

*Speech by the President of the Senate of the Netherlands,
H.E. Ms Ankie Broekers-Knol, at Peking University Department of Law,
7 November 2016*

"The rule of law in the Kingdom of the Netherlands"

Ladies and gentlemen,

Although I am 5,500 miles away from my home country, I still feel very much at home. There are two reasons for this: the hospitality the Chinese people have shown us and the fact that I am at a university. I taught at a university, in the law department, for 40 years. My drive as a teacher has always been that I find it very inspiring to make young people enthusiastic about the subjects of my lectures, to inspire them and to make them excited. As a teacher (whether you are a high school teacher or a law professor) you have a unique opportunity to help young, bright, talented people like yourselves to make their mark on the world. It is just like the Chinese saying: "A teacher opens the door, you enter by yourself."

The topic of my speech to you today is the rule of law in the Kingdom of the Netherlands. I realise that our countries are not only thousands of miles apart, they are also very different in size and age. The Netherlands is a small, densely populated country in Western Europe that is below sea level.

Our country was a republic in the 16th, 17th and 18th century, and in those days, a trading partner of China. Our Kingdom was established in 1815 and has only existed for 200 years: a mere infant compared to the thousands-year old Chinese civilisation.

The Chinese and the Dutch system for upholding the rule of law are both unique. They are a reflection of our countries' history and civilisation.

We have similarities and dissimilarities. I hope that our similarities are a source for recognition and our dissimilarities a source of inspiration.

The Dutch word for law is *recht*. This means: 'that which is fair and just'. To a certain extent this word is comparable to the Chinese word *fǎ*. Just like Article 33 of the Chinese constitution stipulates that "All citizens of the People's Republic of China are equal before the law", Article 1 of the Dutch constitution stipulates that "All persons in the Netherlands shall be treated equally in equal circumstances."

When I use the term 'rule of law' in my speech, I mean that the law applies to all people equally, without exceptions.

Applying the law equally to all citizens and governing in accordance with the law means that there has to be sound legislation. In the Netherlands, the law is created by the people. The people elect their representatives in parliament and the parliament establishes legislation, mostly proposed by the government, but it can also be proposed by members of parliament. Our parliament aims to represent all Dutch people (minorities and majorities) and to serve the general interest.

Our parliament is what we call 'the legislative branch of government'. In the Netherlands there are three branches of government that all uphold and safeguard the rule of law:

- the legislative branch (both houses of parliament)

- the executive branch (the governing cabinet)

- the judicial branch (the courts/judiciary and the public prosecutor)

Each branch has its own role to play. The legislative branch creates the law, the executive branch, makes sure the law is executed and enforced and the judicial branch makes sure citizens are treated fairly and in accordance with the law. All three branches form part of a balanced and sometimes complicated system of checks and balances.

That system of checks and balances is enshrined in the Dutch constitution. Our constitution establishes the framework and principles of government and lists the fundamental rights and duties of Dutch citizens. Our constitution is 200 years old. When our first king, King William I, accepted the sovereignty of the Netherlands 1813, he did so only under the guarantee of a sound constitution, which ensures freedom for the population against possible misuse. In two centuries our constitution was changed 20 times (for instance to introduce women's rights) but to this day we our constitutional monarchy and a parliamentary democracy are still largely based on the principles of 200 years ago.

The last big change in our constitution was in 1983. Changing even one sentence in the constitution takes years, sometimes decades. It is not easy to change the constitution. The reason the Netherlands created a system where it is difficult to change the constitution is because the constitution forms the basis of the much larger robust structure that is in place. It is the foundation of the rule of law and the judicial system as a whole.

So how do we create that larger legal structure? How does a bill become a law in the Netherlands?

Ministry → consultation with organisations from society → advise from the Council of State → House of Representatives → Senate → signed by HM the King

The role of the Senate is to do the final check on legislation. We have three criteria for scrutiny:

Legality → Is the bill in line with national and international law and legal principles such as non-retroactivity? Example: When someone has been acquitted of a crime and (years later) new evidence surfaces; should it be possible to retry the case? Since a couple of years there is a possibility to do this but only in cases that resulted in the death of the victim.

Practicality → Will it work in practice? Example: When the Tax Administration wants to stop sending letters and only use email to inform citizens on tax related issues. Can we guarantee that everyone has access to a digital post-box? Can we guarantee that for instance senior citizens are able to work with this new method?

Enforceability → Can the government make sure citizens follow this law? Example: Does the police have enough resources to enforce a law that prohibits people from smoking in cafés (big and small)?

The Senate consists of 75 members. We have 12 different political parties in the Senate. A bill can only be passed if a majority of the 75 senators approve. That means that the governing cabinet has to consult, debate, persuade and compromise. As I explained, when a bill had passed the House of Representatives, the Senate engages in written correspondence with the cabinet. When that process is concluded and there are questions that remain, we have a plenary debate with the minister or ministers concerned. After all arguments are heard and debated the bill is put to the vote. Through that democratic process we try to establish sound legislation.

However, sound legislation alone does not guarantee that citizens are treated fairly and in accordance with the law. To accomplish that you need an independent judiciary. In the Netherlands we have 2,400 judges. With 16,8 million people, we have one judge per 7,000 citizens. Judges in the Netherlands are appointed for life and cannot be discharged. The judiciary is made up of three different layers: district courts, Courts of Appeal and the Supreme Court of the Netherlands. Generally speaking, we have three

bodies of law: civil law, penal/criminal law and administrative law
(including tax law).

The judiciary can only decide on individual cases. The judiciary decides whether the law is applicable and to what extent - in an individual case. It cannot determine whether a law is in coherence with the constitution. That power is granted exclusively to parliament.

All three branches of government work to uphold and safeguard the rule of law. In the Netherlands we view the rule of law as the foundation and the guarantor for individual rights, long-standing economic prosperity and social stability. And as with buildings, the foundation and the structure require maintenance.

The rule of law is never finished. The rule of law is dynamic and requires continuous maintenance and hard work. It requires also that government and parliamentarians fully realize its importance when drafting legislation. The rule of law is not some place of refuge where we can quietly go to sleep. It is just like the Chinese saying: "Be not afraid of growing slowly, be afraid only if standing still."

I hope my remarks have given you some insight in the rule of law in the Netherlands. As I said: there is no ultimate model for upholding the rule of law. All legal systems around the world are a unique reflection of that country's history and civilisation. However, there are always things we can learn from each other. That is the best way we can make sure we grow slowly and do not stand still.