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THE EU'S CONCEPTUALISATION OF THE RULE OF LAW
IN ITS EXTERNAL RELATIONS

Case studies on development cooperation and enlargement

van Lisa Louwerse

1. A review of the most prominent legal systems of the EU as well as of the relevant literature confirms that the rule of law should contain institutional, procedural, as well as formal elements.
2. In its development cooperation and enlargement policies, the EU's rule of law reform has come to be synonymous with judicial reform.
3. In enlargement, formal legality is undermined by the particular nature of the *acquis*; to a large extent it precludes in depth engagement with EU legislation at the domestic level in the applicant states.
4. The EU has adopted a mostly institutional focus regarding its rule of law reform in development cooperation as a result of the wider international framework within which it takes place, as well as the rise of the notion of good governance and the increasing focus on security issues in this policy area.
5. Whereas formal legality features as a core rule of law element in the most prominent legal systems of the Member States, however, EU practice shows that in its external rule of law conceptualisation formal legality is largely absent.
6. A comprehensive approach regarding the consolidation of the rule of law in third states should necessarily be preceded by an articulation of the concept's component parts and their interrelationship.
7. The EU should acknowledge that developments within a policy area also influence the weight attributed to different elements within that particular area in order to keep a clear focus on the rule of law despite the fluctuating developments in different policy areas.
8. The EU should be more aware of its own cognitive bias vis-à-vis the rule of law's instrumental use-value, i.e. its use as a means to other ends, which has led to a strong emphasis on the end goals and the lack of attention to precisely what elements of the rule of law are needed to achieve those very ends.
9. The arrow that hits the bull's eye is the result of a hundred misses.
10. The bamboo that bends is stronger than the oak that resists.

