



Lawyer Associations and the Rule of Law: A Regional Perspective

**Speech given by Mr Duncan McConnel,
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Introduction

1. It is a great pleasure and privilege to be speaking at this conference of the NT Bar Association. It is of course not just a conference of our own members but has extended across the sea to our newest, nearest neighbours, the legal profession of Timor Leste.
2. The last couple of days has been informative but has also given us an excuse to meet and get to know you, our colleagues in law. I hope that the friendships we have made in these few days will continue and grow, and that our legal professions and our communities will benefit from an enduring association in the future.
3. As lawyers, no matter where we work, we are all united by a common purpose: to uphold and promote the rule of law. Often, however, when we speak of upholding the rule of law we skip over the bit that talks about what the rule of law means in practical terms. So before continuing, let me explain what I mean when I refer to "rule of law".
4. Fundamentally, the rule of law principle means that no single person should be above the law. It means the impartial control of the use of power by the state. Key features of the rule of law include:
 - law which is accessible, intelligible and predictable
 - an independent, impartial judiciary which decides cases by application of the law not discretion;
 - the equality of all before the law;
 - the right to a fair and public trial;
 - the resolution of legal disputes through court processes; and
 - a strong and independent legal profession
5. Lawyers must be free to represent their clients without interference. Judges must be able to arbitrate objectively without regard to political or public sentiments. The people must also have

confidence that the legal services provided are unbiased and provided equally to all members of the community.

6. As a body that represents the legal profession, one of the fundamental roles of a bar Association is to support the profession in the pursuit of this purpose. In this way, a strong and independent bar Association is the conduit through which the profession is empowered to uphold the rule of law.
7. There are a number of ways in which bar Associations can maintain and advance the rule of law. Foremost, it ensures that the legal profession is independent from the government.
8. It also protects legal practitioners from discrimination on the basis of who they represent, or because they criticise the government if the rights of their clients are being infringed upon.
9. It ensures that people have access to information about their legal rights and to appropriate legal advice if, and when, they need it.
10. Finally, a bar Association ensures the competence and integrity of the legal profession.
11. Bar associations throughout Australia, as well as the peak national body, the Law Council of Australia, support this objective through a number of measures. The Law Council engages with the Commonwealth government on issues of law reform. It advocates on issues that affect the legal profession. More recently, it has sought to bring national attention to changes in the law occurring from state to state which are slowly but surely eroding fundamental civil liberties and human rights.
12. I understand that Timor Leste is close to presenting legislation to its Parliament that will establish the regulated legal profession . The role of the Bar Association (AATL) under any new legislation is something to watch with interest. I hope that Timor Leste can achieve a balance of regulation and independence that furthers and promotes the rule of law.
13. Can I suggest that this is a critical time for the AATL. It should not wait to be told what its role will be but should take the lead. a strong, independent bar association is critically important to the growth of a strong, independent system of justice that upholds the Rule of Law.

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14. Law is the language of trade. The promotion of the use of formal systems of justice as a framework for domestic and international trade has always been a key priority for donor countries. This support is predicated on the fact that strong systems of justice promote economic growth and regional stability. Establishing robust legal systems and insulating them from political interference remains the great challenge.
 15. The rule of law is no longer regarded as a uniquely Western concept. The principles underpinning the rule of law have been universally accepted and upheld as the essential requirements of a civilised society.
 16. In 2011 the United Nations Human Rights Council unanimously adopted its Guiding Principles on Business and Human Rights, which comprised three core pillars:
 - (a) Pillar one – the state duty to protect against human rights abuses by third parties, including business, appropriate policies, regulation and adjudication;
 - (b) Pillar two - the corporate responsibility to respect human rights, which means to avoid infringing on human rights of others and addressing adverse human rights impacts with which they are involved; and
 - (c) Pillar 3 – the need for greater access by victims to effective remedy, judicial and non-judicial.
 17. The development of such principles comes about from an increasing recognition of the relationship between respect for the rule of law and economic development. While some commentators may differ on the question of whether the rule of law is an essential pre-requisite for economic growth, it is increasingly clear that there is a strong causal link between respect for the rule of law and sustained and robust economic development.
 18. When the rule of law breaks down and state laws and institutions cannot be relied upon to regulate the behaviour of the government or its citizens, economic development inevitably suffers. A country's international reputation as a place to do business will be

seriously undermined by the absence of indicators of respect for the rule of law. Therefore it is critical that policymakers in all nations seek out ways to establish or strengthen the rule of law in their countries.

19. This can be done through a variety of means, from constitutional reform, to building capacity in state institutions such as courts and corrections facilities, supporting the development of an independent legal profession and ensuring robust protection for human rights.
20. The link between respect for the rule of law and economic growth has become more obvious with the emergence of greater competition for regional investment, that is, where countries themselves seek to attract foreign investment, often from large multinational, publicly owned companies. Coupled with this competition is the growing importance of corporate social responsibility, particularly amongst publicly owned companies. Shareholder groups have become increasingly sophisticated and demanding of corporate management. Shareholders will now commonly insist that investment decisions take into account the human rights and rule of law record of the State in which the investment is planned.
21. In this way, it can be seen that the relationship between establishing and maintaining the rule of law and promoting economic development runs both ways. On the one hand ensuring state institutions and practices are compatible with rule of law principles provides a critical foundation for sustainable economic growth. On the other hand, economic development brings with it increased opportunities to foster respect for the rule of law and human rights.
22. Multinational companies and business have an important role to play in strengthening the rule of law in countries in our region it is critical that such companies be open and transparent in their dealings with government and respect international human rights principles multinational companies can help strengthen the rule of law by supporting legislative reforms, collaborating with donor institutions, resolving conflicts by utilising the judicial system and respecting the rights of their employees. By following these principles, multinational companies can continue to derive the economic benefits that flow from conducting business in a stable

political and regulatory environment. In turn that stability will attract further international investment and economic growth.

23. The increased awareness on the part of the business sector of the importance of establishing and maintaining respect of the rule of law and protection of human rights is reflected in the range of international instruments and standards that have been developed to help guide corporations in this field.
24. I have already mentioned the UN guiding principles on business and human rights. In addition, the International Labour Organisation has issued a Declaration of Principles concerning Multinational Enterprise and Social Policy which recognises the important contribution is a multinational enterprise can make to the enjoyment of basic rights.
25. The OECD has issued Guidelines for Multinational Enterprises, which provides a set of recommendations to multinational enterprise on responsible business conduct including respecting human rights.
26. In addition, a growing number of businesses around the world are voluntarily committing to respect human rights. For example:
 - over 4700 businesses have endorsed the principles in the UN Global Compact, which contains 10 universal principles in the areas of human rights, labour, environment and anticorruption.
 - A group called the Business Leaders Initiative on Human Rights has been established and is finding practical ways of applying the principles in the United Nations Declaration on Human Rights within a business context. This group includes large multinationals such as Barclays, Ericsson, General Electric and Coca-Cola.
27. And, as always, an element of coercion through the pursuit of legal remedies against companies that infringe on private rights has contributed to these changes. In America, for example, several claims have been brought under the Alien Tort Claims Act, which gives US federal courts the power to hear civil cases brought by foreign citizens for injuries caused by actions in violation of the law of nations or a treaty of the United States. The United States Business and Human Rights Resource Centre has

established a special legal accountability portal on its website, which includes concise profiles of hundreds of lawsuits in which companies are accused of human rights abuses: [www.business-humanrights.org/Legal Portal/home](http://www.business-humanrights.org/LegalPortal/home).

Recent Experiences in the Rule of Law Regionally

28. Strong legal systems can foster domestic and foreign investment that is both ethical and profitable and the rule of law provides accountability to safeguard against the arbitrary use of power and encourages responsible policymaking.
29. A brief tour around our region serves to illustrate the importance of observance of the rule of law and human rights to realising the opportunities for economic development.
30. Myanmar is perhaps the most recent and stark example. It has been identified as one of the most significant locations for economic growth in the Southeast Asian region. The opportunities for investment in that country have been directly linked to political reforms that involve greater recognition of individual rights and freedoms and the re-establishment of rule of law principles.
31. Myanmar's list of achievements includes: forming a new government, legalising political parties, holding relatively free and fair parliamentary elections, revoking and revising many repressive laws, pursuing peace talks and cease fires in longstanding ethnic conflict areas, releasing thousands of political prisoners, establishing the parliamentary Rule of Law Committee and the National Human Rights Commission, expanding diplomatic relations, and liberalizing the economy to encourage foreign investment.
32. Western countries have welcomed these reforms and rewarded the government by lifting economic sanctions and waiving billions of dollars in debt.
33. Based on past experience from other countries prioritized for global funding, over the next few years Myanmar will receive large multi-year international grants to support rule of law activities, especially government-led training and workshop.

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34. In similar programs throughout Asia, government actors tend to attract the larger share of funds, often disappointing results.
 35. In recent decades, Pakistan and Cambodia have together absorbed over one billion dollars in rule of law/access to justice funding without visible improvement in the lives of ordinary people.
 36. As an approach, it is suggested that progressive donors interested in supporting rule of law in Myanmar should focus on the non-governmental advocacy sector, especially local lawyers, many already standing with local groups at the forefront of human rights controversies.
 37. There is a need for large-scale, targeted legal education and training for lawyers, judges, prosecutors, paralegals, and media, as well as ordinary communities facing rights violations.
 38. After years of being prevented from gathering in groups, activists are eager to network and share strategies. This is especially important for lawyers and judges who have for decades been deprived of independent professional representation.
 39. With no funding or support, lawyers are already forming groups to fill the representation gap. There is strong potential for these emerging networks to play a leading role in human rights research, litigation, and advocacy. They have prioritized rule of law, intend to establish active departments to pursue justice work, and would benefit a great deal from financial support and help with capacity building.
 40. Similarly, the emergence of Vietnam as a focus of foreign investment in the region can be linked to that country's developing capacity in the areas of governance, transparency and regulatory reform.
 41. In December 2001, the governments of the United States and Vietnam signed a historic bilateral free trade agreement that promised to strengthen economic and political ties between the two countries.
 42. The U.S. Agency for International Development (USAID) funded STAR (2001–2006) the first major USAID technical assistance project in economic growth implemented in Vietnam since 1975.

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43. STAR I focussed on reforms needed for Vietnam's accession to the World Trade Organization (WTO), which the country achieved in 2007.
 44. Following on enormous success of STAR I, STAR II (2006–2010) focused on supporting development of institutional and administrative systems needed to implement the massive legal and regulatory changes that have been promulgated during this period in the areas of trade, commercial dispute settlement, intellectual property rights, foreign direct investment, and transparency and the right to appeal.
 45. These reforms were partnered with extensive educational programs that include training for officials, lawyers, judges, and business leaders; revision of university curricula and capacity development; and media-based public education campaigns.

The STAR Plus strategy.

46. STAR Plus (2010–2013) which included advising the Office of the Government, Ministry of Finance, and State Bank of Vietnam on macroeconomic policy, and ramping up Vietnam's governance skills, systems, and processes at all levels, was flexible and demand-driven, and furthered Vietnam's integration into the global economy as it continues its transition to a market-driven system.
47. Recent developments in Thailand and Papua New Guinea that have disrupted the rule of law further illustrate the connection between law and economic development...
48. Thailand's status as an upper-middle-income country with continued economic growth - despite the setbacks of the 2011 floods - made it a strategic destination for both foreign direct investment and migrant workers.
49. In recent times, Thailand has been looking to position itself as a strong voice on why the rule of law is essential to sustainable development, economic growth and protecting human rights.
50. Until the recent military coup, Thailand had been actively contributing to global and regional discussions that promote the rule of law and criminal justice reform. The government had launched resolutions with international bodies such as the Commission on Crime Prevention and Criminal Justice, leading to

the passage of "The rule of law, crime prevention and criminal justice in the United Nations Development Agenda beyond 2015" by the UN General Assembly.

51. The recent military coup has displaced the elected government in Thailand. The ongoing instability has directly impacted key sectors such as tourism (which accounts for one tenth of Thailand's GDP) and economic analysts have forecast further negative impacts.
52. In the first quarter of 2014, Thai GDP fell 0.6% from the previous quarter and 2.1% year-on-year. Tourism, which makes up roughly 7% of the economy, has declined markedly: according to STR Global, a data provider, hotel-occupancy rates from January through May were 15% lower than in the same period of 2013. In June the Thai central bank nearly halved its 2014 growth forecast to 1.5%.
53. Foreign direct investors also seem skittish: in the first five months of 2014, they made applications to the BOI for 334 projects worth 230 billion baht, compared with 526 projects worth 256 billion baht in the first five months of 2013. Japanese investors, usually the biggest category, have proved particularly reluctant, with their applications more than halving in value.¹
54. Since the abrupt seizure of politicians and pro- and anti-government protest leaders during negotiations brokered by the Thai army on May 22 2014 an increasingly alarming number of poor economic indicators has been revealed...
 - ...tourism arrivals have fallen by 30,000 inbound passengers a day over the past several months. Forward bookings are beginning to fall in the wake of the Thai army's seizure of power as the military intervention invalidates most travel insurance policies. Sixty two countries have issued travel advisories for their citizens planning to visit Thailand, 16 of them so-called "red alerts"

¹<http://www.economist.com/news/finance-and-economics/21606327-economy-cannot-shrug-thailands-political-problems-when-teflon-wears>

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- Consumer confidence is at a 12-year low, while exports between January and April dropped one per cent compared to a year earlier. Overall there has been lower loan growth, reduced savings growth – the NESDB says about half of Thailand’s almost 23 million households have less than Bt100,000 (US\$3,000) in savings – while a significant rise has been seen in non-performing loans amongst the nation’s small and medium enterprises (SMEs).
55. In Papua New Guinea, the Prime Minister Peter O’Neil recently sacked his Attorney-General because the Attorney General had authorised an arrest warrant to be issued to the Prime Minister following investigations conducted by the Anti-Corruption Taskforce set up by the Prime Minister himself. The anticorruption Taskforce was widely acknowledged as an important step forward for the Papua New Guinea government in creating a stable, transparent economy which would attract foreign investment. It remains to be seen what the effect of these latest developments will be for Papua New Guinea's economic growth.
 56. Prior to these developments, the rule of law in Papua New Guinea has been widely regarded as ‘delicate’.
 57. Since the August 2011, political and judicial instability has affected international perceptions over the stability of Papua New Guinea, with some analysts suggesting that Papua New Guinea is on the verge of becoming a ‘failed state’.
 58. Efforts by Australia over the past 30 years to improve stability of law and order in Papua New Guinea have had mixed results.

The work of the Law Council in pursuit of the rule of law

59. The Law Council of Australia has long recognised the importance of respect for the rule of law in helping to create a stable and productive region. As well as pursuing rule of law issues domestically, the Law Council has undertaken work over many years to promote the rule of law within the region.
60. In the late 1960s the Law Council played a fundamental role in the establishment of Law Asia. When created, Law Asia survived on

virtually no funding, with a very small allocation of resources from within the Law Council secretary at.

61. Since its inception, Law Asia has built an enviable reputation among lawyers, business people and governments, both within and outside the region, as a committed, productive and genuinely representative organisation.
62. Today, it represents the peak legal bodies of 24 nations of Asia and the Pacific, facilitating its members' participation in the most dynamic economic region in the world.
63. Part of LAWASIA's mission is to uphold the rule of law, human rights and universally high standards of legal practice.
64. Throughout its history LAWASIA has taken action over many issues affecting lawyers and the profession in the region, using its position as a regional spokes-group to focus international attention where it might assist.
65. For example in May 2005, LAWASIA was at the forefront in supporting the Fiji Law Society in its opposition of a Bill proposing the establishment of a commission that would be able to grant amnesty to those who faced or would face prosecution for criminal activity during the coup.
66. The Law Asia President, Secretary General and Dr Gordon Hughes will be going on a mission to Fiji in July to update LAWASIA knowledge on the Fiji legal community and to gain understanding how the international legal community might provide assistance and increased connectivity in the future.
67. LAWASIA has advocated the need for the independence and freedom of lawyers in Pakistan since 1983 when it sent an observer from the Human Rights committee as a result of arrests of lawyers and claims by the local bar association that judicial independence was under challenge. Most recently LAWASIA issued a statement after the bombing of the Islamabad court and death of Judge Razaqat Awan.
68. LAWASIA has followed the trials of Dato' Seri Anwar Ibrahim and Karpal Singh closely over the years and has been able to have an observer at the most recent trials, Mark Trowell QC. With the benefit of Mark's feedback, LAWASIA has released statements in

reaction to both cases and most recently expressed concern over the haste in which the appeal case against Dato' Seri Anwar Ibrahim concluded in March.

69. Earlier this year LAWASIA also reacted with concern to the deportation of Nauru's sole magistrate and the revocation of the Chief Justice's visa.
70. In addition to establishing Law Asia as a stand-alone body, since 1998, the Law Council has also participated in the Presidents of Law Associations of Asia (POLA). This body comprises Law associations from Asia, India and the Pacific and, by invitation now includes Australia and New Zealand meets once a year. I was fortunate to attend this year's POLA conference to see for myself the primacy that is given to the pursuit of the rule of law by Law associations in all of those regions. One of the topics of discussion at that conference included an examination of the suspension of the rule of law following natural disasters, with a focus on the earthquake in Christchurch in February 2011.
71. Another initiative of the Law Council of Australia was the establishment of the Centre for Asia Pacific Pro Bono. The Centre was established with funding from the Australian government attorney generals Department. It is an outwardly focused regional initiative that provides legal assistance and contributes to building stability amongst Australia's regional neighbours. The Law Council recognised that many Australian lawyers wanted to offer free legal services or undertake pro bono work to assist the needs of organisations in the Asia Pacific region. The Centre for Asia-Pacific pro bono was established to meet that need. The Centre facilitates projects which are developed by organisations operating in the Asia-Pacific region for the purposes of building capacity these projects contribute to good governance based upon requests for assistance.
72. In Indonesia, the Law Council has sought to contribute to the stability of the legal profession by assisting its national professional body, PERADI. In 2003, the Indonesian government legislated for the creation of PERADI to effectively supersede the fragmented representation of the legal profession in Indonesia via a separate association. PERADI was established and it has subsequently taken a number of steps towards unification of the profession and the development of professional standards.

Through the intervention of the Law Council, the Australian government provided targeted financial assistance for a number of initiatives undertaken by PERADI to develop nationally applicable professional standards.

73. In 2007, the Law Council participated in the establishment of the Pacific Judicial Development Program. This program involved 15 Pacific Island countries supported by foreign aid from the Australian and New Zealand governments. It saw the coordinated undertaking of initiatives spread across four general areas:
- access to justice
 - governance
 - systems and processes and
 - professional development
74. Some of the initiatives of that program included the development and publication of Judicial Codes of Conduct, training programs for educators delivering judicial training and the development of court registries. The program used experienced experts from within Pacific island nations to direct training programs in neighbouring countries.
75. The Law Council has also been instrumental in the establishment of the South Pacific Lawyers' Association. This initiative saw the establishment of a regional peak legal body that was able to pool resources across 14 Pacific island nations in the pursuit of the rule of law. Seed funding was provided by the International bar Association is developing bars program. Through the South Pacific Law Association, the Law Council of Australia has been undertaking an important project in the pursuit of the rule of law. This is the South Pacific Model Rules Project. The objectives of the South Pacific model rules project are to undertake an analysis of existing rules legislation and regulations governing the legal profession in the South Pacific region and to develop draft model rules legislation and regulations which could be adopted with appropriate debate and modification by South Pacific countries.
76. Phase 1 of the project is underway. A report on the various legal profession acts of the South Pacific region dealing with admissions, regulation of the profession, costs, professional

misconduct and discipline has been completed and is currently under consultation.

77. This important project provides an unprecedented opportunity for the development of model legislation and rules of professional conduct operating in a broadly consistent manner throughout the region.
78. These are just some examples of the work that the Law Council, in partnership with other international and regional associations, has contributed to the development of the rule of law in the region. The Law Council is interested to assist the emerging independent profession of Timor Leste wherever it can. The legal profession in Timor Leste can take the lead in pursuing the establishment of independent strong institutions of justice in your country. But in addition, there are many opportunities available to the profession in Timor Leste to participate as a member of regional bodies, to learn from and contribute to the practical application of the rule of law in the communities in which we collectively serve.
79. It is my privilege to have been elected to lead the Law Council of Australia in 2015 as it continues this important work. It is my great pleasure that the Law Council has identified Timor Leste as an important focus of interest, that it will happen during my term as president, and provides me with the opportunity to meet and develop associations with my colleagues in Timor Leste which I'm sure will endure for many years.
80. Thank you for your time

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