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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **RULE OF LAW IN INTERNATIONAL LAW**

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## **Abstract**

International law is based on the idea that all individuals and objects, including nations, are bound by and answerable to the law. Fairness, justice, and equality are the key factors in guiding international relations through its legal framework. This concept promotes stability, predictability and general respect for human rights, supporting the notion that no one is above the law. Legal norms create unambiguous legal rules and enforcement methods and promote international cooperation and peaceful conflict resolution, which support the maintenance of international order and the promotion of global justice.



## Introduction

Despite not evolving in isolation, the international rule of law has its conceptual origins, practices, and reflections in legal solutions that are inevitably linked to the concept of state-level rule. The modern phrase by A.V. Dicey<sup>1</sup> is a good starting point for exploring the concept of law, but it may not be entirely without merit. In Dicey's view, the rule of law can be understood in three ways, or viewed from different angles.

### 1. Absolute supremacy or predominance of regular law

- The rule of law, as described by Dicey, refers to the complete dominance of regular law or the supremacy over arbitrary power or wide discretion.
- It means the exclusion of arbitrariness in government.
- Essentially, this means that no one can be arrested, punished or legally punished physically or tortuously for breaking a law established in ordinary courts, except by due process and in the usual legal way.

### 2. *Equality before Law*

- Dicey elucidated the doctrine's aspect, contending that all classes must be equal in legal proceedings or submit equally to common law courts.
- Dicey argued that the provision of special courts to officials who were not under general court jurisdiction was inconsistent with his beliefs about equality.

### 3. *Judge-made Constitution*

- According to Dicey, several countries have implemented rights such as the right to personal liberty and freedom of assembly, as well as freedom from arrest.
- He highlighted the importance of the courts as a safeguard for freedom and proposed that rights would be more secure if they were enforced in court than when they are explicitly declared in judicial documents.

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<sup>1</sup> Albert Venn Dicey

## **Hypothesis**

When considering the rule of law concept in international law, we observe that while it has some common ground with its domestic counterpart, its practical application and effectiveness is characterized by significant opportunities for improvement. The absence of a centralized enforcement mechanism in the international arena, unlike the well-established legal codes and regulations at the borders of sovereign states, allows for uniform enforcement across cultural and national boundaries. We can deduce from this that the rule of law of international legal principles operates on a foundation of complexity, symmetry, and plurality. Therefore, its success depends not only on the formalization of international treaties but also on states willingness to abide by them and on foreign bodies ability to support their enforcement and resolve conflicts.

## **Research question**

- In what way does the rule of law operate within global agreements, particularly in cases where national sovereignty is under state control?
- To what extent does the rule of law apply to international courts?

## **The rule of law significance in international law**

International law is characterized by the rule of law, which serves as the foundation for stability, justice, and its core, the rule of law in the international context is based on the idea that all states big or small, with any influence whatsoever must adhere to the rules and principles which govern their interactions anywhere within the world international cooperation. Developing an institutional structure to control state actions and peacefully resolve conflicts is one of the most significant roles of law in the international community.

On a global scale, the rule of law is founded on international laws such as treaties and conventions, customary practices. It provides a framework for states to coexist and co-exist in an orderly manner, while also establishing rules that regulate territorial sovereignty, human rights, trade, and the use of force.

Additionally, the rule of law supports accountability and justice on a global scale by holding states responsible for their actions and ensuring that they fulfill their international legal obligations. International courts, tribunals, and dispute procedures are necessary to fulfill these

obligations and resolve conflicts between states. These mechanisms must be in place as well. Besides, the rule of law supports the protection of state sovereignty and non-disruptive practices in their internal affairs. At the same time, the importance of international cooperation for solving common challenges such as climate change, terrorism and global pandemics is recognized.

### **The rule of law significance in domestic**

Societies are sustained by the rule of law, which serves as a fundamental cornerstone of domestic law and upholds stability in societies. Its essence is that the principle of the rule of law guarantees nobody's immunity from legal consequences, and ensures that all individuals, institutions, communities, are bound by legal principles and regulations. To maintain legal certainty and predictability is a fundamental function of the rule of law in the national context.

It provides clear, accessible and binding laws governing the conduct of individuals or institutions. The act boosts trust in the legal system, encourages compliance with the law, and empowers individuals to plan their activities and affairs with confidence. Moreover, the principle of individual freedom and equality safeguards individuals by providing mechanisms for enforcing and protecting their rights. It guarantees due process, a fair trial, and equal representation before the law to all, regardless of their status or position. The principle of the rule of law safeguards against abuse and prevents arbitrary regime by those who are not subject to it. To prevent abuse and arbitrary rule, the rule of law limits government power through separation of powers with respect to its citizens; also through checks and balances provided by courts.

Additionally, the rule of law encourages responsibility in domestic societies by allowing individuals and institutions to be held accountable for their actions. Laws are established to resolve conflicts, seek appeals and ensure fair and impartial proceedings. Within the realm of international law, the rule of law is a fundamental principle that guides the behavior of states and other actors on governmental and national level. International law's primary focus is on the behavior of sovereign states and regulating norms that govern their interactions with each other, unlike its domestic application.

## **The Rule of Law in Global Agreements**

The rule of law is a fundamental principle that forms the basis of numerous international treaties, agreements, and organizations. Its principles are commonly incorporated into the objectives and provisions of contracts, even though they may not be explicitly stated in those contracts. Here are examples of how the rule of law manifests itself in global agreements:

### **The UN Charter<sup>2</sup> (1945):**

A fundamental aspect of modern international law is the Charter of the UN, which serves as a legal guide for the United Nations and regulates the behavior of its member states.

It promotes the principle of sovereign equality among states, prohibits use of force, and encourages peaceful resolution of conflicts, which aligns with legal principles that prioritize peaceful coexistence and cooperation between states.

Along with its role in international law, the Charter also creates two important bodies: The United Nations Security Council<sup>3</sup> and the International Court of Justice, which are responsible for maintaining international peace and security.

### **The Universal Declaration of Human Rights (1948):**

The UDHR<sup>4</sup> was adopted by the United Nations General Assembly in 1948, which asserts that fundamental human rights are applicable to all individuals, regardless of their nationality, ethnicity or religion.

International human rights legislation has been revolutionized by the Universal Declaration of Human Rights, which outlines the fundamental principles of human dignity and justice. This declaration is known as "the Declaration that establishes human right and dignity. The Universal Declaration of Human Rights, while not legally binding, served as the foundation for several international treaties and conventions such as ICESCR<sup>5</sup> and ICCPR<sup>6</sup>. on human rights.

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<sup>2</sup> United Nation Charter

<sup>3</sup> The United Nations Security Council

<sup>4</sup> Universal Declaration of Human Rights

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights

<sup>6</sup> International Covenant on Civil and Political Rights Description

## **Geneva Conventions of 1949**

The Geneva Conventions of 1949 represent a pivotal milestone in the evolution of the rule of law in international law. The conventions outlined the fundamental principles of human dignity and humanitarian values that govern actions taken against civilians and prisoners of war in times deployed by violence.

International law's development was significantly influenced by the Geneva Conventions of 1949, which established fundamental principles for safeguarding individuals in times of war.

With these conventions in place, the world recognized the need to uphold human rights and humanitarian standards during times of war, exemplified by provisions for treating wounded and sick combatants, prisoners of battle, as well as civilian individuals.

## **Corfu Channel Case (1949)**

That trial investigated the guilt of Albania in the mining of the Corfu waterway and the subsequent mining of two British naval ships.

In October 1946, two British warships hit mines in the Albanian Sea. Both destroyers were badly damaged, with 45 British officers and men killed and a further 42 wounded.

Without the consent of Albanians, the British Navy scoured for mines in the Albanianousheap channel during November Great Britain requested proceedings against the People's Albania to establish that the Albanian government is globally responsible for the consequences of the event and must make compensation.

Albania, on the other hand, presented a counterclaim against Great Britain for violation of Albanian territorial sea.

It was claimed by the British that the Albanian government authorized or had knowledge of the construction and operation, which resulted in this minefield being detonated between May 15 and October 22, Consequently, Albania was obliged to compensate the UK government for the explosions and fatalities. A different matter concerning a specific agreement, such as the passage of British warships on October 22, 1946, concerns the British navy's actions in Albanian waters on November 12 and 13, 1946. The British government performed mine

extraction operations. an operation called "Operation Retail" without Albanian permission.

### **Issues**

1. Would it be beneficial to connect the North Corfu Channel with international routes?
2. According to the international legal system, is Albania responsible for the events that took place in the Albanian Sea on October 22, 1946 and the resulting damages and victims, and is compensation due for this?

### **Judgement**

Under international law, the court held Albania responsible for the explosions in their waters and the damages sustained. Additionally, there were reports of casualties.

The idea that Albania erected the mines on their own was challenged by him, as was also the claim that they had agreed to a mine-laying operation conducted by the Yugoslav Navy at their request.

However, he discovered that the Albanian government was not aware of the mines existence. The fact that a State has the power to determine its borders makes it difficult to provide direct evidence of its international responsibility, as he pointed out.

The victimized state should have greater freedom in utilizing factual and circumstantial evidence, particularly when it is based on related, but logically conclusive facts.

### **Case Analysis**

The Corfu Channel case continues to be a significant turning point in the evolution of international law, particularly in relation to state responsibility and the law of the sea.

The statement expounded on the responsibilities of states to ensure the safety of navigation in international waterways and the boundaries of territorial sovereignty when it conflicts with international law.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)<sup>7</sup>

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<sup>7</sup> 1986.IC.J.14

## Facts

Accusations have been made against the United States for supporting rebels in their bid to overthrow the Nicaraguan government, which is considered an act of international law.

The Nicaraguan government asserted that the United States was participating in military assaults, fiscal restriction and port mining activities.

Nicaragua was deemed to have committed acts of aggression and violated the sovereignty and non-intervention principle by the ICJ<sup>8</sup> in its ruling.

## Issue

Did the international court have a decision on the case?

## Judgement

The International Court of Justice has the jurisdiction to resolve disputes between two countries that have agreed to court jurisdiction. Nicaragua's declaration of 1929 was not sent to the Permanent Court, but its validity was established due to its potential impact. Thus, it remained in force even when Nicaragua became a party to the I.C.J Statute was established without any conditions or conditions, owing to its unconditional nature.

The International Court can be granted if the request is made by a state that has no grounds to exclude it. Nicaragua's request was challenged by the United States on grounds, with one being that the claimant failed due to the lack of a "necessary parties" rule that prevented it from inviting the necessary parties. The request of the Nicaraguan court to investigate a menace towards peace, which is the only province of any Security Council member in existence, was unsuccessful due to the I.C.J.

A complex and evolving issue is how the rule of law is applied in international courts, which requires careful consideration. The principle of the rule of law can vary among international courts, despite their significant role in maintaining it on a global level. International courts are obligated to adhere to the principles of the rule of law in their proceedings and rulings.

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<sup>8</sup> International Court of Justice

The implementation of established legal procedures, transparency, accountability, and respect for fundamental rights and freedoms are part of this.

## **International**

courts are obligated to conduct proceedings with the highest ethical standards, while also providing fair and impartial proceedings and ensuring that all decisions are guided by relevant laws. At the same time, there are problems in the implementation of decisions and judgments of international courts. International courts, unlike domestic courts are often without enforcement mechanisms to ensure that decisions are enforced. Thus, their ability to promote the rule of law can be curtailed by the willingness of states to execute their decisions and take appropriate steps. In spite of the obstacles, international courts are crucial for advancing the rule of law by serving as a means to resolve conflicts peacefully, clarify legal concepts, and promote greater global cooperation. Through their rulings and decisions, international courts can enhance the consistency and predictability of the global legal system, which in turn strengthens worldwide law.

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