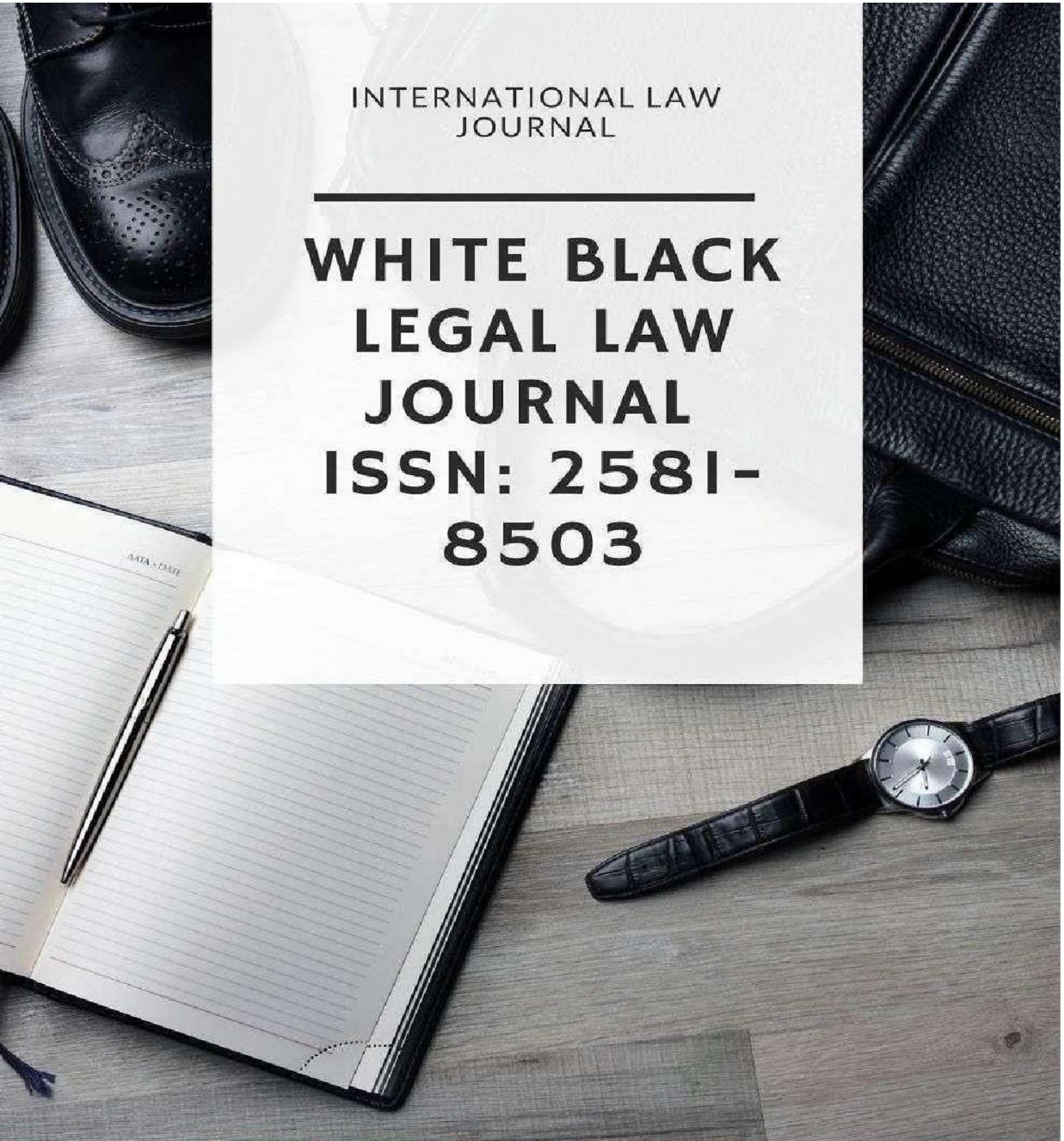




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WHAT THE "RULE OF LAW" MEANS IN INTERNATIONAL LAW: DEFINING THE CONCEPT BEYOND DOMESTIC LEGAL SYSTEMS

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ABSTRACT

The expression "rule of law" is more commonly identified with national constitutions, judicial bodies, and legislative branches. However, the term has an additional and important meaning when used in the context of the international arena, where authority is dispersed among nearly two hundred sovereign states rather than concentrated in a single governing body. This article analyzes the definition and implementation of the rule of law in the international context by the United Nations, compares it with the domestic notion, and provides a review of the international treaties, principles, and institutions such as the UN Charter, the International Court of Justice, and the International Criminal Court that give this concept its practical application. It is argued that the rule of law in the international context acts as a real constraint on the behavior of states, even without any central body to enforce it.

I. INTRODUCTION

During the Russian invasion of Ukraine, which occurred in February 2022, many diplomats and journalists summarized this event as "a violation of the rule of law." In domestic affairs, the term rule of law has a familiar meaning and presupposes the presence of judicial independence, equality before the law, and limitations on executive power. But what does it mean to speak of the "rule of law" among states, where there is no world parliament, no global police force, and no supreme court with automatic jurisdiction over every dispute?

This article examines what rule of law stands for in international law, reviews the definition adopted by the United Nations, and analyzes how this rule of law concept differs from that applied within a single state.

II. THE ORIGIN OF THE RULE OF LAW

Historians and philosophers attribute the basic idea of the rule of law, which is that those who hold power must govern within an imposed framework of social norms rather than their personal whims, to ancient Greece. Later on, the concept was elaborated upon by Roman law, medieval political theology, the political philosophy of early modern England, and the Enlightenment of France and Germany.

The common usage of the specific term "the rule of law" refers to an ideal form of governance that became prevalent in legal, political, and philosophical discussions in the late nineteenth century, largely through the work of the British jurist Albert Venn Dicey in his book "Introduction to the Study of the Law of the Constitution." Before Dicey, the term generally referred to "the particular rule of law applicable to such a situation." It came from a literal translation of the Latin *regula juris* from civil and canon law. The first use of the term in English was recorded around 1500 in John Blount's translation of Nicholas Upton's *De Studio Militari*.¹

In *Introduction to the Study of the Law of the Constitution*, A. V. Dicey states that the rule of law is one of the key characteristics of the English legal system, and it is made up of three basic, interrelated elements.² The first element is that the rule of law refers to the absolute supremacy of regular law over arbitrary power, which means that no person should be punished or have his or her body or property harmed without a violation of the law that was established by ordinary means of lawmaking in ordinary courts.

The second aspect is that it implies absolute equality before the law, which means that everyone, irrespective of rank and status, should be bound by the ordinary laws of the land and subjected to the jurisdiction of ordinary tribunals, which excludes any special treatment for government officials.

The third is the predominance of the legal spirit. It means that constitutional and personal liberties do not flow from abstract or written statements of rights, but from actual judgments determining private rights in real cases.

¹See (Jeremy Kessler, *The Origins of "The Rule of Law"*, 87 *Law & Contemp. Probs.* 1 (2024) (Kessler, 2024)

² A.V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (1st edn, Macmillan and Co 1885).

III. WHY THE “RULE OF LAW” IS DIFFERENT IN THE INTERNATIONAL ARENA

Rule of law functions differently at the international level because of the horizontal structure of the international legal system that involves sovereigns rather than the hierarchical structure in the case of domestic legal systems, H.L.A. Hart famously observed in *The Concept of Law* that international law lacks the centralized institutional features of a domestic state—specifically, a centralized parliament to enact statutes, courts with mandatory automatic jurisdiction, and a centralized police power to execute sanctions.³

Domestic systems rely on a clear separation of powers (executive, legislature, and judiciary). Public international law lacks a centralized international lawmaker or mandatory system of checks and balances; instead, its legal framework is based on sovereign equality and inter-State consensus. Domestically, the government enforces laws and individuals are subject to mandatory court jurisdiction. Internationally, compliance and dispute resolution generally rely on the voluntary consent of sovereign States, with limited centralized mechanisms to enforce compliance.⁴ The application of the rule of law requires adapting traditional domestic legal principles to a sovereign-state system by combining procedural fairness such as equality before the law and judicial independence with substantive human rights standards to regulate state activity, foster global cooperation, and promote equitable economic and social development.⁵

IV. THE UNITED NATIONS DEFINITION OF THE RULE OF LAW

The commonly quoted definition of the rule of law within the framework of the United Nations comes from the report of the Secretary General in 2004, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, and it is defined as:

“...a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human

³ H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), Ch . X, pp. 213 237

⁴ Nicolas de Sadeleer and Ivana Damjanovic, 'The Rule of Law Between National and International Contexts: Introduction to the Special Issue on International Economic Law and the Rule of Law' (2024) 15 *European Journal of Risk Regulation* 477

⁵ Prof. Kennedy Gastorn, Secretary General, Asian-African Legal Consultative Organization (AALCO), *Application of the Rule of Law in the International Sphere*, Lecture delivered at the 2nd China-AALCO Exchange and Research Program (Beijing, China, Aug. 29–Sept. 18, 2016).

rights norms and standards."⁶

The same paragraph adds that this requires adherence to nine interlocking principles: supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

The UN Sustainable Development Goal number 16 is dedicated to promoting peaceful and just societies as well as inclusiveness by enhancing governance institutions which are efficient and accountable, and its importance with respect to the rule of law is crucial since it clearly states that legal order needs to be promoted on the national and international level while ensuring equal justice and basic human rights for everybody.⁷

V. CORE PILLARS OF RULE OF LAW AT THE INTERNATIONAL LEVEL

With respect to the definition above, several legal principles have been developed to achieve the rule of law between nations as follows:

- **Sovereign equality of states:**

Notwithstanding size, wealth, or strength, all nations are considered to be equal according to international law. It means that, at least theoretically, international law does not become just "the law of the strong," and it forms the basis of the equality of states in voting in the UN General Assembly.⁸

- **Pacta Sunt Servanda (Treaties Must Be Honored):**

The maxim "agreements should be kept," which is expressed in Latin, is often cited as the cornerstone of treaty law. When a treaty is ratified, the state assumes the legal obligation to perform its obligations in good faith. Without the aforementioned doctrine (trade agreements, arms control, and human rights conventions) would have no binding

⁶ Report of the Secretary General, The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, 5 UN Doc. S/2004/616, 23 August 2004, para

⁷ United Nations, Sustainable Development Goal 16, United Nations and the Rule of Law, <https://www.un.org/ruleoflaw/sdg-16/>

⁸ United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Art. 2(1).

value.⁹

- **Peaceful Settlement of Disputes:**

The countries should settle their disputes through negotiations, mediation, arbitration, and judicial procedures and not through the use of force. This requirement ensures that the dispute is channeled into legal and diplomatic procedures.¹⁰

- **Prohibition on the Use of Force:**

One of the most consequential rules in the modern international order: states may not use or threaten force against the territorial integrity or political independence of another state, except in narrowly defined circumstances self-defense or Security Council authorization.¹¹

- **Human Rights as a Rule of Law Baseline:**

The rule of law in international law goes beyond mere procedural rules and has established substantive standards which set out how the state must treat individuals. The Universal Declaration of Human Rights and its two supplementary covenants lay down rights which should be respected by states in their internal legal order, linking thus the "rule of law" notion to human dignity.¹²

- **Access to International Justice Mechanisms:** The pillar is only meaningful if disputes and violations can actually be adjudicated.¹³ Key mechanisms include:

- *International Court of Justice (ICJ)* — resolves disputes between consenting states (*ICJ Statute*)
- *International Criminal Court (ICC)* — prosecutes individuals for genocide, war crimes, crimes against humanity, and aggression (*Rome Statute, 1998*)
- *UN treaty bodies* — monitor compliance with specific human rights conventions (e.g., the Human Rights Committee under the ICCPR)

⁹ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Art. 26.

¹⁰ United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Art. 2(3) and Art. 33.

¹¹ United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Art. 2(4) and Art. 51.

¹² Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III), 10 December 1948; International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

¹³ Statute of the International Court of Justice, annexed to the Charter of the United Nations, 1945, Arts. 34–36; Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 3.

VI. KEY INSTITUTIONS THAT EMBODY THE CONCEPT

- ***THE INTERNATIONAL COURT OF JUSTICE.***

The ICJ is the main judicial body of the United Nations and is situated in the Peace Palace in The Hague. It settles disputes regarding law among countries concerning territorial disputes, border and maritime disputes, treaties, and it provides advisory opinions on legal matters presented by authorized United Nations bodies.

- ***THE INTERNATIONAL CRIMINAL COURT.***

The ICC was established by the Rome Statute of 1998, where accountability is moved from the state to the individual for genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC functions separately from the UN but collaborates with it very closely, including referrals from the Security Council.

- ***THE SECURITY COUNCIL AND GENERAL ASSEMBLY.***

In terms of the General Assembly, it represents the main deliberative and representative body consisting of the 193 member states of the UN, and serves as a forum for discussing issues related to the international community, approving the budget of the UN, and issuing non-binding recommendations.

At the same time, the Security Council is responsible for ensuring peace and security in the international community and is authorized, according to Chapter VII of the UN Charter, to issue binding resolutions, conduct peacekeeping missions, or use military force. On the other hand, the 15 member states of the Security Council include five permanent members: China, France, Russia, the United Kingdom, and the United States. These countries have individual veto power when voting on substantive decisions, while the General Assembly votes democratically without a veto.

- ***SPECIALIZED AGENCIES AND OFFICES***

Apart from judicial organs and political organs, there are special agencies of the United Nations that deal with the day to day implementation of activities aimed at capacity building of the rule of law inside a state. The United Nations Office on Drugs and Crime (UNODC) works in the area of criminal justice reforms and corruption prevention and implements the United Nations Convention against Corruption. The Office of the High Commissioner for Human Rights (OHCHR) assists the state in

reconciling domestic law with international human rights standards. UNDP finances projects in the areas of access to justice and judicial capacity, whereas the Department of Peace Operations works on reconstruction of police, courts, and correctional facilities in post conflict states via its peacekeeping operations.

VII. Domestic vs. International Rule of Law: A Comparative Snapshot

Features	Domestic Rule of Law	International Rule of Law
Source of law	Constitution, legislation, judicial precedent	Treaties, custom, general principles
Enforcement	Police, courts, executive agencies	Reciprocity, reputational cost, occasional Security Council action
Subjects of law	Individuals and institutions within one state	States, and increasingly individuals (e.g., ICC)
Consent Basis	Binding regardless of individual consent	Generally requires state consent (treaty ratification)
Adjudication	Domestic courts with compulsory jurisdiction	ICJ and others, often with jurisdiction only if states agree

VIII. WHY THIS MATTERS TODAY

The 2012 General Assembly Declaration on the Rule of Law reaffirmed the centrality of the concept to peace, human rights, and development, and it now sits at the heart of Sustainable Development Goal 16, which calls for peaceful, just, and inclusive societies.¹⁴ Ongoing challenges — armed conflicts tested against the UN Charter's prohibition on the use of force, the governance of artificial intelligence and cyberspace, and disputes over climate obligations — all test whether the international rule of law can keep pace with new forms of state and non-state conduct.

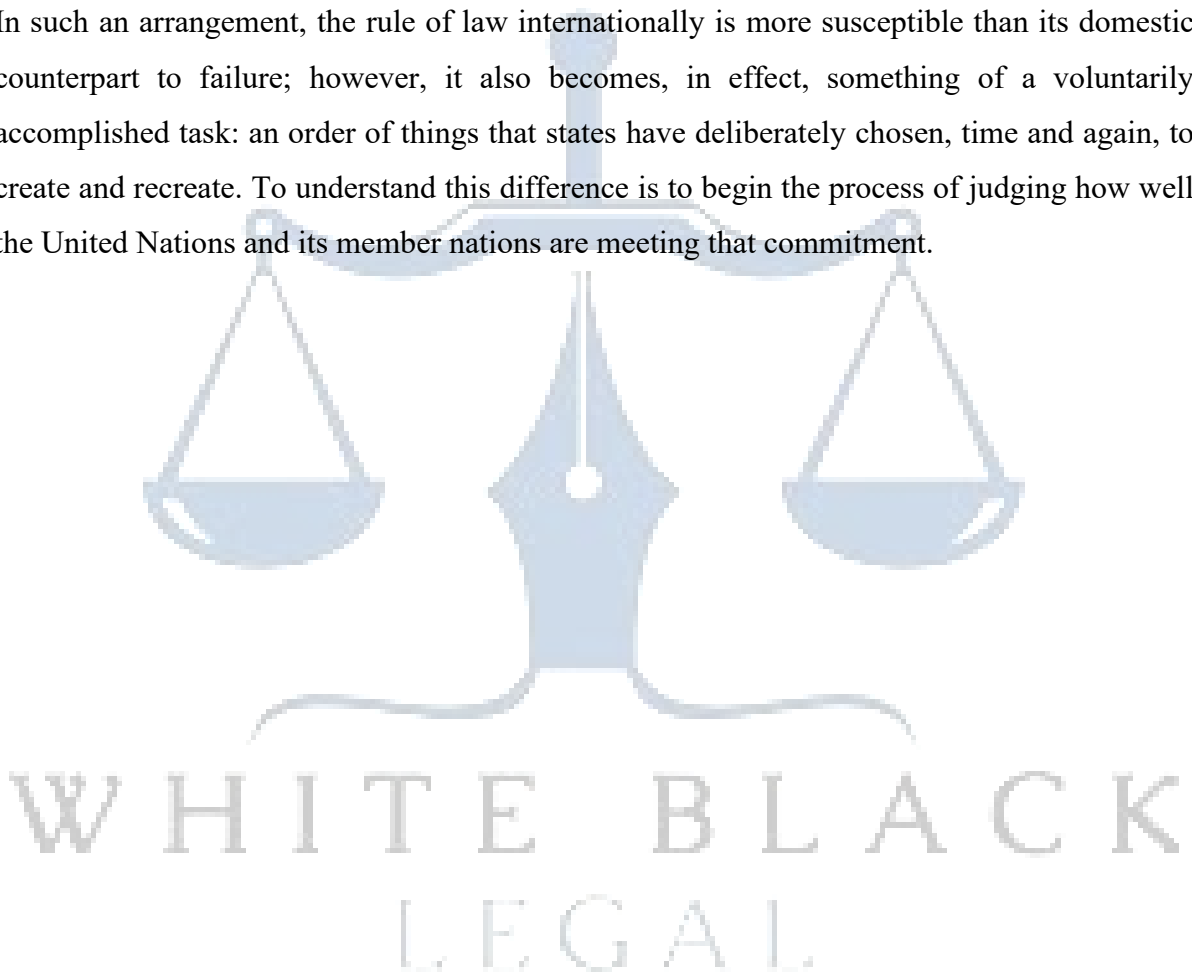
The UN Secretary General's ongoing rule of law coordination efforts, most recently reflected in reports on strengthening UN rule of law activities, indicate that the concept remains an evolving and actively contested project rather than a settled doctrine.¹⁵

¹⁴ United Nations General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, 25 September 2015, Goal 16.

¹⁵ Report of the Secretary General, Strengthening and Coordinating: it does not occur through parliaments, police forces, and courts with automatic jurisdiction, but rather through consent, treaties, custom, and United N Page

IX. Conclusion

The rule of law internationally has the same basic function as its predecessors domestically; that is, those who wield power—be it a single official or a sovereign nation—must do so according to a set of laws, uniformly, and with some element of accountability. What differs is the means by which enforcement occurs; it does not occur through parliaments, police forces, and courts that have automatic jurisdiction, but rather through consent, treaties, custom, and diverse bodies such as the International Court of Justice and the International Criminal Court. In such an arrangement, the rule of law internationally is more susceptible than its domestic counterpart to failure; however, it also becomes, in effect, something of a voluntarily accomplished task: an order of things that states have deliberately chosen, time and again, to create and recreate. To understand this difference is to begin the process of judging how well the United Nations and its member nations are meeting that commitment.



Nations Rule of Law Activities, UN Doc. A/68/213/Add.1, 2014.international rule of law is more susceptible than its domestic counterpart to failure; however, it also becomes, in effect, something of a voluntarily undertaken