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“Legal Reform in the Arab World: An Imperative of Self-determination”

Abstract of the lecture delivered by Hans Köchler at the International Expert Conference on *Legal Reform in the Arab World*

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At the beginning of the 21st century, the Arab world is facing major challenges to its independence that result, primarily though not exclusively, (a) from the process of globalization (in the main areas of economics, politics and information) and (b) from the unresolved conflict situations in Palestine and Iraq due to serious violations of international law.

The Arab world will only be able to preserve its freedom of decision – or regain it in those areas where it has had to act under or in response to outside pressure – if it succeeds in reforming, in a comprehensive and sustainable manner, the political and economic life on the basis of *genuine democracy* and the *rule of law*. What is required is no less than a *reinvention* of the Arab system of governance on the basis of *Arab* experience and *Arab* prescriptions. Such reinvention, in order to be effective, will undoubtedly have to be realized in an international framework, taking into consideration the experience of other countries and regions. However, any advice in regard to constitutional matters will lack credibility as long as the central issues affecting the Arab world – in particular the denial of legal and political sovereignty to the people of Palestine and the threat to Iraq’s territorial integrity due to foreign intervention – are not honestly addressed. A basic reform process cannot be initiated in a political no man’s land.

The cornerstone of comprehensive societal reform will be a major adjustment of the *legal systems*. Personal freedom and the related economic success and international competitiveness essentially depend (1) on an *elaborate* and at the same time *functional* separation of powers and (2) on the irrevocable constitutional guarantee of civil liberties. The independence of the judiciary will be quintessential in that regard.

The subsequent editions of the UNDP’s Arab Human Development Report and Arab civil

society as well as intergovernmental initiatives such as the “Alexandria Statement” and the “Sana’a Declaration on Democracy, Human Rights and the Role of the International Criminal Court,” both of 2004, have drawn our attention to the major components of constitutional and legal reform.

The elements of a genuine Arab reform project in those areas will have to be defined in clear conceptual distinction from the blueprint following the “geopolitics of the Greater Middle East.” If one’s approach is oriented at sustainability, the ongoing discourse on legal and institutional reform is to be seen in the context of what may be called the “unfinished project of de-colonization.” In the highly competitive globalized environment of today, the Arab countries will only be able to reverse the neo-colonial trend towards reshaping the region’s politics according to outside interests if they fully realize the human potential of all citizens. An efficient and consistent legal system, incorporating the transcultural principles of the rule of law, will be the *conditio sine qua non* for self-determination under the conditions of globalization and in a highly volatile regional and geopolitical environment, resulting from the absence of a global balance of power.

It remains to be seen whether the Kantian notion of *Republicanism*, with its emphasis on constitutionalism and a strict separation of powers, could be the basis for an *honest* reform proposal, on the part of the West, that is compatible with the Islamic (and Arab) doctrine and tradition of good governance.
