The World”, 2011, “City of Peace and Justice” section, para. 4.). This court was replaced by the International Court of Justice in 1945, established by the UN. Some argue it was this court that former Secretary-General of the UN Boutros Boutros Ghali spoke about when referring to The Hague as “legal capital of the world” (“The Legal Capitol of The World”, 2011, para. 1.).

Gradually, the City evolved into a *centre of international criminal law* with the establishment of the International Criminal Tribunal for the former Yugoslavia in 1993 (“About the ICTY”, n.d., para. 3.). During these years, multiple tribunals and international organisations found their way to the City. A time line of the settlement of international organisations in the The Hague region in historical perspective can be found in Appendix I.

In 2010, The Hague is home to 199 international organisations and 111 embassies and consulates, creating over 18.000 jobs (Blikman & Ommeren, van, 2011, p. 6). The international organisations and embassies thus form an important economic factor in the City.

## 1.2. Contemporary Developments

As explained in the previous sections, The Hague is the City of Peace and Justice and wants to be able to maintain this ‘brand name’ for a long period of time. In order to do so, adapting to current and future developments is crucial.

Roughly said, three areas of development in the field of Peace and Justice can be distinguished. Referring to section 2.1., the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century can be seen as an era of *dispute settlement* for The Hague. Later on, the City gradually evolved into a centre of *international criminal law*. The latest stage that can be distinguished is that of The Hague as centre of *conflict prevention and strengthening the RoL in fragile states*. This development is easily visualised by the number of organisations dealing with conflict prevention/avoidance and peace building issues that have found their way to the City. Some NGOs focussing on the subject are the in 2004 established *Institute for Historical Justice and Reconciliation* (The Institute for Historical Justice and Reconciliation, 2012, para. 1), the *African Diaspora Policy Centre* that was

incepted in 2006 (African Diaspora Policy Centre, n.d., “Overview” section, para. 1) and the *Global Partnership for the Prevention of Armed Conflict*, set up in 2005 (“About Us”, n.d., para. 1). Furthermore, multiple knowledge institutes have been established in the City over the recent years such as *The Hague Institute for the Internationalisation of Law* (HiiL) established in 2005 (HiiL, 2012, para. 1) and *The Hague Institute for Global Justice* (THIGJ) that began its work in 2011 (“About us”, 2011, para. 2). Interestingly, the Municipality of The Hague is one of the founding partners of THIGJ (together with the MFA and others). Moreover, THIGJ is currently conducting one of its first big researches, with the Municipality as the assignment provider (see text box I). The increase of educational institutions dealing with Peace and Justice has increased as well. Some of the new names are the *The Hague campus of Leiden University*, officially established in 2011 (Universiteit Leiden, 2012, “Over faculteit Campus Den Haag” section, para. 1), and *The Hague Academy for Local Governance* that opened its doors in 2006 (“People”, n.d., para. 1). On the other hand, the establishment of international criminal law bodies has stagnated, with the youngest tribunal opening in 2009, namely the Special Tribunal for Lebanon (Special Tribunal for Lebanon, 2010-2012, “About the STL” section, para. 1).

The Municipality of The Hague has launched the ‘International City investment programme’, to stimulate and foster Peace and Justice activities in the City. Examples of current achievements of this programme are the aforementioned establishment of THIGJ, contribution to the establishment of Leiden University College, and the enlargement of the ‘Bertha von Suttner’ building, which is a multi-tenant office for NGOs (“International City’ investment programme” 2012, “Major achievements and results”, para. 1.). The programme also invests in networks and knowledge. An example of this is the contribution to establishing the Innovating Justice Initiative, which is a network of 130 RoL leaders and 100 justice innovators. Partners of the initiative are HiiL, Microjustice (Tilburg), and the Center for International Legal Cooperation in The Hague (“Innovating Justice Initiative, Interview with Sam Muller” 2012, para. 1).

Since 2008, Jozias van Aartsen is the Mayor of the City. Being a former Minister of Foreign Affairs, his commitment to The Hague as international City is obvious. Some examples of this are his engagement in the establishment of THIGJ (he is the chair of the temporary board), his consequent statements about the international parts of the City in his speeches (“Speech by Mayor Jozias van Aartsen at the 60th anniversary of the International Institute of Social Studies, 11 October 2012”, 2012) and the embedding of Peace and Justice in the civic crest under his rule (September 2012) (“Den Haag krijgt wapen met spreuk ‘Vrede en Recht’”, para. 1).

Text box I: THIGJ research commissioned by Municipality of The Hague

Presently THIGJ is conducting a research for the Municipality of The Hague. The working title of the research is “Access to justice and the development of sustainable institutions in (former) fragile states. The case of Libya in a comparative perspective.” Part of the research is to formulate so called ‘The Hague Guiding Principles’ or ‘The Peace Palace approach’, which aim to provide guidance for promoting the Rule of Law in fragile states. The principles or the approach will be presented on the 28<sup>th</sup> of August 2013, as part of the 100<sup>th</sup> anniversary of the Peace Palace.

Summarising, The Hague has a long tradition of international law, dating back to the 17<sup>th</sup> century, but the development of the internationalism of the City really started at the end of the 19<sup>th</sup> century. Multiple international organisations found their way to the City by the sea. Three eras of development can be distinguished: the era of (pacific) dispute settlement and by the 1990’s the era of international criminal law and the era of conflict prevention and strengthening the RoL in fragile states. Different governmental reports see security and the RoL as a possible niche for its foreign policy, supporting the ideas the Municipality has. Currently The Hague has a Mayor that is obviously committed to The Hague remaining City of Peace and Justice. Furthermore, the International City investment programme is financially stimulating various activities in the field of Peace and Justice.

## 2. The New Development Cooperation regarding Rule of Law promotion

Over the last decades, many discussions have taken place about what development cooperation should look like. There is a lot of criticism about whether development cooperation is effective, and whether it contributes to the level of self-reliance of the receiving countries. Moreover, which sectors of development cooperation are to be focussed on is and was a highly discussed topic as well.

In the policy letter of 2007 (“een zaak van iedereen”), special attention to fragile states within development cooperation was introduced. The letter received a follow up in 2008 (“veiligheid en ontwikkeling in fragiele staten”), in which the basic principles for this policy were sketched. Development cooperation with a focus on fragile states and promoting the RoL was put on the political agenda of the House of Representatives. In 2010, the Wetenschappelijke Raad voor het Regeringsbeleid (WRR) wrote a report titled “Attached to the world: On the Anchoring and Strategy of Dutch Foreign Policy”. One of the most important recommendations to the government was that development cooperation is too fragmented. The Netherlands was doing too much in too many countries. Priorities needed to be set in order to make the efforts more effective and efficient. With the rise of the economic crisis, the discussion about the exact content of development cooperation and the costs of it again took off. Drastic choices had to be made.

### 2.1. “New focus on Dutch development policy“

The new policy became really concrete in 2011, with the letter “new focus on Dutch development policy“, putting large parts of the recommendations of the WRR report into practice. The policy letter introduces four spearheads (priorities) of policy, namely food security, water, Sexual and Reproductive Health and Rights, and security and the legal order (“New focus of Dutch development policy”, 2011, p. 2). These are considered areas in which the Netherlands can make a difference, and in which The Netherlands is relatively good at. The letter notes specifically the international profile of The Netherlands by naming the international tribunals and institutions (most of them situated in The Hague) that deal with the RoL as added value. Besides introducing the spearheads, the letter also points out the drastic decrease in partner countries (countries receiving bilateral assistance) from 33 to 15, and reducing the Official Development Assistance (ODA) budget to 0,7% of the Gross National Product (GNP) in 2014 (“New focus of Dutch development policy”, 2011, p. 17). This research focuses on the RoL part of the new policy (the name of the spearhead later changed in Security and RoL).

## 2.2. Spearhead Security and Rule of Law

Ronald Wormgoor, senior policy officer of the Ministry of Foreign Affairs, described the spearhead as follows:

The spearhead is simply said a priority, an area of focus. The spearhead has five goals: security for people, functioning Rule of Law, inclusive political processes, legitimate and capable governments and finally peace dividend, meaning the existence of jobs and basic services. Improving human security (which is a very broad term) in fragile states is essentially the overall goal of the spearhead. For every country a different mix of goals and priorities within the five goals is applicable. The spearhead will be carried out through three channels: firstly the Embassy in that country, secondly through the UN and/or EU and thirdly through different specialised civil society organisations (based in The Netherlands if possible). The approach is to aim for a (slow) transition from violence to knowing (basic) facilities.

The policy letter “Kamerbrief over het speerpunt veiligheid en rechtsorde” mentions 10 out of the 15 partner countries of focus in regards to the spearhead security and RoL (Knapen, 2012, 12). The 10 countries are as follows:

Afghanistan, Burundi, Ethiopia, Indonesia, Yemen, Kenya, Uganda, Palestinian Territories, Rwanda, South Sudan.

Besides these 10 countries, The Netherlands will also contribute in promoting Safety and the RoL in the following regions:

Central America, Great Lakes, Horn of Africa, Afghanistan-Pakistan.

The policy letter describes many reasons for investing in RoL promotion. First of all, the MDGs are the furthest away from being achieved in fragile states. Secondly, countries in which the RoL is not upheld see much more risk in facing instability (Knapen, 2012, p.2). These instabilities not only affect the countries in question, but can also harm the Dutch economy; an example of this is the piracy off the coast of Somalia, which is causing much damage to the trade overseas (Ronald Wormgoor, personal interview).

The policy letter also states that the government wants to invest in the field of RoL because it lays the foundation of not only sustainable development and self-reliance, but it also contributes to the three goals of foreign policy, namely security, freedom and welfare. The letter also names the

knowledge institutes that deal with RoL (legal capitol, many of them situated in The Hague) as an added value to this (Knapen, 2012, p.3).

One of the principles of the spearhead is the so called comprehensive approach (Knapen, 2012, p.6) which focuses on cooperation between different ministries in development and tackling different aspects of development in one approach. See text box II for more information.

Text box II: 3D approach

The 3D (defense, diplomacy and development) approach, now applied in Afghanistan and on a much smaller scale in Burundi (Wormgoor, personal interview), is seen as an innovative and successful comprehensive approach in rebuilding fragile states. This approach shows that RoL promotion is not only a matter of the Ministry of Foreign Affairs, but also other ministries (defense and security and justice in some occasion) are involved. The 3D approach is a good example of RoL promotion as a spearhead of development cooperation, and it is to be continued in the upcoming years in the light of the spearhead security and RoL, each time adjusted to every situation.

#### 2.2.1. Knowledge platform

The MFA wants to expand and make better use of the present knowledge and experience by bringing international, national and local parties together. A concrete outcome of these government aspirations is the establishment of a so called 'knowledge platform'. Goal of this platform is to improve the exchange, application and gaining of knowledge between knowledge institutions, civil society, the private sector and governmental institutions involved in the matter. According to Ronald Wormgoor, one of the coordinators of the platform, around 35 organisations will join the knowledge platform (personal interview, October 4, 2012). For the organisational overview of the platform, please see Appendix II.

In the letter about the knowledge platform, the platform is described in more detail. The primary function of the platform is that of research. The goal is to articulate research questions that improve the exchange of knowledge between the participating organisations, which will have to improve the international efforts in the end" ("Notitie - Oprichting Kennisplatform Veiligheid en Rechtsorde", n.d., p.5). One of the main functions of the platform is to form a network. It seeks to connect with other international networks that deal with Security and RoL. Representatives of relevant networks will thereby be invited to actively join the platform. Participation in the platform is open to social, academic, private, international and governmental organisations, knowledge institutions and organisations in the south that deal with Security and RoL ("Notitie - Oprichting

Kennisplatform Veiligheid en Rechtsorde”, n.d., p.3). The note suggests that THIGJ and the Conflict Research Unit of the Netherlands Institute for International Relations Clingendael locations to accommodate the secretariat of the platform due to their “central role, position and expertise in the field of security and the rule of law” (“Notitie - Oprichting Kennisplatform Veiligheid en Rechtsorde”, n.d., p.5). “It has not been officially confirmed (meaning on paper) yet, but it is more than likely that these two organisations will provide the venue for the secretariat.” states Ronald Wormgoor, working for the Ministry of Foreign Affairs (personal interview, October 4, 2012). As mentioned in paragraph 1.2, THIGJ was established to form an umbrella organisation for all institutes that deal with global justice, the RoL being part of that field. If THIGJ would indeed become the home for the secretariat of the knowledge platform, this would coincide perfectly with its goal. Furthermore, it could be seen as the perfect starting point of The Hague focussing more on connecting theory and practise regarding the RoL, since this is one of the goals of the platform. Ronald Wormgoor stated that the Municipality should “get involved as much as possible” in the knowledge platform (personal interview, October 4, 2012). A good step in this process is that the Municipality was invited to the meeting of the platform held on the 22<sup>nd</sup> of November this year.

As geographical focus, it names the 15 countries that are part of the development policy of The Netherlands, but notes specifically that the Arabic region, middle income countries and neighbouring countries of the EU can be relevant as well (“Notitie - Oprichting Kennisplatform Veiligheid en Rechtsorde”, n.d., p.2-3).

### 2.3. Why the Municipality of The Hague wants to respond to the new development cooperation policy

The idea of the Municipality of The Hague to focus more on promoting the RoL is supported by a report mentioned earlier, namely the report “Attached to the world: On the Anchoring and Strategy of Dutch Foreign Policy” by the WRR. The report names promoting RoL internationally as one of the three possible niches. It is seen as a ‘global public good’ with potential. As a consequence of globalisation, international law is evolving from an international activity towards a transnational activity. Not only are many NGOs working on promoting the RoL situated in the Netherlands, also universities and knowledge institutes are developing initiatives related to this field of expertise. The WRR report names THIGJ specifically as an attempt of the Municipality of The Hague to establish an umbrella organisation that aims to provide some direction and decisiveness to the broad scale of activities developed in this area, it has therefore come not as a surprise that THIGJ will provide the location for the aforementioned knowledge platform. It concludes that the focus on promoting the RoL in the Netherlands lacks coordination and needs to be further developed, but

due to the dynamics of the theme and the actors involved promoting the RoL has the potential to actually be developed into a niche. This is the exact point where the Municipality wants to step in; as a facilitator of a developing process. Ronald Wormgoor has mentioned specific recommendations for the Municipality: “it can make the work of organisations involved easier, for example by stimulating partnerships and improving communication between the stakeholders” (personal interview, October 4, 2012). Moreover, Wormgoor mentioned that the MFA aims to “strengthen the ties with the Municipality concerning this spearhead” (personal interview, October 4, 2012).

In conclusion, development cooperation has been a topic of debate in Dutch politics over the last decades. In 2011, the drastic changes that need to be made within the policy became clear, with the establishment of the four spearheads, the cut from 33 to 15 partner countries and the decrease of the ODA budget to 0,7% of the GNP by 2014. The spearhead Security and RoL, and specifically the RoL is further analysed in this research. This spearhead has five goals, namely security for people, functioning Rule of Law, inclusive political processes, legitimate and capable governments and finally peace dividend, meaning the existence of jobs and basic services. As geographical focus, it focuses on 10 different partner countries and four regions. A concrete outcome of the aspirations concerning the spearhead is the establishment of the knowledge platform. As we speak, the MFA is launching this platform, to bring together local and international parties and to articulate research questions that improve the exchange of knowledge between the participating organisations. The idea of The Hague in focussing more on RoL promotion in its Peace and Justice City strategy is supported by the WRR report “Attached to the World”. It mentions the establishment of THIGJ specifically as an attempt to establish an umbrella organisation. The City wants to step in as a facilitator of the process of focussing more on RoL promotion. The MFA wants to involve the Municipality as much as possible in the development of the knowledge platform. According to Wormgoor, the MFA wants to strengthen the ties with the Municipality concerning the spearhead Security and RoL.

### 3. The Rule of Law

In the third chapter of this research, RoL is explained and defined. This has been done to provide complete understanding of the concept and to know exactly what is referred to when mentioning the RoL further on in this research.

#### 3.1. Meaning

To put the difficult and somewhat vague term in perspective, the RoL is to be seen as the contrary of the Rule of Man, a common way of ruling a state not very long ago. It aims to protect against anarchy and the ‘Hobbesian’ war of all against all. Examples of forms of government where the Rule of Man is applicable are a (non-constitutional) monarchy, a theocracy or a tyranny (“Rule of Law Definition”, n.d., “A government of law and not of men” section, para. 1). In a political system where the law is supreme over the acts of the government and the people, it adheres to the RoL (“Rule of Law Definition”, n.d., “A government of law and not of men” section, para. 2).

#### 3.2. Historic origin and translations

The origin of the term goes back to antiquity. Classical philosopher Plato (as cited in Report on the rule of law, 2011, p.3) said the following:

Where the law is subject to some other authority and has none of its own, the collapse of state, in my view, is not far off, but if the law is the master of government and the government its slave, then the situation is full of promise and men enjoy all the blessings all the gods shower on a state.

An important misconception to clarify is that the terms Etat de droit, Rechtsstaat and RoL are of origin not the same in meaning. The term RoL is not as easy to translate in other languages as it may seem.

The term Rechtsstaat refers to the nature of the state. It was created as an antithesis of an absolutist state where the government had total power. The main theorist of this belief, Robert von Mohl (as cited in “Report on the rule of law”, 2011, p. 4), found that protection against absolute rule must be provided by written legislature (constitution), rather than by the courts alone.

The theory of Etat de droit has been interpreted as “state based on the principle of the supremacy of the laws” (“The principle of the rule of law”, 2007, p.2). This interpretation is too formalistic to be considered a suitable translation of the term RoL. It is important to distinguish the RoL from a purely ‘written’ concept since it entails much more than just the “rule by law”, or “rule by the law”, or even “law by rules” (“Report on the rule of law”, 2011, p. 4), because this interpretation permits rules to carry out authoritarian actions as long as they coincide with the written legislation.

Nowadays the concept of the RoL means much more than just this. In the Council of Europe, where English and French are the two official working languages, the term “*prééminence du droit*” (freely translated as “the precedence of law”) has been chosen to refer to consistently when referring to the RoL (“The principle of the rule of law”, 2007, title page).

### 3.3. Definition

First of all, the definition of the UN, as stated in the Report of the Secretary-General on the RoL and Transitional Justice in Conflict in Post-Conflict Societies is described. This definition is being discussed since the UN can be considered a widely respected and established global organisation since 193 out of the 196 officially recognised countries are members of the UN. Furthermore, the report of which the definition derives focuses on post-conflict societies; it is therefore highly compatible with the topic of this research. The definition reads as follows:

For the United Nations, 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 continue to behave according to a particular rule) 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 (Ban, 2004, p.4).

Since the concept of RoL is so differently perceived, it is of importance to discuss another definition, in which some principles are highlighted that are not mentioned in the definition of the UN. To do so, the definition used in the Rule of Law Index 2011 is discussed. The Rule of Law Index is “a new quantitative assessment tool to offer a detailed and comprehensive picture of the extent to which countries adhere to the rule of law in practice” (“World Justice Project Rule of Law Index”, 2008-2012, para. 1). It is designed by the World Justice Project, which aims to “lead a global, multidisciplinary effort to strengthen the rule of law for the development of communities of opportunity and equity” (“About the WJP”, 2011, para. 1).

The definition of the Rule of Law in the “Rule of Law Index 2011” reads as follows:

As used by the WJP, the RoL refers to a rules-based system in which the following four universal principles are upheld:

- 1) Accountable government: the government and its officials and agents are accountable under the law.
- 2) Good laws: The laws are clear, publicized, stable, and fair, and protect fundamental rights, including the security of persons and property.
- 3) Good process: The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- 4) Access to justice: Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve (“About the WJP”, 2011, “Working Definition of the Rule of Law” section, para. 1).

### 3.1.1. Discussion

When comparing the two definitions, many similar terms are mentioned. First of all, both definitions mention accountability to all persons, including state officials. In both definitions this principle is mentioned in the beginning, possibly showing the significance of it. Second of all, both definitions state that the laws must be publicised, or promulgated in the definition of the UN. Another similarity is the principle of fairness, in the definition of *The Rule of Law Index 2011* the term is mentioned twice. The final similarity is the term ‘stable’ in the *Rule of Law Index 2011*’s definition, which appears similar in meaning to ‘legal certainty’, mentioned in the final paragraph of the UN definition.

Other than similarities, multiple differences are visible as well. Two main differences are discussed. First of all, a completely new aspect of the RoL is discussed in the definition of *The Rule of Law Index* in the fourth section, by mentioning the principle of ‘Access to Justice’, by having competent, independent, and ethical personnel working for the judicial organ in a state. This aspect is not mentioned in the UN definition.

The second main difference is the approach chosen when addressing rights. The UN definition specifically names consistency with “international human rights norms and standards” as part of the definition for the RoL. The Rule of Law Index refers to the protection of “fundamental rights, including the security of persons and property.” Clearly, the UN definition goes further than the other definition when it comes to rights. It names human rights in particular, plus it expresses the ‘international’ norms and standards of these rights. Other terms are mentioned that coincide with the high focus on rights, such as the participation in decision-making (leaning towards a democratic principle) plus the separation of powers alias Trias Politica, which also refers to a more

democratic state. All of this is easily justified and explained due to the fact that one of the ultimate goals of the UN is to globally improve human rights and equality of men and women, and is therefore not likely to choose a reserved approach when it comes to this issue. The Rule of Law Index has tried to strike a balance when referring to rights in its definitions. It has taken an “intermediate position that encompasses elements of political participation, fundamental human rights, and access to justice (Botero & Ponce, 2010, p.9)”. With regards to rights, it includes “fundamental rights, including the security of persons and property” in the definition. The difference between a wider approach, that includes characteristics such as self-government and various fundamental rights and freedoms (Agrast, Botero & Ponce, 2011, p.9), and a minimalist conception, that focuses on formal, procedural rules, is often referred to as a “thin” or “thick” conception of the Rule of Law ( Ringer, 2007, p. 196). The difference between the two concepts is clearly explained in a figure made by two authors of the *Rule of Law Index 2011* (Appendix III).

### 3.3.2. Choosing a suitable definition

To conclude, the definition of the WJP, defined in the Rule of Law Index is the most suitable one for this research. Two main reasons have been mentioned. Firstly the inclusion of ‘Access to Justice’ as a main principle that is included in the definition. Secondly, the intermediate position between the “thin” and the “thick” approach with regards to the protection of rights that was chosen. These two aspects make the definition both comprehensive, as well as widely applicable to different types of societies. The latter is especially important, since promoting the RoL is often needed in countries that are either transitioning to more democratic forms of government or are still not ruled democratically. Furthermore, referring to the four keywords of the definition, it is a short and practical definition as well.

Besides the advantages that the definition possesses, The *Rule of Law Index* can be considered a comprehensive and reliable piece of research as a whole. Over 2.000 experts and 66.000 people in 66 countries have been interviewed (“World Justice Project Rule of Law Index”, 2008-2012, para. 4). Consequently it is considered “one of the world's most comprehensive data sets measuring the extent to which countries adhere to the rule of law-not in theory but in practice” (“World Justice Project Rule of Law Index”, 2008-2012, para. 4).

The definition aims in particular to making the principles workable and universally accepted: “.. for the principles to be broadly accepted, they must be culturally universal, avoiding Western, Anglo-American, or other biases” (Agrast, Botero & Ponce, 2011, p. 9). This is considered an advantage in this research, since the global acceptance is of high importance to perception of The RoL for the focus of the Peace and Justice Municipal strategy of The Hague. The City wants to

become a City where theory and practice about the RoL acceptable for all states is developed, not singling non Western norms and values out.

Summarising, to shorten the definition, the following principles will be used to define the Rule of Law in this thesis:

- 1) Accountability
- 2) Good laws
- 3) Good process
- 4) Access to justice

To conclude, the RoL is a broad concept and differently perceived. Now that a workable definition is chosen, it is clearer what it means to engage in RoL promotion.

## 4. Fragile States

### 4.1. Definitions

In order to have a clear view on what type of states are being discussed in this research, a definition is formulated in this chapter.

Fragility is both multi-causal and multi-dimensional in any given context (“Causes and characteristics of fragility, Structural, economic and political causes and characteristics”, n.d., “Overview of causes and characteristics of fragility”, para.2). Despite this, there are characteristics that commonly appear in these states, although some to a bigger extent than others. First of all the safety of the civilians is often not guaranteed (Koenders & Verhagen, 2008, p. 5). Secondly, political and institutional factors also play an important role (“Causes and characteristics of fragility, Structural, economic and political causes and characteristics”, n.d., “Political and Institutional factors”, para.4), such as the lack of legitimacy and capacity of the government as a whole. Thirdly the local government often fails to provide its people with the basic services such as water and sanitation, health care, education and infrastructure (Koenders & Verhagen, 2008, p. 5). The final key characteristic of fragile states are the issues concerning structural and economic factors (“Causes and characteristics of fragility, Structural, economic and political causes and characteristics”, n.d., “Structural and Economic factors”, para.3). The economy is stagnating or declining and it lacks economic opportunities for the people (Koenders & Verhagen, 2008, p. 5).

Actually defining terms such as a fragile state is highly contested. Hundreds of definitions can be found, and entire researches are aimed at formulating a globally acceptable definition. In many cases, a combination of highly trustworthy definitions is chosen, despite of simply choosing one. The MFA defines fragile states as “states that know severe political and social tensions that often have great negative consequences for the civilians” (Koenders & Verhagen, 2008, p. 5). Terms as ‘severe’ and ‘great negative consequences’ seem multi-interpretable and hard to measure. The World Bank (WB), widely considered one of the biggest players in the world of development, defines a fragile state in a more concrete and measurable way. The WB’s definition reads as follows:

The WB’s definition of fragile states covers low-income countries scoring 3.2 and below on the Country Policy and Institutional Assessment (CPIA), which is used to assess the quality of country policies and the main input to International Development Association’s (IDA) Performance-Based Allocation (PBA) system. This involves around thirty countries. Countries scoring >3.2 on the CPIA may manifest symptoms of fragility in specific sectors or even in subnational areas (“Definitions of Fragility and Conflict”, 2012, “Fragile States”, para. 2).

The CPIA is considered one of the most widely accepted assessment frameworks (“Results in Fragile and Conflict-Affected states and situations”, 2012, “Introduction”, p. 3). Clearly, the WB defines fragile states in a measurable way. When countries have an income below a certain score, they are called fragile states. This way of defining has its advantages and disadvantages. Some countries may manifest symptoms of fragility, but have a higher income than the definition states. This is also noted in the last sentence of the definition. The indicators used by the Bank to calculate the scores are heavily focused on financial and economic factors as well as bureaucratic efficiency (Patrick & Rice, 2008, p. 6).

As mentioned in paragraph 2.2., Spearhead Security and Rule of Law, out of the 15 partner countries, 10 countries, and 4 regions, are focussed on within the spearhead Security and Rule of Law (Knapen, 2012, p.12). Although many of these countries and regions do count as fragile states according to the WB’s criteria, some of them do not. According to the MFA, fragility is less of a dominant factor in some partner countries and the efforts made there are part of the political dialogue and other commitments to reach the MDG’s faster (Koenders & Verhagen, 2008, p. 4). Since this thesis focuses on the Development Cooperation Policy, the definition of the Ministry of Foreign Affairs and the 10 countries and 4 regions of focus of the Spearhead Security and Rule of Law will be guiding.

To conclude, when referring to fragile states or regions in this research, the following countries and regions are the states referred to.

Ethiopia, Uganda, Rwanda, Afghanistan, Burundi, Yemen, Palestinian Territories, South Sudan, , Indonesia, Kenya (“New focus of Dutch development policy”, 2011, p. 14).

Central America, Great Lakes, Horn of Africa, Afghanistan- Pakistan.

## 5. Dutch programme for developing the Rule of Law: Kunduz, Afghanistan

The assignment provider has expressed the need for an overview of relevant (European) organisations dealing with RoL promotion. Taking into consideration that providing a complete overview of all organisations is fairly impossible to provide as part of this particular final project, a current and relevant example of RoL promotion in a fragile state is examined, aiming to provide an insight in key players in RoL promotion. In this chapter, the RoL promotion organisations and institutions involved in the Dutch programme for developing the RoL are described. This approach has been chosen due to multiple reasons. First of all, the Dutch efforts in Afghanistan are highly focussed on promoting the RoL sector. Secondly, the Dutch efforts made in Afghanistan are part of the 3D approach, described in paragraph 2.2., which is an approach which the government wants to keep on using in the future. It is repeatedly mentioned as one of the key activities within the Spearhead Security and RoL. Moreover, the operations in Afghanistan are current: many players have been, and still are active within the country. It is likely that the outcomes of this examination present a reflection of organisations and institutions that could play a role in other fragile states seeking help in rebuilding their RoL system.

For this exploration, a letter from former Minister of Foreign Affairs Ben Knapen to the House of Representative titled “The programme for developing the RoL in Kunduz” is used for guidance. Additionally, the factsheet on The Netherlands in Afghanistan “The Dutch contribution towards developing the rule of law” is consulted. Both documents provide an overview of the projects covered by the Dutch programme for developing the RoL, with a focus on the integrated police training mission in the Northern Province of the country, Kunduz. It highlights with whom the Dutch government is collaborating or which organisation it financially supports in conducting certain projects. Please note that this examination does not intend to be complete: it aims to provide the assignment provider with an insight of which organisations and institutions play a role in a current situation of Dutch RoL promotion in a fragile state.

### 5.1. Framework

The programme for developing the RoL is focused on strengthening the quality of the RoL system in Kunduz, Afghanistan. The programme started in July 2011 and is planned to end in 2014. The programme forms one of the two components of the Dutch integrated police training mission in Afghanistan, the other one being the strengthening of the Afghan civilian police. The programme consists of development projects and the deployment of experts. Part of the projects is set up in collaboration with the German government, which is the leading nation in Kunduz. The fact that the German legal tradition can be seen as one of the most influential in Europe according to

Oswald Jansen (personal interview, September 24, 2012), reflects the large contribution of Germany in RoL promotion in Afghanistan.

As commissioned by the Ministry, the Max Planck Institute did preliminary research of the situation in Kunduz. It concluded that the justice system is still weak in many aspects. Clear needs exist within the areas of capacity building, strengthening the “responsiveness” and accountability of the national government.

Currently the programme consists of 13 projects in total (Knapen, 2011, p.1). The total costs of the programme are 22.5 million Euro, being part of the ODA-budget of the MFA.

The RoL programme is based on several principles, namely adapting to Afghan needs, synergy when it comes to the police training, complementarity with existing activities (new activities should support existing activities, instead of opposing them), coordination and unity of efforts within the programme plus collaboration with partners which possess a proven expertise. Special attention is drawn towards human and specifically women rights and the position of vulnerable groups and (religious) minorities (Knapen, 2011, p.3).

Currently, both the national as the international efforts made in Afghanistan are in the transitional phase. In the summer of 2012, the Afghan National Security Forces (ANSF) are responsible for the safety of 75% of the Afghan population. The Dutch efforts in Afghanistan are planned to end in 2014. (Knapen, 2011, p.2). The government does note that for sustainable results in the longer term, international development efforts are needed (Knapen, 2011, p.2). Despite physically leaving the country, the government has pledged 30 million euro per year to the ANSF, from 2015 to 2017 (*Stand van zaken brief politietrainingsmissie Afghanistan*, 2012, p. 3). The exact date on which the Dutch efforts will end is currently unclear, due to the announcement of the German government, made at the 4<sup>th</sup> of December 2012, that it will leave the province of Kunduz in 2013, a year earlier than planned. The German government feels that the situation in Kunduz has been sufficiently improved. The German parliament will make its official decision in February 2013. Due to this development, it has become likely that the Dutch will leave Kunduz in 2013 as well, because Germany is responsible for the safety of the Dutch troops in the region. Geoffrey van Leeuwen, Civilian Representative of the Dutch Police Training Mission Afghanistan, hopes that the RoL programme will continue after 2014. Whether the Dutch efforts will end earlier than planned is up to the government to decide (Righton, 2012, “bescherming” section, para. 2.).

The Dutch government has pleaded for an evaluation of the efforts it has made in Afghanistan. This plead was supported by other donor countries. After these requests, the United Nations Development Programme (UNDP) had started with setting up the evaluation. A team of

independent evaluators will examine the Dutch programme before the end of 2012. The outcomes of this evaluation will be presented to the government (*Stand van zaken brief politietrainingsmissie Afghanistan*, 2012, p. 8).

## 5.2. International Actors

A limited number of international actors are active in Kunduz when it comes to RoL promotion. In this paragraph, the main actors are described.

### United Nations Assistance Mission in Afghanistan (UNAMA)

UNAMA is the name for the political mission established by the Security Council in 2002 (resolution 2041). It aims to assist the government and the people of Afghanistan in laying the foundations for sustainable peace and development in the country. UNAMA leads the operations of all UN agencies, of the regional cooperation and of the international community ("Mandate", n.d., para. 3.). Ján Kubiš is the Special Representative of Afghanistan and the head of UNAMA since 2011 ("Mandate", n.d., para. 3.). Unama is an important player in Kunduz due to the dialogue and coordination with the Afghan institutions (Knapen, 2011, p.2).

### EUPOL

In June 2007, the EU launched their police mission in Afghanistan, titled EUPOL Afghanistan, as part of the Common Security and Defense Policy (CSDP). The aim and mandate of the mission is to "contribute to the establishment of sustainable and effective civilian policing arrangements under Afghan ownership and in accordance with international standards". More particularly, the mission monitors, mentors, advises and trains at the level of the Afghan Ministry of Interior, regions and provinces" ("EUPOL Afghanistan" n.d., para. 2). The mission's mandate lasts until May 31, 2013. It replaces and builds on the efforts of the German Police Project Office ("About us", n.d., para. 1 ) plus other international actors that deal with police and rule of law work. The mission aims to bring together the different national efforts, and aim to cover the whole of Afghanistan ("EUPOL Afghanistan" n.d., para. 3). The mission has around 350 international and 200 local staff. Twenty-three Member States plus four contributing states second personnel for the mission ("EU Police Mission in Afghanistan", 2012, "mission background", para. 2.).

The activities of EUPOL are based on three pillars, namely institutional reform of the Ministry of Interior, professionalisation of the Afghan National Police (ANP) and connecting police to justice. An example of a concrete activity of EUPOL which is part of the Dutch programme for developing the RoL is EUPOL's contribution to improving the cooperation between police and public prosecutors, and is aimed at case management and presentation of evidence ("The Netherlands in

Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4). EUPOL focuses on the provinces of the North of Afghanistan (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4).

### 5.3. Organisations and Projects

Multiple projects, carried out by different development organisations are part of the Dutch programme for developing the RoL in Kunduz. In this paragraph, each partner organisation is briefly described, followed by an explanation of the projects they are implementing.

#### 5.3.1. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)

GIZ is the agency for international development of the German government, and assists the Government in achieving its objectives in the field of international cooperation. It operates on behalf of multiple ministries, mostly the Federal Ministry for Economic Cooperation and Development, but others as well such as Federal Foreign Office, the Federal Ministry of Defence and the Federal Ministry of Education and Research. Work of GIZ is as well commissioned by governments abroad, the European Commission, the United Nations and the World Bank. GIZ operates in different fields; among them are governance and democracy, reconstruction, peace building and civil conflict transformation and other RoL related fields. GIZ promotes strengthening the ties between actors in international cooperation. Currently, GIZ conducts operations in more than 130 countries across the globe (“Profile”, n.d., “Global reach - the company at a glance”, para. 5.) All of the projects carried out by GIZ as part of the Dutch programme for developing the RoL in Kunduz are the practical outcome of the Dutch-German collaboration in the region.

#### 1) Community Policing Project

The objective of the community policing project is to better anchor the civilian operating of the police into the Afghan society. It focuses on the collaboration between the police and the community. Next to organising workshops and trainings, also regular meetings where the police and the community can meet are part of the project. The project will be emerged with the activities carried out by the Police Operational Mentor and Liaison Teams (“POMLTs”, n.d., para. 1), which offer the Afghan police officers practical trainings.

#### 2) Improving cooperation between police and public prosecutors (GIZ)

GIZ works on the collaboration between police and prosecutors in the practice of their professions (Knapen, 2011, p.5). The main goal of this project is to improve “the quality, speed and procedural correctness of legal proceedings” (“The Netherlands in Afghanistan”, 2011, “Overview of the

projects covered by the Dutch programme for developing the rule of law”, para. 4). Intensive mentoring of police and prosecutors, judicial training and facilitated meetings between the two are practical elements of the project. As mentioned in paragraph 6.2., EUPOL is also improving the collaboration between police and prosecutors, but these activities are focused on the provinces, whereas the efforts of GIZ are focused on the districts.

### 3) Police Literacy Course

GIZ is taking the lead in a six-month basic literacy course. The course is followed by an additional three months of training. Every police officer receives 468 hours of language training in total (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4).

### 4) Strengthening local departments of the Ministry of Justice

GIZ is conducting a programme to strengthen the local departments of the Ministry of Justice which forms a link between the formal and informal justice sector. These efforts aim to “improve access to the law, enable more cases to be handled by the appropriate institutions, and ensure that court decisions are better enforced” (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4). This project started earlier with German funding, but due to Dutch contribution the project was later intensified and extended to more districts (Knapen, 2011, p.6).

### 5) Establishing an office for the Afghan Independent Bar Association (AIBA)

GIZ is helping the AIBA in establishing an office in Kunduz. Establishing a new office should serve as a platform for information and knowledge exchange between prosecutors (Knapen, 2011, p.6).

### 6) Supporting infrastructure and hardware

GIZ is renovating offices of the Ministry of Justice and the Public Prosecution Service, so that employees can carry out their duties more effectively (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4).

#### 5.3.2. BBC Media Action

BBC Media Action (the new name for BBC World Service Trust) is the international development charity of the BBC (“BBC World Service Trust”, 2007, para. 1). It works independent from the

BBC. BBC Media Action uses its expertise in communication and media to “provide access to information and create platforms to enable some of the poorest people in the world to take part in community life, and to hold those in power accountable” (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4). It conducts projects in three themes, namely governance and rights, health and resilience and humanitarian response.

#### 1) Edutainment programmes

The edutainment programmes are aimed at creating the accountability of the police by promoting a society whose citizens are “critically aware”, (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4) which knows what to expect from the police and which knows how to claim these rights (Knapen, 2011, p.5). In order to do so, items are broadcasted through the national and regional radio stations. Additionally, theatre groups will try to bring the messages of the items under the attention of the people in Kunduz (Knapen, 2011, p.2).

#### 5.3.3. Max Planck Society

The Max Planck Society is one of Germany’s leading research institutes, established in 1948 (“A short portrait of the Max Planck Society”, n.d., para. 1). Currently, 80 Max Planck Institutes all over the world exist, conducting research in the fields of humanities, life, social and natural sciences (“A short portrait of the Max Planck Society”, n.d., para. 3). Next to conducting research, the Max Planck network also carries out several projects and international collaborations (“Max Planck Institutes Abroad”, n.d., para. 1).

#### 1) Training Courses

The Max Planck Institute conducts trainings for judges and prosecutors in the fields of land rights, legal ethics and criminal law. Furthermore, important legal documents will be translated into the local languages Dari and Pashtu and handed over to the judicial bodies (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4).

#### 5.3.4. Cooperation for Peace and Unity (CPAU)

CPAU is an Afghan non-profit NGO established in 1996, being the first Afghan peace building and research organisation. It works in the areas of awareness of peace, social justice, and human rights (“Cooperation for Peace and Unity”, n.d., para. 2). CPAU has as its ultimate goal to hand over ownership to the Afghan population.

#### 1) Strengthening links between the formal and informal justice sectors

CPAU will carry out a project aimed at strengthening the capacity of traditional leaders in the peaceful settlement of conflicts. When making these key figures aware of human rights issues and how to protect them, an effort is made to create a link between the informal and formal justice sector. Important to note is that the Dutch efforts do not aim to get involved in solving tribal or political conflicts; the programme is primarily aimed at capacity building (Knapen, 2011, p.6).

#### 2) Research into the legal position of vulnerable groups

CPAU is conducting research into traditional methods of conflict resolution and the position of vulnerable groups within the legal system, and searches for ways that the position can be improved (“The Netherlands in Afghanistan”, 2011, “Overview of the projects covered by the Dutch programme for developing the rule of law”, para. 4).

#### 5.3.5. The Asia Foundation (TAF)

TAF, an NGO founded in 1954, working on the development of Asia as a peaceful and stable continent. It supports initiatives in the areas of governance and law, economic development, women's empowerment, the environment, and regional cooperation. The Asia Foundation has 17 offices throughout Asia, and has its headquarters in San Francisco (“About the Asia Foundation”, 2012, para. 2).

#### 1) Improving women's access to justice

TAF is executing a campaign to boost awareness of women's rights among village elders and religious leaders. Women are trained in understanding their rights, and will receive practical solutions on how to claim their rights (Knapen, 2011, p.7).

#### 5.3.6. Scholarships

This project aims at the recruitment of well-trained men and women in the justice sector. Five scholarships will be awarded to five female and five male law students from Kunduz. These students will receive support in their first jobs in the justice sector in the region. AIBA can play an important role in providing this support (Knapen, 2011, p.6).

#### 5.4. Nationwide initiatives

Besides the activities as part of the Dutch RoL programme, the Dutch government is also investing in some nationwide activities. In this paragraph, these activities and the organisations involved are described.

#### 1) Contribution to the Law and Order Trust Fund for Afghanistan (LOTFA)

The Netherlands is investing in capacity building through LOTFA. LOTFA is a multi-lateral fund set up as a "mechanism for coordinating contributions from partners, as part of the international community's support to build the Afghan national police force, established in 2002". The budget of LOTFA is 1.4 billion US dollars and next to the Netherlands, Canada, Czech Republic, Denmark, EU, Finland, Germany, Italy, Japan, Norway, Switzerland, UK, and USA are donors. LOTFA is governed by the UNDP Afghanistan. Next to contribution the annual 10 million euro, The Netherlands will support LOTFA in strengthening the Afghan MFA and enhancing the position of women in the police force ("The Netherlands in Afghanistan", 2011, "Overview of the projects covered by the Dutch programme for developing the rule of law", para. 4).

## 2) Deploying experts

The Netherlands is deploying experts to advise the national government on developing the RoL. One RoL expert will work for UNAMA in Kunduz and five will work for the EUPOL mission in Kunduz. Nationwide, the government is deploying a human rights and minorities expert at the EU, UN or another partner. The government is looking to deploy a maximum of 25 experts in total ("The Netherlands in Afghanistan", 2011, "Overview of the projects covered by the Dutch programme for developing the rule of law", para. 4).

In conclusion, NGOs play a major part in the Dutch RoL programme. An important part of the programme is the collaboration between Germany and the Netherlands. Multiple projects of the programme are carried out by the development organisation GIZ. A limited amount of international actors are active in Kunduz when it comes to RoL promotion, namely the coordinating bodies UNAMA and EUPOL. Both missions are established specifically for the situation in Afghanistan. For the overview of all EU missions, see Appendix IV. Furthermore, multiple projects, carried out by different development organisations are part of the Dutch programme for developing the RoL. Each partner organisation has implemented different projects. A remarkable finding is that none of the organisations involved in the programme are Dutch. Besides the activities as part of the Dutch RoL programme, the Dutch government is also investing in some nationwide activities, namely investing in LOTFA and the deployment of experts.

## Conclusions

Countries where the RoL is not upheld face (under)development issues in many areas. The importance of the RoL is that it is the foundation for communities of opportunity and equity. It is the predicate for the eradication of poverty, violence, corruption, pandemics, and other threats to civil society. A solid establishment of the RoL is not only beneficial to the states in question. The Netherlands gains from core values such as uncontrolled acting of the government, transparency, responsibility and participation being respected, because the Dutch economic interests are intertwined with that of other countries, due to globalisation.

Over the last years, the Dutch national government has developed a new development cooperation policy which is built on setting priorities, and focussing on areas in which the Netherlands is relatively 'good at'. Governmental reports have particularly mentioned the field of security, legal expertise and the RoL as so called 'niches' for The Netherlands to further develop. Furthermore, several reports have concluded that the communication and cooperation between theory and practice is poor, and that coordination is missing within the field of expertise regarding the RoL in the Netherlands. The opportunities are there to further develop the City's reputation as 'Legal Capital' of the world.

In this thesis it has been researched if the Municipality of The Hague can respond to the new development cooperation policy regarding Rule of Law promotion to further develop as City of Peace and Justice.

The City of The Hague has a long tradition of international law, and has developed as City of Peace and Justice over the years. The era that the City is currently in can be labelled as the era of conflict prevention and strengthening the RoL in fragile states. THIGJ is specifically an attempt of the Municipality of The Hague to establish an umbrella organisation that aims to provide some direction and decisiveness to the broad scale of activities developed in this area. The aforementioned developments are stimulated by the 'international City' investment programme and by the commitment of the Mayor Jozias van Aarsten in relation to The Hague as City of Peace and Justice.

To maintain the brand name of City of Peace and Justice, adapting to current developments is crucial. Different governmental reports see security and the RoL as a possible niche for the foreign policy of The Netherlands, supporting the idea of the Department of International Affairs to respond to this field of expertise in its City Strategy. The focus on promoting the RoL in the Netherlands lacks coordination and needs to be further developed, but due to the dynamics of the theme and the actors involved promoting the RoL has the potential to actually be developed into a

niche. This is the exact point where the Municipality wants to step in; as a facilitator of a developing process.

Development cooperation has been a topic of debate in Dutch politics over the last decades. In 2011, the changes in the development cooperation policy became clear. One of the decisions made was the choice of five areas of priority, so called spearheads. The spearhead Security and RoL, and specifically the RoL have been further analysed in this research. This spearhead has five goals, namely security for people, functioning RoL, inclusive political processes, legitimate and capable governments and finally peace dividend, meaning the existence of jobs and basic services. As geographical focus, it focuses on 10 different partner countries and four regions. The 3D approach, which is a comprehensive approach for rebuilding fragile states, is considered successful, and the aim is to continue this approach in the light of the spearhead in the upcoming years. Within the 3D approach, multiple ministries all work simultaneously, to stimulate cooperation and in that sense improve the development process. Another concrete outcome of the aspirations concerning the spearhead is the establishment of the knowledge platform, which aims to bring together organisations involved in RoL promotion and connect research to practise. THIGJ and Clingendael Institute for International Relations are likely to provide the venues for the secretariat of the platform. THIGJ was established to form an umbrella organisation for all institutes that deal with global justice, the RoL being part of that field. If THIGJ would become the home for the secretariat of the knowledge platform, this would coincide perfectly with its goal. Furthermore, it could be seen as the perfect starting point of The Hague focussing more on connecting theory and practise regarding the RoL, since this is one of the goals of the platform. The Municipality can make the work of organisations involved easier, for example by stimulating partnerships and improving communication between the stakeholders. The MFA aims to strengthen the ties with the Municipality concerning this spearhead.

As stated by the WJP, the RoL refers to a rules-based system in which four universal principles are upheld: accountable governments, good laws, good process and access to justice. The City wants to become a City where theory and practice about the RoL acceptable for all states is developed, not singling non Western norms and values out.

Activities involved in RoL promotion take place in fragile states. Fragility is both multi-causal and multi-dimensional in any given context context. Actually defining terms such as a fragile state is highly contested. Different ways of defining have advantages and disadvantages. The Dutch MFA defines fragile states as states that know severe political and social tensions that often have great negative consequences for the civilians.

A current and relevant example of RoL promotion in a fragile state was examined; namely the Dutch programme for developing the RoL in Kunduz. This was done to provide an insight in key players in RoL promotion. In conclusion, a limited amount of international actors are active in Kunduz when it comes to RoL promotion, namely the coordinating bodies UNAMA and EUPOL. Both missions have been established specifically for the situation in Afghanistan. Furthermore, multiple projects, carried out by different development organisations are part of the programme. Besides the activities as part of the Dutch RoL programme, the Dutch government is also investing in some nationwide activities, namely investing in LOTFA and the deployment of experts. None of the organisations involved in the programme are Dutch. Moreover, GIZ is the main executing organization. All the projects that are part of the German-Dutch collaboration are carried out by GIZ. Germany is leading-nation in Kunduz. This coincides with the fact that Germany can be seen as frontrunner in Europe in a legal point of view, due to its legal tradition.

In conclusion of the aforementioned and answering the central question of this research; yes, the Municipality of The Hague can respond to the new development cooperation policy regarding RoL promotion, but to a certain extent. It speaks for itself that the Municipality executes policy, and does not design policy. The government decides which areas have priority and what is invested in. Metaphorically speaking, with the establishment of RoL as a spearhead within the national development cooperation policy, the ‘train’ already departed. Although the Municipality cannot decide which path the ‘train’ is going, this does not mean it cannot ‘hop on’. Moreover, the train is currently heading into a direction in which the Municipality is comfortable in. It is therefore a suitable moment for the Municipality to engage in the implementation of the Spearhead. The fact that the WRR mentioned a role for The Hague in the report ‘attached to the world’ supports this notion.

Next to it being a suitable time for responding to the new development cooperation policy, the Municipality has already started with doing so. Examples of this development are the establishment of THIGJ and different NGOs and universities that are developing initiatives in this area. The development is financially supported by ‘The Hague as international City’ investment programme.

Additionally, the Municipality has already proven that it can play a significant role in creating a suitable environment for the settlement of international organisations. The fact that nowadays 199 international organisations and 11 embassies and consulates have chosen to situate themselves within the City borders supports this assumption. The Hague has over the years become increasingly interconnected with the two key terms Peace and Justice.

Moreover, to respond to the new development cooperation policy with regards to RoL promotion no new City strategy has to be developed. RoL promotion can be implemented as a new branch or offshoot within the Peace and Justice strategy, which is already established and proven to be successful. Obviously, the goal of establishing a solid RoL system is intertwined with establishing Peace and Justice.

Responding to the new development cooperation policy with regards to RoL promotion is something that can be done, if the right measures are taken.

## Recommendations

As the author is not an employee within the Municipality, nor an expert in one of the relevant programmes or institutions mentioned in this thesis, it cannot give recommendations that are all feasible or realistic to implement. What the author can do, is give its opinion on different opportunities.

The currently developing knowledge platform on Security and RoL has the potential to function as one of the driving forces of the City strategy expansion. Twenty-five actors involved in RoL promotion will be joining the platform, creating a perfect place for establishing a network of relevant players within The Netherlands. According to Ronald Wormgoor, one of the coordinators of the platform, many of the participating organisations are based in The Hague (Personal interview, October 4<sup>th</sup>, 2012). For the Municipality to function as a facilitator and a accommodator, it is crucial that the Municipality is participating and contributing to the knowledge platform as much as it can. As Ronald Wormgoor stated, the Municipality “can make the work of organisations involved easier, for example by stimulating partnerships and improving communication between the stakeholders” (Personal interview, October 4<sup>th</sup>, 2012). The likely first step would be to become a permanent participant in the platform, perhaps joining the ‘regiegroep’ (freely translated group of directors, board of directors). According to the organisation chart of the platform, the ‘regiegroep’ is the group where research proposals are proposed to. Having seat in this group could perhaps create the opportunity for the Municipality to facilitate new researches and initiatives wherever it feels like they could contribute to expanding the City strategy. It remains unclear up until this date whether the Municipality will join the ‘regiegroep’, what is clear is that they have joined the last meeting of the platform, held at the 22<sup>nd</sup> of November 2012.

The 3D approach, which will be continued and further developed over the next years, revolves around cooperation between different ministries and is an essential part of the spearhead Security and RoL. Strengthening the ties with the involved ministries - so not only the Ministry of Foreign Affairs - could therefore be a good idea in order to seek opportunities for the Municipality to respond the new development cooperation policy. By strengthening the ties, it is likely that the Municipality is better informed of what is going on concerning the spearhead, and where it can provide assistance as a facilitator of the process in the City of The Hague.

At the starting point of this final project, the assignment provider expressed the need for an overview of all European relevant organisations and institutions in the field of RoL promotion. Although the question is relevant, it remains a tough question to answer in this thesis. The RoL promotion ‘field’ so to say is not only large, it is also highly fragmented. Furthermore RoL

promotion is a wide area, covering many different areas of expertise. If the assignment provider would still like to see an overview, this would perhaps be more suitable for a future research, based solely on ‘mapping’ these organisations, instead of it being part of a research.

Due to the international tradition the City of The Hague has and has had for over many years, plus the multiple knowledge institutes, international organisations and educational institutes situated in the City (and region) that deal with the RoL and related fields as conflict prevention and capacity building, The Hague has the potential to function as the centre of coordination for RoL promotion in The Netherlands. Furthermore, fully adopting RoL promotion as one of the principles of the municipal Peace and Justice strategy will likely work as a magnet for all sorts of institutions that deal with the RoL, such has been the case with the overall Peace and Justice strategy. When RoL promotion has been fully implemented as part of the municipal strategy, the ideal case is that institutions are no longer ‘asked’ to settle in the City (e.g. through lobbying), but will choose The Hague almost automatically as the place to be.

If the Municipality is committed to expanding its City strategy of Peace and Justice by including RoL promotion, launching this could help in establishing this expansion, and introducing it to the public. The celebrations of ‘100 years Peace Palace’ at the end of 2013, could be a great opportunity to do this. This because The Hague as City of Peace and Justice will be receiving extensive attention during the month of celebrations, but moreover many distinguished and renowned guests are likely to be present. Having this said, by including the City strategy expansion in the festivities, this could help in associating RoL promotion with The Hague as City of Peace and Justice. Suggestions on how this could be done are, for example, facilitating and/or organising debates or lectures about the topic, inviting experts related to RoL promotion as quest speakers and so on.

The idea of expanding the City strategy of Peace and Justice into the direction of RoL promotion is an idea of the Department of International Affairs of the Municipality. If the Department wants to see the Municipality fully adopting the expansion, having the City Council, alderman and the Mayor fully informed and ‘on board’ seems crucial. Taking into account that the exact procedure on how to address this is unknown, it seems a logical step to formally inform the City Council members and the Mayor about the expansion. Ideally, the alderman and the Mayor could incorporate the expansion into their public speeches for example (whenever it suits the occasion), just as former Minister of Foreign Affairs Ben Knapen mentions the policy of the four spearheads in multiple speeches, thereby repeatedly reminding different audiences to the government’s policy and plans. Having the Mayor, Mr. Van Aartsen including the City strategy expansion into his speeches (e.g. at ‘100 years Peace Palace’) would be ideal (taking into account that the feasibility

of this idea is unclear). When the City Council members and the Mayor fully adopt the expansion, using funds from the budget related to The Hague as international City of Peace and Justice for purposes related to expanding the City strategy are more likely to be accepted and embraced.

Another part of the '100 years Peace Palace' festivities is the official launch of the research of THIGJ on "Access to justice and the development of sustainable institutions in (former) fragile states", mentioned in paragraph 1.2. of this research. The idea is to have 'The Hague principles' or the 'The Hague approach' coming forth from this research, setting guidelines for promoting the RoL in fragile states. Having such an approach could also create more awareness among organisations and experts dealing with RoL promotion. It is likely that having such an approach creates a link between the City of The Hague and RoL promotion. This could again contribute to the establishment of the City strategy expansion.

The Municipality can stimulate the establishment of a suitable environment for RoL initiatives. It could organise, e.g. lectures, debates and expert meetings that revolve around RoL issues. It could also deliberate with cultural institutions within the City about letting them organise these activities. The Municipality could perhaps provide funding for them to do so, or stimulate them in another manner.

Ideally, RoL promotion would become a topic of priority within the 'International City' investment programme, so that initiatives developing within this area of expertise receive special attention.

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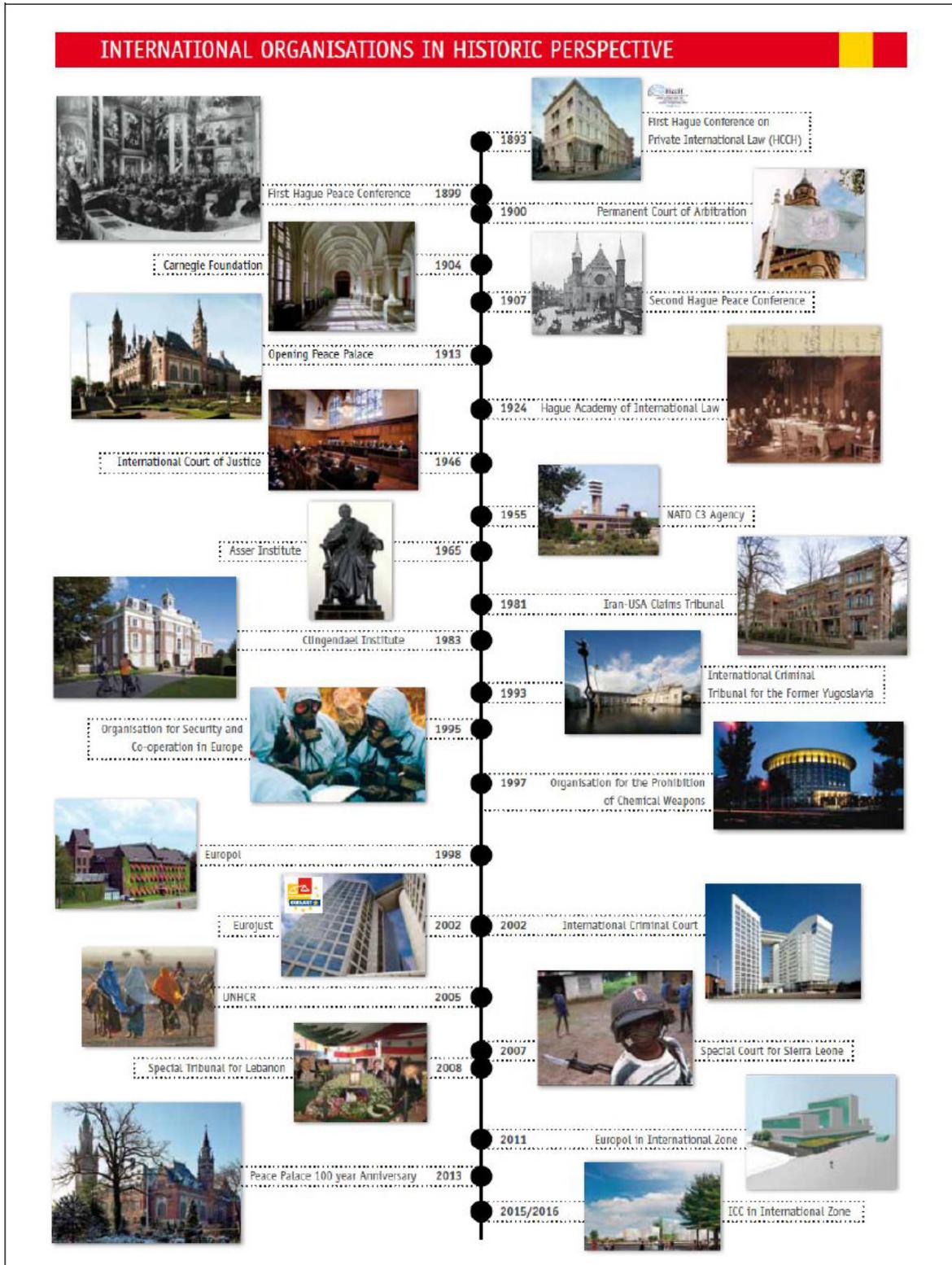
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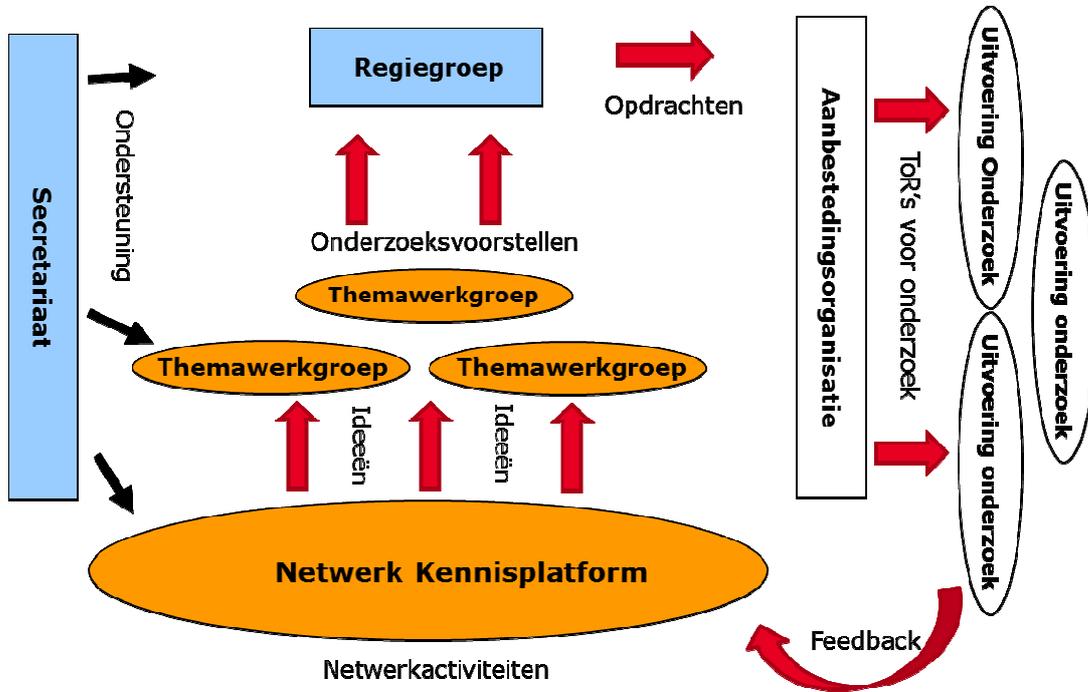
Appendix I – International Organisations in Historical Perspective

Source (Blikman & Ommeren, van, 2011, p. 8)



Appendix II – Organisational overview knowledge platform Security and RoL

Source (“Notitie - Oprichting Kennisplatform Veiligheid en Rechtsorde”, n.d., p.7)



Appendix III – Thin and Thick definition RoL

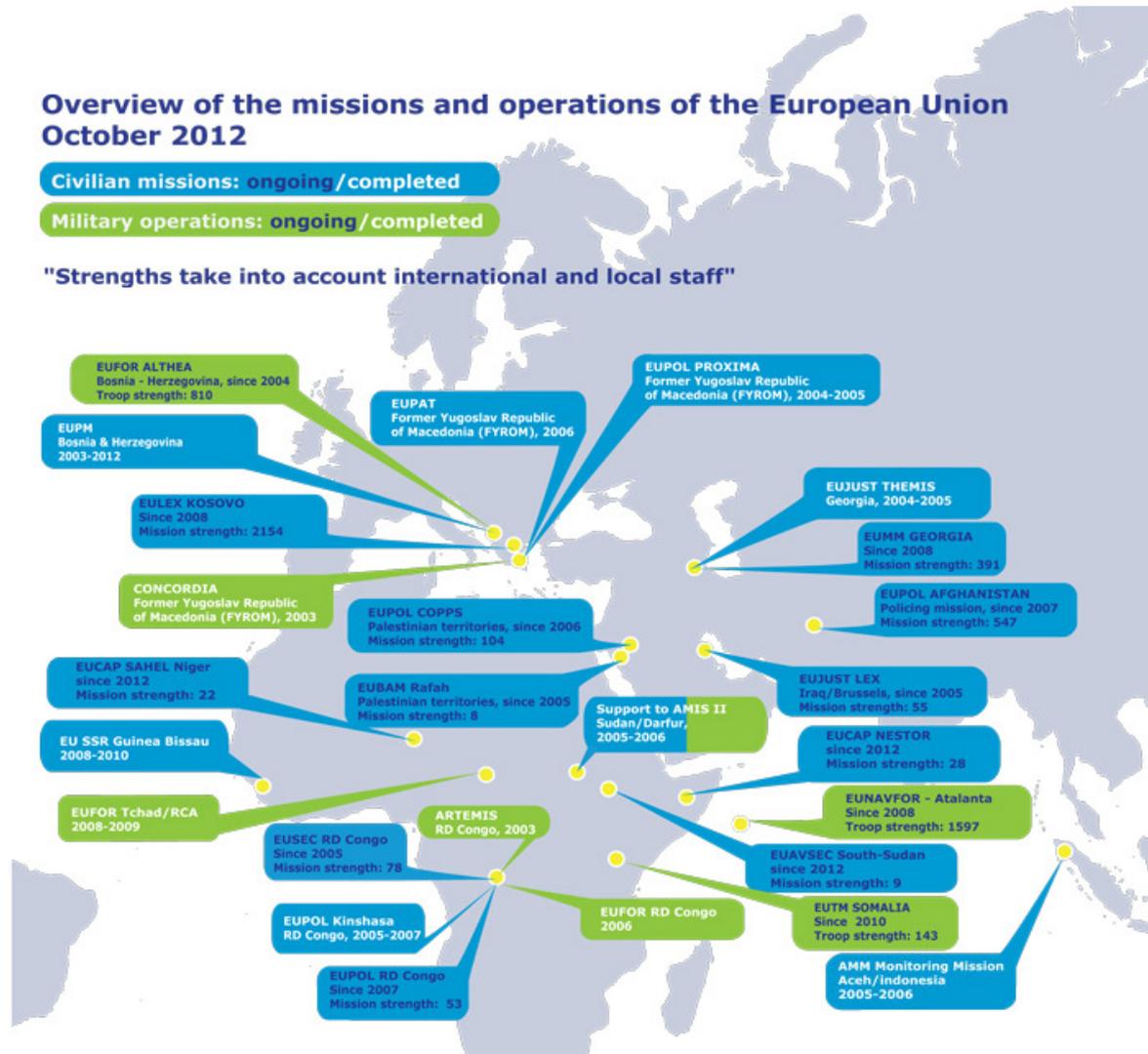
Source (Botero & Ponce, 2010, p.37)



Appendix IV – EU Operations

Source: (“Overview of missions and operations of the European Union,” 2012)

EU Operations



## Appendix V – Interviews

### Interview I – Oswald Jansen

Interviewee: Dr. Oswald Jansen is a legal adviser and lawyer at the municipality of The Hague. Besides his work at the municipality, he is also a senior lecturer and researcher at the Department of Constitutional and Administrative Law of the University of Utrecht.  
Date: 24<sup>th</sup> of September 2012

#### **Which different judicial movements can be distinguished within the European Union?**

Roughly said, two main schools of law exist. The first one is the system of Common Law, which is used in the United States and Great Britain. The other system is that of Civil Law. In the Common Law system, jurisprudence plays a bigger role than the law. On the contrary, the law is the most important source in the Civil Law system. Great Britain is the only country within the EU that knows the Common Law system.

Within the Civil Law system, two main families exist, namely the German tradition and the French tradition. It slightly changes from one judicial system to another, but the actual codifying of law started with the French. So the main codifications of law we know today are here because of Napoleon, ‘the French way of thinking’ so to say. The German tradition developed its own thought, which is way more dogmatic and precise. This can, for example, be seen in the German administrative law, which is much more precise than that of the French. Spain and Italy are influenced by both the French and the German tradition, both in administrative and criminal law. Spain for example knows and looks at both systems, but then simply chooses what it finds best from both ends. All countries mentioned before, so Germany, France, Great Britain, Spain and Italy can be seen as the most influential within the EU. Even though there are much more member states, these countries can be seen as frontrunners.

#### **You have mentioned before that the German tradition is more precise than the French tradition. What are other differences between the two traditions?**

The French have the system of the Council of State (conseil d’État) that acts both as a legal adviser and as the supreme court for administrative law. In France, the only way to complain about actions of the government is through the court. This is known as ‘la décision préalable’ (the previous decision). The board has to make a decision before the court can make a judgment. This has to do with the separation of powers. In Germany, this system is not used.

The German tradition is anchored with the thought that for all the acts of government, legal protection must exist. This does not only count when decisions have been made, but also when the government fails to act at all. In Germany the legal protection is broader and offers more opportunities than in the French system.

France knows the system of 'Dualité des juridiction' (dual system of jurisdiction), which distinguishes an public law and civil law. Everything that deals with the government originally ends up with the civil law branch, with the Council of State on top. In Germany this distinction does not exist. In Holland we have a mix of both traditions. We started out with a dual, French system, but over the years this has slightly shifted. We have an administrative section within our courts, with the higher court and the Supreme Court at the top. Everything is built in into the 'normal' judicial branch, but us having a council of state originates from the French tradition. Spain has let go of the French tradition and has leaned more towards the German tradition since around the fifties of the previous century.

Additionally, the German system has another special aspect. Everything is related to the national constitution. The reason for this is World War II. An example of this is that the German Constitutional Court recently decided whether Germany could participate in the European rescue fund. The German Constitutional Court actually decided how the European Union was going to continue. There are more differences between the German and the French tradition, but these are the main ones.

**Do you see the variety in judicial movements in Europe as an advantage when it comes do development cooperation?**

Yes, absolutely. What is relevant to your thesis, is that the different traditions can be combined. This is also the case with European law. This is a combination of French, German, Italian, Spanish and British thinking. It has become a mixture of the, judicially speaking, most important countries. A big plus of the Dutch tradition is that we know and understand all the different movements. We are not dogmatic at all. We do not care whether the German or the Spanish system is the best, we simply choose the ones that we consider best and apply those. If a country requires a different approach, we seek the most practical solution. That is who we are. We 'steal' from the great thinkers (e.g. the French and the German), mix it up and come up with our own solution.

Another reason why I consider it an advantage is that many systems all over the world are actually inspired by what was originally developed in Europe. It can be seen as the origin in many cases.

**Are there examples of development cooperation whereby European countries cooperated and came up with a mix to reform a countries rule of law system?**

To be honest I have no clue, since development cooperation is not my expertise. What I do know is that, e.g., Greece knows a system in which the criminal law derives from the German tradition and the administrative law from the French. I also know that the Dutch civil code has been sold to quite a list of countries. This is because it is a very recent codification. I do not know to which countries exactly, perhaps to Russia and Japan. We are very active in ‘selling’ our codifications.

One other thing that I also discussed with Astrid Bronswijk (head of department of international affairs of Municipality of The Hague, assignment provider) is that we should gather the knowledge when it comes to rule of law promotion. I am not talking about criminal law, that has been covered a lot, but about public law.

## Interview II – Ronald Wormgoor

Interviewee: Ronald Wormgoor has been working for the Ministry of Foreign Affairs for ten years. In the past he has worked as a diplomat in the Palestinian Territories in Ramallah. Currently he holds the position of senior policy officer of the Stability and Humanitarian Aid unit (formerly Peace building and Stabilisation unit). His main tasks include the development and overall coordination of the knowledge platform of the spearhead Security and Rule of Law.  
Date: October 4, 2012

**Could you explain what the spearhead Security and Rule of Law practically entails?**

The policy of focussing on areas in which The Netherlands can make a difference started with the policy letter *Security and Development in Fragile States* (Veiligheid en Ontwikkeling in fragiele staten), written in 2008. After that, many reports and letters followed that supported this approach. The World Development Report 2011 is embraced as the piece of ‘evidence’ of focussing on this area. The actual implementation of these ideas is now taking off.

One of the main causes and reasons for focussing on Security and Rule of Law is that in fragile states MDGs (still one of the most important tools to measure development) are hardly ever reached. Moreover conflicts in these states tend to be very costly, plus these conflicts may affect our economic interests as well. An example of this is the piracy off the coast of Somalia, which is causing much damage to the trade overseas in that area. These are just some of the reasons and causes. The priority of improving a country’s security and rule of law chain is becoming more clear, not only to The Netherlands but also globally.

It has become clear that most of the conflicts are internal instead of external. Furthermore, fragile states deal often with cycles of violence, instead of suffering from one single war or conflict. An example of this is Afghanistan. An important note is that fragility (as with fragile states) in our definition does not necessary incline that the state has a GDP below a certain number. A state can also possess certain fragile characteristics.

The spearhead is simply said a priority, an area of focus. The spearhead has five goals: security for people, functioning Rule of Law, inclusive political processes, legitimate and capable governments and finally peace dividend, meaning the existence of jobs and basic services. Improving human security (which is a very broad term) in fragile states is essentially the overall goal of the spearhead. For every country a different mix of goals and priorities within the five goals is applicable. The spearhead will be carried out through three channels: firstly the Embassy in that country, secondly through the UN and/or EU and thirdly through different specialised civil society

organisations (based in The Netherlands if possible). The approach is to aim for a (slow) transition from violence to knowing (basic) facilities.

What is really important in these type of operations is the thorough analysis of the situation beforehand. This aspect has been forgotten or not paid as much attention to as necessary in the past. What are the actual needs of the average civilians? That is a very important question that needs to be answered before heading into an area of conflict. This aspect is called conflict sensitivity. Every country or region, requires a different approach and thorough analysis of the problems. You must always bear in mind that whatever you do, your actions will have consequences. One must always ask ourselves: are we contributing to positive or negative development? Furthermore it is of high relevance to create ownership of the civilians and its government. When the people do not embrace your presence and the actions you carry out, once you leave it will all go back to the way it was before you were there. This coincides with the third goal of the spearhead (inclusive political processes), which means that not one party is dominating the process.

Another important aspect of the policy is to involve Dutch experts, namely the organisations, many of them situated in The Hague. Whenever we need help they advise, but sometimes execute policy as well. To better involve the organisations, we are currently setting up a knowledge platform. The overall goal of creating a platform such as this one is to create a cluster of relevant organisations that deal with Security and Rule of Law topics on a daily basis. This on its own has many advantages. When implementing new policy it is of high importance to involve all the partners (many of them located in The Hague) as much as possible to make the efforts worthwhile. Strengthening the ties between the organisations involved will increase the added value of the Dutch expertise in this field internationally.

**How is the establishment of the knowledge platform coming along? (September is mentioned as the month of establishment)**

The establishment is coming along quite well. Currently we are determining the subtopics within the field of Security and Rule of Law to create different (smaller) working groups, each with specialised organisations taking part in these groups. Two meetings with all the stakeholders involved have taken place already. The third and probably final meeting with the participants (around 35 organisations) has been scheduled for the beginning of November. Hopefully shortly after that meeting, the knowledge platform will officially be launched.

**Has it been officially confirmed that the secretariat of the knowledge platform will be situated in both the venues of THIGJ and Clingendael Institute?**

The idea of situating the secretariat with these organisations has been thoroughly introduced to all the partners involved, and the reactions were positive. It has not been officially confirmed (meaning on paper) yet, but it is more than likely that these two organisations will provide the venue for the secretariat.

**How will the tasks be divided between the two organisations?**

Since the expertise of the THIGJ lies with rule of law activities, and the Clingendael Institute is focused on global security issues tasks will be divided this way.

**In the policy letters it states that the arrangements made in the HLM in Busan called ‘the New Deal for engagement in fragile states’ coincide with the arrangements of the spearhead. Could explain the connection between the New Deal and the spearhead?**

The New Deal is an approach endorsed by 48 states, many of them fragile states, arranged at the HLMF on Aid Effectiveness at the end of 2011. The plan for the future is to take the arrangements made in Busan to the UN. After 2015 the MDGs will be revised, and we hope to contribute in putting the rule of law on the agenda at that time. It would be great to have an MDG that aims to improve security and the rule of law. An example would be to set ‘50% of the people has access to justice’ as an MDG, this is just a suggestion. An important aspect of this all is that we want to put the fragile states themselves in the driver’s seat. When they form, embrace and participate in the policy-making as much as possible, the ownership improves. This is still an ideal, since a lot of countries still see development cooperation in a very basic form. Creating water wells for example is what development cooperation is in their eyes. This attitude was again shown during the HLM on RoL of the UN in September. Rebuilding the security and rule of law sector is for a lot of countries too much, and some see it as interfering in the principle of sovereignty of that particular state.

**The 3D approach is often mentioned as a comprehensive and therefore successful method when it comes to rebuilding states. Does the ministry want to continue this approach in the future?**

Yes it does, but you must bear in mind that the 3D approach is a recipe that can be used in every state. It cannot be applied in every case, since different situations require different measures. For example Burundi and Sudan know a 3D approach on a much smaller scale than in Afghanistan. Advising the Burundi government about work ethics is also part of the 3D strategy for example. Another example is the providing of barracks for Burundi soldiers, so that they stay away from the villages (a place where soldiers do not belong originally).

**Which EU-institutes will play a role in developing the spearhead?**

The European External Action Service (the diplomatic service of the EU) that is still in its developing stage at this point plays and will play an important role. Europeaid is also an important entity. What specific institutes will play a role really depends on each and every country and situation you are working in. For specific conflicts or fragile states, different EU-missions are established. Most of the time, the EU-mission and the European Commission are the most important actors in a country. EUPOL in Afghanistan is an example. These are really important.

**What are, in your opinion, outside of the EU-institutions important actors in the field of security and rule of law?**

It is not easy to answer this question. This is because different organisations play a role in each and every different situation. The most important entities are the EU, the UN and the World Bank. Other actors are NGOs and knowledge institutes or think tanks. Each goal requires a different coalition of partners.

**When thinking about rebuilding (human) security and the rule of law many people think of the countries that were and are involved in the Arabic Spring. Despite this, these countries are not on the list of partnercountries for this spearhead. The *focusletter on development cooperation* does include a note about these countries, stating that the government will take a position about its involvement within the near future. Could explain why these countries are not partner countries and what current situation is?**

This is a very sensitive subject. Yes, the countries are not developing well and often the problems lie with the rule of law system. The thing is that the countries that are and were involved in the Arabic Spring are often not that poor. Libya for example can even be seen as rich. That is why we cannot take actions under the umbrella of development cooperation, and that is what the spearhead is. The minister Rosenthal and vice minister Knapen are currently debating about this topic. Despite all of this, we are involved in the development of these countries. The content and analysis of these conflicts is highly relevant, also to what we are working with within the spearhead.

**What type of role do you see for the Municipality of The Hague in the development of the spearhead? What are recommendations for the Municipality?**

First of all I feel that the municipality should get as involved as possible. A good step in this process is that the municipality will officially join in the upcoming meeting about the knowledge platform. The municipality can play a good role in facilitating the process. It can make the work of organisations involved easier, for example by stimulating partnerships and improving communication between the stakeholders. We definitely aim to strengthen the ties with the municipality concerning this spearhead.

## Appendix VI – List of Abbreviations

AIBA – Afghan International Bar Association

ANSF – Afghan National Security Forces

CPAU – Cooperation for Peace and Unity

CPIA – Country Policy and Institutional Assessment

CSDP – Common Security and Defence Policy

EEAS – European External Action Service

EU – European Union

GDP – Gross Domestic Product

GIZ – Deutsche Gesellschaft für Internationale Zusammenarbeit

GNP – Gross National Product

HIIL – The Hague Institute for the Internationalisation of Law

LOTFA – Law and Order Trust Fund for Afghanistan

MDG – Millennium Development Goal

NGO – Non-Governmental Organisation

MFA – Ministry of Foreign Affairs

ODA – Official Development Assistance

OECD – Organisation for Economic Co-operation and Development

PBA – Performance-Based Allocation

PCA – Permanent Court of Arbitration

RoL – Rule of Law

TAF – The Asia Foundation

THIGJ – The Hague Institute for Global Justice

UN – United Nations

UNDP – United Nations Development Programme

UNAMA - United Nations Assistance Mission in Afghanistan

WB – World Bank

WJP – World Justice Project

WRR – Wetenschappelijke Raad voor het Regeringsbeleid