
THE EVOLUTION AND CONTEMPORARY CHALLENGES OF THE INTERNATIONAL RULE OF LAW: AN INSTITUTIONAL AND DOCTRINAL ANALYSIS

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ABSTRACT

The rule of law serves as the basis of the modern international legal system, determining how countries communicate, settle disagreements, and use power according to accepted standards instead of force. Its origins lie in philosophy and the early practices of states, and over time, it has developed from a system mainly focused on Europe into one that is broader and applies to all countries. This change has been made official through the United Nations and strengthened by international courts and other legal bodies. This article looks at the historical change from strict national independence to a more equal relationship between countries. It discusses how the end of colonial rule and improvements in human rights have influenced international legal rules. The article also looks at the role of the International Law Commission in creating clear legal guidelines and the impact of the International Court of Justice in explaining legal rules. Additionally, it considers the contributions of organizations like the World Trade Organization and the International Centre for Settlement of Investment Disputes in shaping today's global legal system. It highlights how the rule of law continues to direct how countries behave around the world.

Keywords: International Rule of law, Sovereignty, Decolonization, International Court of Justice (ICJ), Human Rights, Geopolitical Challenges.

INTRODUCTION:

The foundational conception of the rule of law, where legal authority supersedes arbitrary power, has its origins in classical philosophical thought, most notably in Aristotle's proposition that governance by laws is inherently superior to governance by individuals.¹ As these philosophical traditions matured, they influenced the development of domestic legal systems and eventually shaped the structure of international relations, where the rule of law became a guiding aspiration for state conduct.² Over time, the international rule of law came to embody principles such as legality, equality of states, due process, institutional accountability, peaceful dispute settlement, and respect for human rights.³ Although states have historically differed in interpreting these principles, their recognition forms the normative bedrock on which the modern international legal order rests.⁴ The emergence of the international rule of law, however, was neither linear nor uniform. The early international system, constructed largely by European states, reflected limited participation and often served strategic and imperial objectives.⁵ Concepts such as sovereignty, non-intervention, and territorial integrity developed within this Eurocentric environment and excluded vast populations subjected to colonial rule.⁶ Only after unprecedented global conflict in the twentieth century, culminating in the establishment of the United Nations in 1945, did the rule of law acquire a universal institutional foundation.⁷ The UN Charter introduced binding obligations, including the prohibition of force and the mandate to settle disputes peacefully, thereby initiating a shift away from power-driven politics toward normative governance.⁸

The growing influence of international organizations after 1945 created mechanisms that strengthened rule-of-law practices, including monitoring bodies, courts, treaty frameworks, and expert commissions. Collectively, these institutions contributed to a transformation of world order by clarifying legal standards, adjudicating disputes, and promoting compliance. Still, despite this institutional architecture, the rule of law faces persistent challenges ranging

¹ ARISTOTLE, *POLITICS* bk. III, ch. 16 (Benjamin Jowett trans., Oxford Univ. Press 1885).

² Hans Kelsen, *The Rule of Law and International Law*, 2 *REV. POL.* 1, 3–7 (1940).

³ U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 6–9, U.N. Doc. S/2004/616 (Aug. 23, 2004).

⁴ HERSCH LAUTERPACHT, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* 3–10 (1958).

⁵ GERRIT W. GONG, *THE STANDARD OF "CIVILIZATION" IN INTERNATIONAL SOCIETY* 14–35 (1984).

⁶ Antony Anghie, *Colonialism and the Birth of International Law*, 34 *HARV. INT'L L.J.* 1, 1–31 (1993).

⁷ U.N. Charter pmbl.; *id.* Arts. 1–2.

⁸ *Id.* Arts. 2(3)–2(4); *Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.)*, 1986 I.C.J. 14, 187–190 (June 27).

from geopolitical rivalry to nationalist politics. Understanding its evolution therefore requires a historical, doctrinal, and institutional analysis, which this article undertakes in detail.⁹

1.1 HISTORICAL FOUNDATIONS OF THE RULE OF LAW:

Classical political philosophy framed the earliest discourse on the rule of law, emphasizing that legitimate power must be constrained by predictable, publicly known rules. These philosophical ideas influenced the emergence of legal systems based on written norms and the expectation that rulers themselves must abide by the law. As European states consolidated political authority after prolonged religious and dynastic conflicts, they developed concepts of sovereignty and territorial jurisdiction that underpinned the Peace of Westphalia in 1648. This settlement formalized the principles of sovereign equality and territorial integrity, which later became essential pillars of international law. Yet, despite its symbolic importance, Westphalian sovereignty did not restrain war; rather, war remained a lawful instrument of statecraft, highlighting the limited reach of law in the early international relations.¹⁰

Early international law was also shaped by discriminatory ideas regarding “civilization.” European jurists distinguished between “civilized” and “non-civilized” societies, thereby limiting who could participate in legal relations. This justified colonial domination, enslavement, and the doctrine of terra nullius, which treated lands inhabited by indigenous populations as empty for the purpose of European acquisition. Such principles entrenched global inequality and institutionalized racial hierarchies that defined the prevailing international order until the mid-twentieth century.¹¹

The catastrophic world wars exposed the inadequacy of this classical system. The League of Nations failed to prevent aggression or enforce collective security, revealing the need for stronger institutions and binding norms. The creation of the United Nations marked a fundamental reorientation: the Charter prohibited the use of force, established universal membership, and introduced mechanisms to promote peace, security, and human rights. International law thereby transitioned from a Eurocentric arrangement into a universal legal system rooted in multilateral institutions and legal obligations.¹²

⁹ Hugo Grotius, *On the Law of War and Peace* (1625).

¹⁰ Leo Gross, *The Peace of Westphalia*, 42 AJIL 20 (1948).

¹¹ Antony Anghie, *Finding the Peripheries*, 40 HARV. INT’L L.J. 1 (1999).

¹² U.N. Charter art. 2(4).

1.2 DECOLONIZATION AND THE UNIVERSALIZATION OF INTERNATIONAL LAW:

Decolonization radically transformed international law by dismantling the hierarchical structures that had privileged European states. As newly independent nations emerged across Asia, Africa, the Middle East, and the Caribbean, they asserted the right to self-determination and demanded equality within the international system. The 1955 Bandung Conference crystallized collective political solidarity among these states, enabling them to challenge the status quo and advance principles supportive of sovereign equality, racial equality, and economic justice.¹³

The entry of dozens of new states into the United Nations changed the balance of political power within the General Assembly. Through landmark declarations most notably Resolution 1514 (XV) the Assembly declared colonialism contrary to the purposes of the UN Charter and affirmed self-determination as a legal right. Additional resolutions on permanent sovereignty over natural resources empowered resource-rich states to reclaim economic control from foreign corporations. These developments transitioned international law from a system of selective application to one grounded in universality and equality.¹⁴

The negotiation of the United Nations Convention on the Law of the Sea further demonstrated the influence of developing nations in re-shaping legal norms. UNCLOS introduced equitable principles for maritime jurisdiction, navigational freedom, and exploitation of natural resources. Critically, the Convention designated the deep seabed as the “common heritage of mankind,” an idea championed by developing states to prevent technologically advanced nations from monopolizing marine resources. The result was a landmark treaty reflecting a balance between economic interests, environmental stewardship, and equitable access.¹⁵

1.3 THE RISE OF HUMAN RIGHTS AND THE INDIVIDUAL AS A SUBJECT OF INTERNATIONAL LAW:

One of the most important extensions of the rule of law occurred with the acknowledgment of human rights after 1945.¹⁶ A framework outlining the rights that every person, regardless of

¹³ SUNGJOO PARK, SELF-DETERMINATION AND DECOLONIZATION (2020).

¹⁴ G.A. Res. 1514 (XV) (Dec. 14, 1960).

¹⁵ United Nations Convention on the Law of the Sea, Dec. 10, 1982.

¹⁶ MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 3–15 (2001).

nationality, is entitled to was introduced by the Universal Declaration of Human Rights.¹⁷ These principles were turned into legally enforceable commitments subject to international oversight by later treaties, the ICCPR and ICESCR.¹⁸ These treaties influenced country constitutions, court rulings, and legislative changes globally over time.¹⁹

The integration of individuals into international legal frameworks marked a significant departure from the conventional state-centered paradigm. Academics and judicial bodies have progressively acknowledged that individuals hold rights that can be enforced on an international scale, especially in matters related to discrimination, torture, and genocide. Additionally, customary international law has developed to encompass peremptory norms (*jus cogens*) that forbid severe violations of human rights. Courts within different jurisdictions have started to cite international law in constitutional matters, employing it to express advancing standards of justice and to limit state authority.²⁰

1.4 CODIFICATION AND PROGRESSIVE DEVELOPMENT THROUGH THE INTERNATIONAL LAW COMMISSION:

Since its establishment in 1949, the International Law Commission (ILC) has played a vital role in articulating, clarifying, and codifying international rules. The Commission produced drafts that formed the basis of major treaties governing diplomatic relations, consular relations, treaty law, state responsibility, and succession of states, among others. Its work provides states with authoritative guidance and promotes consistency across legal systems.²¹ One of the ILC's greatest achievements is the Vienna Convention on the Law of Treaties, which sets out rules concerning treaty formation, interpretation, validity, and termination. The Convention also codified the doctrine of *jus cogens*, establishing that certain fundamental norms cannot be derogated by agreement. These norms include prohibitions on genocide, slavery, and aggression. By providing a structured framework for treaty relations, the VCLT reinforced predictability and stability in international law.²²

The ILC has also shaped the field of international criminal law, particularly through draft codes that contributed to the creation of the International Criminal Court. Its ongoing work on topics

¹⁷ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948).

¹⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁹ Louis Henkin, The International Bill of Rights: The Universal Declaration and the Covenants, in THE INTERNATIONAL BILL OF RIGHTS 1, 5–12 (Louis Henkin ed., 1981)

²⁰ Andrew Clapham, The Individual in the International Legal System, 21 EJIL 25 (2010).

²¹ International Law Commission, Yearbook of the ILC (1949–present).

²² Vienna Convention on the Law of Treaties, May 23, 1969.

such as customary international law, environmental protection, and immunity of state officials continues to inform both treaty negotiations and judicial practice.²³

1.5 THE INTERNATIONAL COURT OF JUSTICE AND THE JUDICIAL DEVELOPMENT OF INTERNATIONAL LAW:

The International Court of Justice (ICJ) plays a central role in safeguarding the rule of law by adjudicating disputes between states and issuing authoritative advisory opinions. In its *Reparation for Injuries* opinion, the Court affirmed that the United Nations possesses international legal personality, enabling it to assert rights and responsibilities independently of its member states. This recognition strengthened the institutional capacity of international organizations and established the doctrine of implied powers.²⁴

In *Barcelona Traction*, the Court introduced the doctrine of *erga omnes* obligations, holding that certain duties such as prohibitions against slavery and genocide are owed to the international community as a whole. This ground-breaking principle expanded the legal consequences of wrongdoing by acknowledging that some violations affect not only individual states but humanity at large.²⁵ The Court's jurisprudence also addresses issues involving the use of force, nuclear weapons, environmental harm, and self-determination. In the nuclear weapons advisory opinion, the ICJ stated that any threat or use of nuclear weapons must comply with the principles of humanitarian and environmental law, while also reaffirming the obligation of states to negotiate disarmament in good faith. Through such decisions, the Court helps clarify legal principles and fosters adherence to the rule of law.²⁶

1.6 ECONOMIC GOVERNANCE: WTO, INVESTMENT ARBITRATION, AND THE RULE OF LAW:

The creation of the World Trade Organization introduced a sophisticated, rules-based mechanism for regulating global trade. Its dispute settlement system featuring binding adjudication, appellate review, and defined timelines has been recognized for enhancing predictability and fairness in international commerce. Numerous cases, including those concerning environmental measures and public health, illustrate the system's capacity to balance trade liberalization with regulatory autonomy.²⁷ Yet the WTO currently faces a crisis,

²³ ILC Draft Articles on State Responsibility (2001).

²⁴ *Reparation for Injuries*, Advisory Opinion, 1949 I.C.J. 174.

²⁵ *Barcelona Traction*, Judgment, 1970 I.C.J. 3.

²⁶ *Nuclear weapons*, Advisory Opinion, 1996 I.C.J. 226.

²⁷ WTO Appellate Body Report, United States – Gasoline, WT/DS2/AB/R.

largely due to the paralysis of its Appellate Body. This paralysis stems from decisions by certain states to block the appointment of new judges, undermining the organization's capacity to enforce rules and resolve disputes. The erosion of this system poses serious risks to the rule of law in global trade relations and threatens a return to unilateralism.²⁸

Investment arbitration under ICSID also shapes the rule of law in economic relations. By permitting foreign investors to bring claims directly against host states, ICSID provides a forum for resolving disputes involving expropriation, fair treatment, and regulatory change. Cases such as *Maffezini v. Spain* expanded protections for investors but also raised concerns about transparency, legitimacy, and state regulatory autonomy. Critics argue that developing states often lack legal capacity to effectively defend themselves in complex arbitration proceedings.²⁹

Economic governance at the international level relies heavily on institutions such as the World Trade Organization (WTO) and the global system of investment arbitration, both of which play crucial roles in maintaining predictability, transparency, and fairness in cross-border economic relations. The WTO's rules-based framework aims to ensure that States conduct trade according to agreed principles rather than unilateral power, yet recent disputes, the paralysis of the Appellate Body, and rising protectionism have strained its ability to enforce discipline among members. Similarly, the investor-State dispute settlement (ISDS) regime, designed to protect foreign investors from discriminatory or arbitrary State action, has faced criticism for inconsistency in arbitral awards, limited accountability, and concerns about the balance between investor rights and State regulatory authority. These pressures raise deeper questions about the legitimacy and coherence of international economic law, as States increasingly challenge the authority of tribunals or withdraw from investment treaties. Together, these developments illustrate how economic governance mechanisms, once regarded as stabilizing pillars of the international rule of law, now confront issues of compliance, reform, and trust that threaten their long-term effectiveness and credibility.

1.7 CONTEMPORARY THREATS TO THE INTERNATIONAL RULE OF LAW:

The international rule of law faces significant threats in the twenty-first century. The global financial crisis, rising nationalism, and populist politics have fuelled scepticism toward international institutions. Political movements in various states promote unilateral action and

²⁸ Joost Pauwelyn, *The WTO Appellate Body Crisis*, 20 J. INT'L ECON. L. 341 (2017).

²⁹ *Maffezini v. Spain*, ICSID Case No. ARB/97/7 (2000).

reject multilateral commitments, weakening the institutional foundations that support legal stability.³⁰

Geopolitical tensions have exacerbated these challenges. Prolonged conflicts in regions such as the Middle East expose the limitations of the UN Security Council, which often remains gridlocked due to competing strategic interests among its permanent members. Such paralysis undermines the credibility of collective security mechanisms and diminishes global confidence in multilateral governance.³¹ Other challenges include withdrawal from international treaties, selective compliance with legal obligations, and attempts to bypass established institutions. The weakening of the WTO Appellate Body, disregard for international refugee protection norms, and increasing cyber-operations that violate sovereignty illustrate growing fragmentation in the international system. These trends threaten the coherence of the rule-based order.³²

The rapid growth of specialized treaties and tribunals has also created overlaps and contradictions, leading to fragmentation in international law.³³ This allows States to choose forums that favour them, reducing coherence in global legal governance. At the same time, rising nationalism and populism have led some governments to withdraw from international obligations and question the role of multilateral institutions. Non-State actors such as multinational companies, armed groups, and cyber networks now play major roles in international affairs but are difficult to regulate under State-centric legal frameworks.³⁴ Weak enforcement mechanisms further undermine the system, since many courts lack compulsory jurisdiction and depend on political will for compliance. New technological threats, including cyber operations and artificial intelligence, evolve faster than legal rules can adapt, creating uncertainty and opportunities for misuse. Climate change also exposes gaps in international law, especially regarding responsibility for environmental harm and climate-induced displacement. Finally, widespread misinformation and attacks on expert knowledge reduce trust in legal institutions and make global cooperation more difficult.

³⁰ Anne Peters, *Populism and International Law*, 15 GERMAN L.J. 385 (2017).

³¹ Anne Peters, *Populism and International Law*, 15 GERMAN L.J. 385 (2017).

³² Richard Falk, *The Collapse of Global Multilateralism*, 12 GLOBALIZATIONS 425 (2015).

³³ International Law Commission (ILC), *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).

³⁴ Andrew Clapham, *Human Rights Obligations of Non-State Actors* 3–10 (Oxford Univ. Press 2006).

1.8 THE FUTURE OF THE INTERNATIONAL RULE OF LAW:

The future of the rule of law in international relations depends on states' willingness to recommit to multilateral cooperation, strengthen institutions, and uphold universal legal norms. Global crises such as climate change, pandemics, and transboundary environmental degradation cannot be resolved through unilateral action. Instead, they require coordinated responses grounded in legal frameworks such as the Paris Agreement, international health regulations, and environmental treaties.³⁵ At the same time, enhancing the effectiveness of international institutions through reforms, capacity-building, and greater transparency is essential. Strengthening mechanisms for peaceful dispute settlement, including the ICJ and arbitral tribunals, would bolster legal predictability. Increasing participation in treaty regimes addressing human rights, disarmament, and environmental protection would reinforce shared commitments to global welfare.³⁶

Ultimately, the rule of law remains central to international stability, justice, and human dignity. Despite contemporary challenges, its continued evolution reflects humanity's enduring aspiration for a world governed by principles rather than power. Strong institutions, universal norms, and active state engagement are essential to ensuring that the international legal order continues to serve as a framework for cooperation and peace.³⁷

1.9 CONCLUSION:

The international rule of law represents a collective human achievement built over centuries through philosophical reflection, political negotiation, and institutional innovation. From the post Westphalian system to the UN Charter and beyond, international law has expanded to encompass human rights, environmental protection, maritime governance, and economic regulation. Yet the durability of this system depends on states' willingness to uphold shared norms and support multilateral institutions. The uploaded document emphasizes that global challenges ranging from climate change to armed conflict cannot be addressed without strong legal frameworks. Preserving the international rule of law is essential not only for global stability but for the dignity and survival of future generations.

³⁵ Paris Agreement, Dec. 12, 2015.

³⁶ Jutta Brunnée & Stephen Toope, *Interactional Theory of International Law*, 39 NYU J. INT'L L. & POL. 891 (2007).

³⁷ MALCOLM SHAW, *INTERNATIONAL LAW* (9th ed. 2021).