Page 278 - 293 **DOI:** *https://doij.org/10.10000/IJLMH.1110427*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 4

2025

Rule of Law as Global Norm: Legal Validity and Multilevel Governance in the International Legal Order

ASIF IQBAL[1] AND NEERAJ KUMAR JAISWAL[2]

ABSTRACT

The rule of law has evolved beyond its classical domestic conception to become a cornerstone of the international legal order. As a global norm, it underpins principles of legal legitimacy, institutional accountability, and normative coherence across fragmented systems of governance. This research paper explores the theoretical and practical evolution of the rule of law in the international domain, emphasizing its function as a foundational principle within multilevel legal governance. Drawing on General Assembly resolutions, Security Council debates, Secretary-General reports, and jurisprudence of international courts and tribunals, this paper argues that the rule of law operates simultaneously as a legal standard, political ideal, and institutional mandate.

The study engages with the conceptual challenges of legal validity in a decentralized and pluralistic international legal system. It interrogates the tension between formal legality and normative legitimacy, particularly in contexts where non-state actors, regional organizations, and transnational legal regimes exert legal authority. The paper employs a multidimensional analytical framework that integrates legal theory, UN practice, and comparative constitutional insights to demonstrate how the rule of law contributes to norm-building, dispute resolution, and institutional development. It also critically assesses instances of selective compliance and power asymmetries that undermine the universality and impartial application of the rule of law.

Ultimately, this paper contributes to scholarly discourse by proposing a more coherent understanding of international legal validity anchored in the normative architecture of the rule of law. It suggests that enhancing the consistency, transparency, and accessibility of international legal processes will strengthen global governance and reinforce the legitimacy of the international legal order.

Keywords: *Rule of Law; International Legal Order; Legal Validity; Multilevel Governance; United Nations; Legal Pluralism; International Norms.*

[1] Author is an Assistant Professor at School of Legal Studies, Babu Banarasi Das University, Lucknow, India.
[2] Author is an Assistant Professor at School of Legal Studies, Babu Banarasi Das University, Lucknow, India.

 [ISSN 2581-5369]

I. INTRODUCTION

The rule of law has long served as a foundational concept in domestic legal systems, symbolizing a commitment to legal certainty, equality before the law, and limitations on arbitrary power.[3] In recent decades, however, it has assumed a prominent position in international discourse, cited in treaties, peacebuilding mandates, and global governance efforts.[4] The shift reflects a growing recognition that the rule of law is indispensable to the legitimacy and functionality of the international legal order.[5] Yet this transformation also introduces theoretical and practical challenges, particularly in reconciling diverse legal traditions and ensuring coherence within fragmented governance regimes.[6]

The emergence of the rule of law as a global norm poses questions about how legal validity is conceptualized and institutionalized across multilevel legal frameworks. In a world where legal authority is dispersed among sovereign states, international organizations, and non-state actors, the coherence and enforceability of legal norms depend on shared understandings of legitimacy and accountability.[7] This paper explores these dimensions through a multidisciplinary lens, focusing on the theoretical foundations, institutional mechanisms, and practical implementations of the rule of law in the international arena.

II. LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

The academic discourse surrounding the rule of law has evolved significantly, particularly in the context of its internationalization. Scholars such as Brian Z. Tamanaha and Tom Bingham have offered foundational insights by distinguishing between formal *"thin"* and substantive *"thick"* conceptions of the rule of law.[8] While thin conceptions emphasize legal predictability, procedural fairness, and institutional checks, thick conceptions integrate values such as democracy, human rights, and social justice.[9]

Tamanaha warns that the term *"rule of law"* has become so expansive in international parlance that it risks becoming an empty signifier.[10] For him, an overly broad conception can

[3] Tom Bingham, The Rule of Law 3–5 (2010).
[4] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General, 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).
[5] G.A. Res. 67/1, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (Nov. 30, 2012).
[6] Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory 91–113 (2004).
[7] Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 18–21 (2012).
[8] Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory 3–4 (2004); Tom Bingham, The Rule of Law 6–7 (2010).
[9] G.A. Res. 67/1, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (Nov. 30, 2012).
[10] Brian Z. Tamanaha, A Concise Guide to the Rule of Law, Legal Studies Research Paper No. 07-0082, at 2–5 (2007).

 [ISSN 2581-5369]

lead to incoherence in both academic and institutional usage, undermining its practical utility.[11] In contrast, Bingham provides a more structured operational model, proposing eight principles including legal clarity, equality before the law, access to justice, and respect for human rights.[12] These principles aim to bridge the divide between formal legality and normative legitimacy.

In the international context, the United Nations has largely adopted a hybrid understanding of the rule of law that embraces both procedural regularity and substantive outcomes.[13] This is evident in its resolutions, Secretary-General reports, and field operations in transitional societies. Yet such hybridization invites critique—particularly from legal pluralists—who argue that imposing a singular, universalistic model of the rule of law risks marginalizing local traditions and normative systems.[14]

This paper adopts a multidimensional framework, informed by doctrinal, normative, and socio-political approaches. It recognizes the limitations of both formalist positivism and moralistic idealism in capturing the complexity of legal authority in international governance. By doing so, it lays the groundwork for analyzing how the rule of law is shaped by competing legal theories, institutional dynamics, and cultural particularities in a fragmented global legal order.

III. METHODOLOGY

This research adopts a doctrinal and comparative methodology, grounded in both legal theory and international institutional practice. The doctrinal approach involves a systematic analysis of primary legal sources, such as treaties, customary international law, judicial decisions, and United Nations documents. This includes the Charter of the United Nations,[15] key General Assembly resolutions,[16] and authoritative interpretations by bodies like the International Court of Justice (ICJ) and the International Law Commission (ILC).

Additionally, the study incorporates a comparative dimension by analyzing case studies from transitional societies—particularly Kosovo, Afghanistan, and Sierra Leone. These jurisdictions offer instructive examples of how the rule of law is operationalized in post-

[11] Brian Z. Tamanaha, The History and Elements of the Rule of Law, Singapore J. Legal Stud. 232, 232–47 (2012).
[12] Bingham, supra note 6, at 6–10.
[13] See Charles Jalloh, Special Court for Sierra Leone: Achieving Justice?, 32 Mich. J. Int'l L. 395, 402–10 (2011);
[14] P.T.B. Kohona, The International Rule of Law and the Role of the United Nations, 36 Int'l Law. 1131, 1132–33 (2002).
[15] U.N. Charter arts. 1–2, 24–25.
[16] See, e.g., G.A. Res. 60/1, 2005 World Summit Outcome (Oct. 24, 2005); G.A. Res. 67/1, supra note 5.

 [ISSN 2581-5369]

conflict environments, through mechanisms such as hybrid courts, legal reform initiatives, and peacebuilding missions.[17] The analysis draws on reports by the UN Secretary-General, as well as data from international NGOs, truth commissions, and academic field studies.

Furthermore, the methodology is interdisciplinary, drawing insights from jurisprudence, political science, and sociology to understand how global norms are constructed, contested, and institutionalized. This includes the theoretical contributions of H.L.A. Hart,[18] John Finnis,[19] and Jürgen Habermas,[20] whose work offers valuable lenses for interrogating questions of legal validity and normative legitimacy in pluralistic legal systems.

Finally, the paper employs critical analysis to evaluate both the promises and pitfalls of rule of law promotion in international governance. This involves interrogating the assumptions behind legal reforms, examining the politics of norm diffusion, and identifying tensions between global standards and local realities. The goal is not only descriptive but also normative: to propose a framework that reconciles legal coherence with democratic legitimacy in an increasingly fragmented international legal landscape.

IV. THEORETICAL FOUNDATIONS: LEGAL VALIDITY AND JURISPRUDENTIAL THEORIES

The rule of law, as a global norm, is underpinned by diverse jurisprudential theories that shape conceptions of legal validity, legitimacy, and normativity in international law. These theoretical foundations are crucial in explaining the status, authority, and coherence of legal norms in a fragmented and multilevel global legal system.

A. Legal Positivism and the Rule of Recognition

In domestic legal systems, legal validity has traditionally been rooted in legal positivism. H.L.A. Hart's theory, for instance, centers on a *"rule of recognition,"* a secondary rule that determines the criteria for legal validity within a particular legal order.[21] For Hart, a law is valid if it is produced according to the accepted rule-making procedures of a legal system, regardless of its moral content.[22] This formalist model emphasizes systemic coherence and institutional recognition.

[17] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 11–34, U.N. Doc. S/2004/616 (Aug. 23, 2004).
[18] H.L.A. Hart, The Concept of Law 94–96 (2d ed. 1994).
[19] John Finnis, Natural Law and Natural Rights 23–29 (1980).
[20] Jürgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy 127–130 (1996).
[21] H.L.A. Hart, The Concept of Law 94–99 (2d ed. 1994).
[22] Id. at 107–10.

 [ISSN 2581-5369]

However, applying Hart's theory to international law is problematic. The international legal system lacks a centralized legislature or universally accepted rule of recognition. As such, state consent—expressed through treaties and customary practice—serves as a proxy for legitimacy. Yet, this voluntarist foundation often clashes with the emergence of peremptory norms (jus cogens) and obligations erga omnes, which purport to bind states irrespective of consent.[23]

B. Natural Law and Moral Validity

Natural law theorists assert that a law's legitimacy derives not merely from procedural compliance but from its moral content and alignment with justice. According to John Finnis, the rule of law is not only a procedural requirement but also an embodiment of values such as human dignity, fairness, and reason.[24] From this perspective, legal norms that systematically violate basic human rights may lack genuine legal validity—even if procedurally enacted.

This normative approach is particularly relevant in the international context, where institutions like the United Nations claim to promote a rule of law that advances peace, development, and human rights.[25] As such, natural law frameworks underpin arguments for humanitarian intervention, transitional justice, and universal human rights obligations.

C. Legitimacy through Procedural and Discursive Rationality

Thomas Franck bridges positivist and natural law traditions by emphasizing procedural legitimacy. He argues that international legal norms acquire authority when they are seen as being fairly made, clearly articulated, and universally applicable.[26] This participatory legitimacy rests not only on formal criteria but also on normative acceptability, contributing to rule compliance even in the absence of coercive enforcement.

Building on this, Jürgen Habermas introduces a discourse theory of law, where legitimacy arises from the rational deliberation of free and equal participants.[27] In this model, legal norms must be publicly justified through inclusive discourse, respecting the autonomy and voice of affected parties. This procedural ideal resonates with efforts to democratize global governance, enhance transparency in treaty-making, and ensure inclusivity in rule of law

[23] See Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331; Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain), 1970 I.C.J. 3, 33–34 (Feb. 5).
[24] John Finnis, Natural Law and Natural Rights 273–76 (1980).
[25] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 2–6, U.N. Doc. S/2004/616 (Aug. 23, 2004).
[26] Thomas M. Franck, The Power of Legitimacy and the Legitimacy of Power, 100 Am. J. Int'l L. 88, 91–94 (2006).
[27] Jürgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy 127–30 (1996).

 [ISSN 2581-5369]

reform initiatives.

D. Critical Legal Studies and Legal Pluralism

Critical legal scholars challenge both positivist and natural law paradigms, arguing that international law often reflects hegemonic power relations rather than neutral rules. Martti Koskenniemi, for instance, critiques the indeterminacy and ideological biases of international legal discourse.[28] From this standpoint, the invocation of the rule of law may conceal domination, enabling powerful states and institutions to legitimize interventions under the guise of legality.

Similarly, legal pluralists argue that international law coexists with multiple normative orders—religious law, indigenous law, regional norms—creating a polycentric legal landscape.[29] Understanding the rule of law in this context requires acknowledging contestations of authority, jurisdictional overlap, and the fluid boundaries between law and politics.

V. THE RULE OF LAW IN INTERNATIONAL LAW AND GOVERNANCE

The rule of law has become a central organizing principle in the international legal order, serving not only as a normative benchmark but also as a practical tool for maintaining peace, fostering cooperation, and ensuring accountability. This section examines how the rule of law is embedded in key sources of international law—such as the United Nations Charter, customary international law, and the practices of international institutions—and how it functions to advance global governance.

A. The United Nations Charter

The U.N. Charter constitutes the constitutional framework of international relations and is replete with normative references to rule of law principles. Article 1 affirms the purpose of maintaining international peace and security, promoting friendly relations among nations, and achieving international cooperation—all of which are predicated on legal predictability and respect for obligations.[30]

Although the Charter does not explicitly define the "rule of law," it incorporates its core elements through various provisions. Article 2(1) enshrines sovereign equality; Article 2(3) requires peaceful dispute resolution; and Article 2(4) prohibits the threat or use of force—all

[28] Martti Koskenniemi, The Politics of International Law, 1 Eur. J. Int'l L. 4, 5–8 (1990).
[29] Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 12–21 (2012).
[30] U.N. Charter art. 1, 1.

of which reflect legal constraints on state behavior.[31] Similarly, Chapter VI on pacific settlement of disputes and Chapter VII on enforcement actions establish procedural norms for lawful intervention.

The rule of law also underpins the functions of the Security Council and General Assembly, particularly in the context of sanctions, peacekeeping, and the authorization of international criminal tribunals.[32]

B. Customary International Law

Customary international law, consisting of consistent state practice (usus) and a sense of legal obligation (opinio juris), further reinforces the rule of law. Norms such as *pacta sunt servanda* (agreements must be kept), the prohibition of aggression, and non-refoulement exemplify stable and general legal expectations that bind states independently of treaty commitments.[33]

Customary law provides normative continuity across jurisdictions and is especially vital in areas where treaty law is absent or ambiguous. It also undergirds peremptory norms (jus cogens), which are non-derogable and reflect the moral imperatives of the international community, such as the prohibitions on torture, genocide, and slavery.[34] These norms contribute to the universality and coherence of international legal obligations, vital components of a functioning rule of law regime.

C. International Institutions

A growing constellation of international and regional institutions plays a pivotal role in institutionalizing the rule of law. These include:

- The International Court of Justice (ICJ), which adjudicates legal disputes between states and provides advisory opinions. Its jurisprudence enhances interpretive clarity and legal predictability.[35]
- The International Criminal Court (ICC) and ad hoc tribunals, which enforce international criminal law, promote accountability, and affirm the principle that no one is above the law.[36]

[31] Id. art. 2, 1, 3, 4.
[32] See, e.g., S.C. Res. 827, 2 (May 25, 1993) (establishing the ICTY); G.A. Res. 60/147 (Mar. 21, 2006) (Basic Principles and Guidelines on the Right to a Remedy and Reparation).
[33] See North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.), Judgment, 1969 I.C.J. 3, 77 (Feb. 20).
[34] Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331; see also Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain), 1970 I.C.J. 3, 34.
[35] Statute of the International Court of Justice art. 36, June 26, 1945, 59 Stat. 1055, 1060.
[36] Rome Statute of the International Criminal Court arts. 5–8, July 17, 1998, 2187 U.N.T.S. 90.

 [ISSN 2581-5369]

- The World Trade Organization (WTO) and regional trade bodies, which embed legal procedures into economic governance and uphold contractual obligations.[37]
- Regional human rights courts, such as the European Court of Human Rights (ECHR) and Inter-American Court of Human Rights (IACHR), which provide redress and oversight over state conduct.[38]

However, the efficacy of these institutions is often constrained by challenges of fragmentation, selective compliance, and legitimacy deficits.[39] Some states resist international adjudication or withdraw from treaty regimes, citing sovereignty or political concerns. Others comply selectively, undermining the universal application of legal standards.

Nonetheless, these institutions collectively contribute to norm diffusion, capacity building, and the gradual internalization of rule of law norms in domestic legal systems.[40] Their existence also reinforces the expectation that legal disputes should be resolved through lawful means, rather than force or unilateral coercion.

VI. UN RULE OF LAW PROMOTION

The United Nations has emerged as a central actor in defining, operationalizing, and promoting the rule of law at both national and international levels. This institutional engagement reflects an evolving understanding of the rule of law as not merely a legal ideal but a cornerstone of peacebuilding, sustainable development, and post-conflict reconstruction.

A. Declarations and Resolutions

The foundational moment in the UN's modern rule of law agenda was the 2004 Report of the Secretary-General on Rule of Law and Transitional Justice, which defined the rule of law as "a principle of governance in which all persons, institutions and entities... are accountable to laws."[41] This report emphasized the interdependence of justice, accountability, and institutional legitimacy, urging member states and the UN system to integrate the rule of law into all peace operations and development programs.

---

[37] Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 3, 23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

[38] Convention for the Protection of Human Rights and Fundamental Freedoms arts. 34–35, Nov. 4, 1950, 213 U.N.T.S. 221; American Convention on Human Rights arts. 61–62, Nov. 22, 1969, 1144 U.N.T.S. 123.

[39] See Yuval Shany, Fragmentation and Harmonization in International Law: Can the UN Human Rights Treaty Body System Play a Role?, in Promoting the Rule of Law: A Practitioner's Guide to Key Concepts, Tools and Institutions 143 (L. Hammergren ed., 2008).

[40] Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 89–94 (Cambridge Univ. Press 2012).

[41] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

The 2005 World Summit Outcome reaffirmed the rule of law as a universal value and committed all states to strengthening it at national and international levels.[42] The 2012 Declaration of the High-level Meeting on the Rule of Law, adopted by the General Assembly, reiterated this commitment and called for improved coordination, inclusivity, and support for national ownership of reform processes.[43]

These declarations have been reinforced through annual resolutions of the General Assembly and reports of the Secretary-General, creating a normative and procedural framework for UN engagement in rule of law promotion.

B. Rule of Law Unit and Institutional Framework

To coordinate its growing rule of law activities, the UN established the Rule of Law Coordination and Resource Group (RoLCRG) and the Rule of Law Unit within the Executive Office of the Secretary-General.[44] These entities provide policy guidance, technical support, and inter-agency coordination across various UN organs and field missions.

They also assist in aligning peacekeeping mandates, judicial reforms, human rights promotion, and constitutional assistance within a coherent rule of law strategy. The Rule of Law Unit works closely with agencies such as the United Nations Development Programme (UNDP), UN Women, OHCHR, and UNODC to ensure programmatic integration and resource optimization.[45]

C. Institutional Strengthening and Legal Reform

The UN's rule of law work in post-conflict and fragile contexts emphasizes institutional strengthening, including:

- Reform of judicial institutions, ensuring independence, competence, and accessibility.
- Support for constitutional processes, often through inclusive national dialogues and expert legal assistance.
- Anti-corruption and legal empowerment initiatives, particularly targeting marginalized communities.[46]

These programs are increasingly tailored to local realities. The UN's experience has shown

[42] G.A. Res. 60/1, 119–120, 2005 World Summit Outcome (Oct. 24, 2005).
[43] G.A. Res. 67/1, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels (Nov. 30, 2012).
[44] United Nations Rule of Law Website, https://www.un.org/ruleoflaw (last visited July 3, 2025).
[45] U.N. Secretary-General, Strengthening and Coordinating United Nations Rule of Law Activities, 12–14, U.N. Doc. A/73/253 (July 25, 2018).
[46] See U.N. Secretary-General, Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels, U.N. Doc. A/66/749 (Mar. 16, 2012).

 [ISSN 2581-5369]

that transplanting formal legal models without sensitivity to socio-cultural conditions often leads to failure or backlash.[47] Consequently, context-sensitive programming—emphasizing local ownership, participation, and legitimacy—has become a guiding principle.

Moreover, the UN integrates transitional justice mechanisms, such as truth commissions and hybrid courts, within its broader rule of law strategy to address impunity and restore trust in governance.[48] These efforts aim not only at accountability but also reconciliation and nation-building.

VII. MULTILEVEL GOVERNANCE AND LEGAL FRAGMENTATION

The international legal order increasingly operates within a multilevel governance structure that includes not only states but also international organizations, non-state actors, regional bodies, and transnational networks. This complex and overlapping system challenges traditional conceptions of sovereignty and unitary lawmaking, raising critical questions about legal coherence, validity, and norm hierarchy in a fragmented global legal space.

A. Characteristics of Multilevel Governance

Multilevel governance denotes the distribution of authority across different levels of decision-making, often without a clear vertical hierarchy. In international law, this includes:

- Global institutions (e.g., United Nations, World Trade Organization)
- Regional bodies (e.g., European Union, African Union)
- Bilateral and multilateral treaties
- Customary international norms
- Private regulatory regimes and soft law (e.g., multinational codes of conduct, financial standards)[49]

This proliferation of legal actors and norms enhances the flexibility and responsiveness of international law but also leads to normative conflict, legal uncertainty, and jurisdictional overlap.

B. Fragmentation of International Law

The International Law Commission (ILC) has extensively studied the phenomenon of legal

[47] See Akihiko Morita, Rule of Law Without God? (2010), https://globalengage.org/_assets/docs/7_Rule_of_Law_without_God_by_Akihiko_Morita.pdf.
[48] Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (Mar. 2010), https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.
[49] See Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 10–17 (Cambridge Univ. Press 2012).

fragmentation, identifying it as the "splintering" of international law into specialized and sometimes conflicting subsystems.[50] These subsystems—such as trade law, environmental law, human rights law, and humanitarian law—often operate autonomously, guided by distinct norms, principles, and institutional logics.

Examples of fragmentation include:

- WTO jurisprudence diverging from environmental treaty obligations
- Regional human rights systems issuing conflicting judgments with universal treaties
- Bilateral investment treaties challenging national regulatory space in public health or labour rights[51]

While fragmentation complicates legal coherence, it also creates opportunities for norm innovation and regime interaction through cross-fertilization and dialogue among legal regimes.

C. The Role of the Rule of Law in Managing Fragmentation

The rule of law provides a framework to manage fragmentation through procedural values—such as transparency, fairness, and participation—and substantive norms like human dignity, equality, and accountability. It serves as a common denominator for harmonizing diverse legal systems, even in the absence of a global sovereign or centralized legal hierarchy.

Legal scholars like Nico Krisch and Martti Koskenniemi have explored how pluralism and fragmentation may be navigated without requiring constitutional centralization.[52] Instead, they argue for models of constitutional pluralism or conflict-of-laws approaches, where competing norms are balanced contextually, and legitimacy is derived from overlapping consensus and institutional dialogue.

For example, mutual deference and norm coordination mechanisms have been developed between international and regional courts (e.g., ICJ and ECHR) to prevent conflicting obligations and reinforce legal predictability.[53] Such practices underscore the need for meta-principles—such as proportionality, subsidiarity, and rule-of-law safeguards—to mediate

[50] Int'l Law Comm'n, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, U.N. Doc. A/CN.4/L.682 (Apr. 13, 2006).
[51] See Martti Koskenniemi, The Politics of International Law 1 Eur. J. Int'l L. 4 (1990); William Burke-White & Andreas von Staden, Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations, 35 Yale J. Int'l L. 283 (2010).
[52] See Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Post-national Law 79–95 (Oxford Univ. Press 2010); Koskenniemi, supra note 43.
[53] See Erika de Wet & Jure Vidmar, Hierarchy in International Law: The Place of Human Rights (Oxford Univ. Press 2012).

jurisdictional clashes and foster normative coherence.

D. Legal Pluralism and Non-State Actors

Multilevel governance also brings non-state actors—corporations, NGOs, civil society, epistemic communities—into the legal fold. These actors shape global norms through informal rulemaking, monitoring, and advocacy.[54] The rule of law must thus expand to include these actors within accountability frameworks, ensuring that power is exercised with responsibility and subject to norms of legitimacy and transparency.

VIII. RULE OF LAW IN TRANSITIONAL JUSTICE AND POST-CONFLICT SETTINGS

The rule of law plays a foundational role in post-conflict peacebuilding and transitional justice. In societies emerging from armed conflict, authoritarian rule, or systemic human rights violations, the restoration of legality and accountability is indispensable for sustainable peace.[55] Rebuilding a functioning legal system is not merely a technical endeavor; it is a normative enterprise that implicates justice, reconciliation, institutional legitimacy, and societal trust.

A. Legal and Institutional Reform

Post-conflict environments are typically marked by institutional breakdown, weakened judiciary, and eroded public confidence in legal processes.[56] Effective rule of law promotion requires comprehensive legal reform targeting:

- Constitutional and legislative rebuilding
- Judicial independence and capacity building
- Anti-corruption and integrity systems
- Human rights enforcement mechanisms

The United Nations has emphasized these goals in its guidance documents and peace operations.[57] Legal and institutional reform must be context-sensitive, recognizing local traditions, transitional politics, and potential power asymmetries. Imposing rigid, externally-driven models often leads to failure or resistance.[58]

---

[54] See Anne Peters et al., Non-State Actors as Standard Setters (Cambridge Univ. Press 2009).
[55] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 4–10, U.N. Doc. S/2004/616 (Aug. 23, 2004).
[56] Rama Mani, Beyond Retribution: Seeking Justice in the Shadows of War 9–15 (Polity Press 2002).
[57] See Guidance Note of the Secretary-General: United Nations Approach to Rule of Law Assistance (Apr. 2008); U.N. Peacebuilding Support Office, Rule of Law and Peacebuilding (2011).
[58] See Chandra Lekha Sriram, Globalizing Justice for Mass Atrocities 23–30 (Routledge 2005).

 [ISSN 2581-5369]

B. Peacebuilding and Justice Mechanisms

In recent decades, the UN and regional actors have deployed rule of law strategies in post-conflict missions, integrating transitional justice elements into broader peacebuilding. Mechanisms include:

- Hybrid and international tribunals (e.g., ICTY, ICTR, Special Court for Sierra Leone)
- Truth and reconciliation commissions
- Reparations programs
- Lustration and vetting procedures
- Community-based justice models (e.g., Rwanda's Gacaca courts)[59]

These mechanisms aim to balance accountability, truth-telling, reparative justice, and social reconciliation. The rule of law ensures that such initiatives are not merely symbolic but grounded in procedural integrity and substantive fairness.

C. Case Studies

Kosovo: Administered by the UN Mission in Kosovo (UNMIK), Kosovo adopted a hybrid legal system combining international norms with adapted local structures. International judges and prosecutors were embedded in domestic courts to address serious crimes and ensure impartiality.[60] Despite institutional challenges, the system facilitated a partial restoration of legal order under transitional international authority.

Afghanistan: Following the U.S. intervention in 2001, international efforts focused on judicial reconstruction, constitutional reform (2004 Constitution), and the creation of independent legal institutions.[61] However, these initiatives were undermined by weak rule of law culture, entrenched patronage networks, and persistent insecurity, reflecting the limits of externally led legal reforms.[62]

Sierra Leone: The Special Court for Sierra Leone (SCSL) represented a unique model blending international and domestic legal standards.[63] It prosecuted individuals most responsible for atrocities during the civil war, including the trial of former Liberian President

[59] See Laurel E. Fletcher & Harvey M. Weinstein, A World Unto Itself? The Application of International Justice in the Yugoslav Context, in My Neighbor, My Enemy 29, 32 (Eric Stover & Harvey Weinstein eds., 2004).
[60] See Daria Jarosz, The UNMIK's Administration of Justice System in Kosovo and the Role of International Judges and Prosecutors, 4 Int'l J. Transitional Just. 247 (2010).
[61] Erica Gaston, Process Lessons Learned in Afghanistan's Legal System Reform, U.S. Inst. of Peace (2010).
[62] Jennifer Brick Murtazashvili, Informal Order and the State in Afghanistan 91–102 (Cambridge Univ. Press 2016).
[63] Charles C. Jalloh, Special Court for Sierra Leone: Achieving Justice?, 32 Mich. J. Int'l L. 395, 410–14 (2011).

 [ISSN 2581-5369]

Charles Taylor. The SCSL contributed to establishing legal accountability while respecting state sovereignty and complementarity with national courts.

These examples demonstrate that while transitional justice mechanisms differ across contexts, their effectiveness hinges on the institutionalization of the rule of law as both a process and a principle.

IX. CRITIQUES AND CHALLENGES

While the rule of law has been widely endorsed as a normative foundation for international governance, its application at the global level raises a number of theoretical and practical concerns. These critiques emphasize the dangers of overuse, rhetorical vagueness, enforcement deficiencies, and cultural insensitivity.

A. Rule of Law as Rhetoric

Scholars such as Brian Tamanaha have cautioned against the rhetorical overuse of the rule of law, noting that the term is frequently invoked without precision or accountability.[64] When used indiscriminately in diplomatic discourse, peacebuilding strategies, or donor programs, the rule of law risks becoming a symbolic slogan rather than a concrete legal standard.[65] This inflationary use dilutes its normative strength and permits strategic appropriation by regimes with poor human rights records.

Tamanaha distinguishes between rule-of-law "rule of law lite"—which focuses on formal legality—and a thicker version that demands substantive justice.[66] Overemphasizing formal aspects may permit authoritarian legalism, while overloading it with substantive content may undermine consensus and operability.

B. Enforcement and Compliance Gaps

One of the most enduring challenges in international law is the lack of centralized enforcement mechanisms. Unlike domestic legal systems, the international legal order lacks a global sovereign with the authority to ensure compliance.[67] States remain the primary actors and must voluntarily submit to jurisdiction or enforcement actions.

As a result, many international institutions rely on soft power, peer pressure, or reputational

[64] Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory 3–5 (Cambridge Univ. Press 2004).
[65] Thomas Carothers, The Rule of Law Revival, 77 Foreign Aff. 95, 96–97 (1998).
[66] Brian Z. Tamanaha, A Concise Guide to the Rule of Law, Legal Studies Research Paper No. 07-0082, at 4–6 (2007).
[67] Thomas M. Franck, The Power of Legitimacy and the Legitimacy of Power, 100 Am. J. Int'l L. 88, 89–90 (2006).

 [ISSN 2581-5369]

costs rather than coercive force.[68] This limits the practical efficacy of rule of law norms, particularly in politically sensitive or high-stakes situations involving powerful states. Selective enforcement and impunity for major violations further erode trust in global legal processes.[69]

C. Cultural and Contextual Sensitivity

A significant critique of international rule of law promotion is the lack of cultural and contextual sensitivity. Western liberal conceptions of the rule of law—grounded in individual rights, adversarial legalism, and secular constitutionalism—may not align with local traditions or legal cultures.[70]

Legal transplants, especially in post-conflict or developing societies, often face resistance or fail to take root when they are seen as externally imposed or culturally alien.[71] Moreover, neglecting informal justice mechanisms or indigenous legal orders may marginalize valuable sources of local legitimacy and community-based dispute resolution.

To address these concerns, rule of law initiatives must incorporate participatory frameworks, recognize legal pluralism, and adapt universal standards to local contexts.[72] Achieving this balance is crucial for sustainable legal reform and democratic consolidation.

X. CONCLUSION

The rule of law has evolved from a foundational ideal in domestic legal orders to a global norm that undergirds the legitimacy, coherence, and functionality of international governance. This evolution reflects a deepening consensus that legality, accountability, and justice are not merely national concerns but universal aspirations essential to a peaceful and orderly international society.[73]

This paper has argued that to function effectively in the multilevel international legal order, the rule of law must be conceptualized in both its formal and substantive dimensions. Formal legality—requiring clarity, generality, and stability of laws—must be complemented by

[68] Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council 16–18 (Princeton Univ. Press 2007).
[69] Martti Koskenniemi, The Politics of International Law 21–25 (Hart 2011).
[70] Akihiko Morita, Rule of Law Without God? (2010), https://globalengage.org/_assets/docs/7_Rule_of_Law_without_God_by_Akihiko_Morita.pdf.
[71] Channell, Wade, Lessons Not Learned About Legal Reform, in Promoting the Rule of Law Abroad: In Search of Knowledge 137–41 (Thomas Carothers ed., 2006).
[72] Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 54–61 (Cambridge Univ. Press 2012).
[73] P.T.B. Kohona, The International Rule of Law and the Role of the United Nations, 36 Int'l Law. 1131, 1133 (2002).

 [ISSN 2581-5369]

substantive commitments to human rights, democratic participation, and accountability.[74] A merely procedural view of the rule of law risks legitimizing unjust governance, while an overly substantive approach may fragment consensus and obscure its legal distinctiveness.[75]

A critical challenge in realizing this multidimensional framework lies in the fragmented nature of international law. The proliferation of legal regimes, institutions, and norms produces legal pluralism, which, while dynamic, may lead to normative incoherence and institutional rivalry.[76] Nevertheless, this complexity also offers opportunities for cross-fertilization, where human rights bodies, trade institutions, and peacekeeping missions can collectively reinforce rule of law principles through shared values and coordinated practices.[77]

The United Nations system—through its resolutions, declarations, and operational programs—has played a pivotal role in promoting the rule of law across sectors and geographies. From post-conflict justice to treaty ratification and judicial reform, the UN's efforts reflect an evolving understanding that the rule of law is integral to sustainable peace, development, and legitimacy in international affairs.[78] Yet, for these efforts to succeed, greater attention must be paid to context sensitivity, cultural legitimacy, and institutional inclusiveness.[79]

In conclusion, the rule of law can and should serve as a unifying principle in the international legal order—one that reconciles legal validity with democratic legitimacy, and form with substance. Embracing this nuanced approach is essential not only to resolve current global legal challenges but also to safeguard justice, human dignity, and lawful governance in an increasingly fragmented yet interdependent world.[80]

*****

[74] Tom Bingham, The Rule of Law 7–9 (Allen Lane 2010).
[75] Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory 89–91 (Cambridge Univ. Press 2004).
[76] Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Post-national Law 23–27 (Oxford Univ. Press 2010).
[77] Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders 86–90 (Cambridge Univ. Press 2012).
[78] U.N. Secretary-General, Strengthening and Coordinating United Nations Rule of Law Activities, U.N. Doc. A/73/253 (July 25, 2018).
[79] Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (Mar. 2010).
[80] Martti Koskenniemi, The Fate of Public International Law: Between Technique and Politics, 70 Mod. L. Rev. 1, 5–6 (2007).

 [ISSN 2581-5369]