

**Committee:** Legal Committee

**Issue:** The rule of law on a local and international level

**Student Officer:** Maria Kollia

**Position:** Co-Chair

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## PERSONAL INTRODUCTION

Dear delegates of the Legal Committee,

It is a true delight for me to welcome you to the 2<sup>nd</sup> ACGMUN Conference. My name is Maria Kollia and I will be serving as your co-chair. I am a 10<sup>th</sup> grade student at Pierce-ACG with the aspiration to study law.

I must admit that enthusiasm is an understatement to describe my feelings about this conference. It holds a sentimental value for me, as it is the first time I will be chairing, but also at a conference my own school organizes. For this reason, I feel very grateful and content to be given this position. I will hopefully contribute to the smooth running of the conference and ensure that you have an unforgettable time.

I would also like to congratulate you on your participation and choice of committee. As you may already know, MUN is an interesting and entertaining way for young people to become engaged in issues that afflict the global community while taking the role of a diplomat. The Committee you have chosen, the Legal, is one that promotes stability, one of the fundamental goals of the United Nations, and the subject of the 2<sup>nd</sup> ACGMUN Conference. That is on the grounds that only through the setting of international law, namely common guidelines and mutual agreements for States' behavior, can the UN foster dialogue and peace, which is, after all, its ultimate purpose.

Last but not least, I must remind you that the present study guide aims to introduce you to the issue and aid you to set a basis for your research. Given the many aspects of the topic in hand, I encourage you to delve deeper into it with further study. Should you have any questions, you can contact me at [maria.kollia@acg.edu](mailto:maria.kollia@acg.edu) and I will be more than willing to answer them.

Looking forward to meeting you in March,  
Maria Kollia

## TOPIC INTRODUCTION

“Justice cannot be for one side alone, but must be for both” -Eleanor Roosevelt

In the twenty-first century, democracy has been established in most countries of the world. This regime and its school of thought set the ideals of justice and equality as their utmost values. If we wish to uphold these principles, it is vital that no person be above the law that respects democracy and human rights. This might be a principle of most Constitutions, though it is exceptionally hard to apply in practice, with armed conflicts, corrupt politicians, and social turbulences threatening it.

The rise of a global community in modern times has created the need for international law to exist as well. For this reason, the principles of the rule of law are to a certain extent transferable to the international level. Non-compliance of States with legal norms, with the most striking example being North Korea and its nuclear program, pose a great threat to the international rule of law and, as a result, to global peace and security.

The United Nations, in its mission to achieve the upholding of human rights, the achievement of peace and security, but also sustainable development, is a forum where nations constantly work to advance the rule of law; both on a national and international level. Besides, Sustainable Development Goal (SDG) number 16 is “Peace, Justice and Strong Institutions”.

## DEFINITION OF KEY TERMS

### Law

Law is “the enforceable body of rules that govern any society”<sup>1</sup> and are “established by custom or enforced by a governing authority”<sup>2</sup>.

### International Law

“International law is the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors.”<sup>3</sup>. The formulation of international law usually happens via

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<sup>1</sup> "law." Oxford Reference. 2009-01-01. . Date of access 30 Nov. 2017.

<sup>2</sup> "Law." Merriam-Webster.com. Merriam-Webster, n.d. Web. 4 Dec. 2017.

<sup>3</sup> Shaw, Malcolm. “International Law.” Encyclopædia Britannica, Encyclopædia Britannica, Inc., 7 Dec. 2016.

treaties, meaning “legally-binding agreements between states”<sup>4</sup>. It is enforced by international courts and tribunals.

### **Rule of law**

This legal term means the supremacy of law at all times, while this law has a moral foundation on human rights and justice. The former Secretary-General of the UN, Kofi Annan, has commented on the rule of law 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 rights norms and standards.” Hence, it is interesting to note that many languages use the term “state of justice” to describe the rule of law.

### **Transitional Justice**

“Transitional justice is not a special form of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse”<sup>5</sup> and repression. In such cases, the citizens have no confidence in political and legal institutions like the police, the judiciary, and the prosecution service, since they are fragile and politicized. Therefore, transitional justice aims to restore the rule of law through ways that include “criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms”<sup>6</sup>.

### **Codification of Law**

The codification of law is the collection of “law which previously was in the shape of customs, ancient texts, judicial decisions and fragmentary statutes at one place and presented in a systematic arrangement which is known as code.”<sup>7</sup> This is done in order for the law to be more comprehensible and practical. Famous codes include the Roman Code, the Justinian Code etc.

### **Monism and Dualism in International Law**

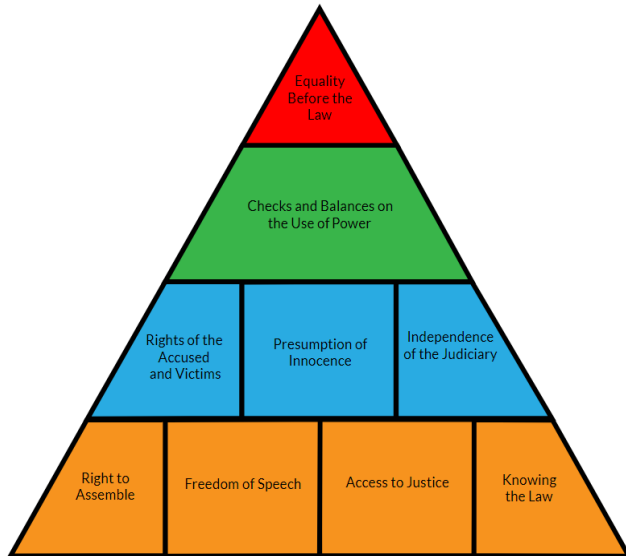
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<sup>4</sup> "treaty." Oxford Reference. 2004-01-01. . Date of access 30 Nov. 2017.

<sup>5</sup> United Nations. What is Transitional Justice? A Background.

<sup>6</sup> United Nations and the Rule of Law. (2017). Transitional Justice - United Nations and the Rule of Law.

<sup>7</sup> Umar, Farooq. Codification of Law Meaning and Kinds, Sept. 2011.



#1 Rule of Law Principles

These two terms refer to the status of international law in national legal systems. In a monist legal tradition, there is no distinction between national and international law; once a treaty has been ratified, it automatically constitutes part of domestic law. Guided by the principle *Lex posterior derogat priori* ("Later law removes the earlier"), any previous national law contradictory to the international one is now null and void. Dualism, on the other hand, means that a country must first enact the relevant national law.

## BACKGROUND INFORMATION

The rule of law is a cornerstone of every democratic State. It basically constitutes the ideal way of governance. There are certain prerequisites the legislative, the judiciary and the administrative branches must fulfill to accomplish this and ensure the prosperity of democracy, the citizens, and the society as a whole.

Firstly and most importantly, the supremacy of and equality before the law must exist. Everyone within a state, namely both governmental and private actors, are held accountable to national laws. This way, no abuse of the law is feasible.

What is more, the Constitution must protect the separation of powers. Therefore, governmental powers and officials' actions are constrained by the legislative and judiciary branches, but also by non-governmental factors, such as the media's critique; this way, there is no suppressive regime that abuses civilians' rights by possessing superfluous power.

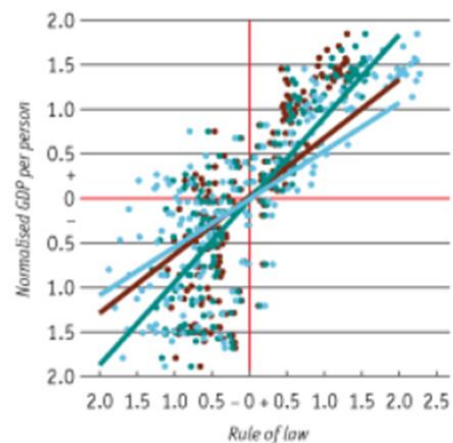
Moreover, corruption must be absent; all three branches of a State, as well as of the police and military, should not use their positions for political or personal interest. Also, no special treatment is to be given to people with a certain financial or social status or to those who offer bribes. All actions of the State happen for the sake of the public and not private interest.

Additionally, all administrative, legislative and judiciary procedures of a State should be open and accessible to the public and conducted with transparency. This

way, the compliance of the government with legal procedures is verified. The laws and data of the State should be publicized and accessible by the people. Judicial procedures are generally open and free, with very rare and strict exceptions like in the case of a terrorist trial, where publicity could be potentially hazardous, due to the revelation of sensitive information.

All laws of a State must be enacted and applied with respect to the fundamental human and civil rights of an individual. For example, the freedom of speech, the right to trial, the right to life and safety, and also labor rights are secured by the Constitution of a country and respected by the State's institutions. All civilians are entitled to these rights, in spite of nationality, religion, gender or color.

Lastly, attention must be drawn to the judiciary, as it is the guard of the implementation of the national law. When a problem arises between individuals, or between a civilian and the state, national courts intervene, in order for the dispute to be solved pacifically. The access to both civil and criminal justice must be affordable and not discriminatory, dispute resolution must be done at a reasonable time and the judges must be independent and unbiased.



#2 This graph shows that the higher level of the rule of law, the higher the GDP per capita

All the aforementioned principles are vital for the existence of stability within a society. When there is proper rule of law, justice is allocated properly and impartially; human rights are protected, as the laws and respected by the government; the public institutions are strong and there is no disturbing bureaucracy; citizens have the sense of security, feel trust towards the government and are willing to fulfill their civil obligations, like paying taxes. In other words, everything runs smoothly, and the State can flourish. It is interesting to observe that there is a direct correlation between the economic growth of a State and its level of rule of law, as figure #2 shows. If the society functions properly, as a result of good governance, the citizens are by definition able to be productive and contribute to the economic prosperity of the State.

As it can be comprehended, the principle of the rule of law cannot be completely implemented realistically, and no democratic country has achieved perfection, while this rule is nonexistent in the Constitution of others with totalitarian governments, such as Saudi Arabia. There are many factors that threaten the rule of law, with the severest being ambitious leaders who take advantage of

democratic procedures in order to impose authoritarian regimes. For instance, one may recall the President of Turkey Recep Tayyip Erdogan and his increased powers because of the referendum on Constitutional Amendments. Armed conflict is another factor that endangers the rule of law. Nowadays, civil wars have almost completely replaced wars between States and there are countless examples, like Syria and Yemen, to verify this. This is particularly alarming for the rule of law, as civil war means that there is imbalance domestically. This can jeopardize the proper function of the State; When there is war, it is anarchy and not law that reigns, and thus we cannot refer to governance, let alone good governance. As a result, conflict only brings human rights violations, collapse of governments and institutions, and increased corruption.

The rule of law on the international level refers mostly to the way the international law is enacted and efficiently implemented. Treaties are perhaps the most important instruments by which the international law is set, and they play a crucial role in maintaining harmony in international relations, as they are legally binding. Treaties may address issues concerning the environment, terrorism, peace et cetera. In order to affirm this assertion, one can recall certain key treaties, like the Chemical Weapons Convention. Most multilateral treaties are signed within the scope of the UN.

It is also important to mention the role of the General Assembly and Security Council resolutions. General Assembly resolutions are not legally binding, as they may only make suggestions. Nevertheless, they carry substantial political weight and certain, ones, like the Universal Declaration of Human Rights, are so widely recognized, that one could even characterize them as legally binding. Also, Article 13 (1)(a) of the UN Charter reads; “1. The General Assembly shall initiate studies and make recommendations for the purpose of a. [...] encouraging the progressive development of international law and its codification”. On the other hand, the Security Council’s resolutions are legally binding to the Member-States and are considered as parts of international law. The Security Council even has the authority to impose sanctions, should a State fail to abide by its decisions or by substantial international law concerning peace and security.

International courts and tribunals with distinct jurisdiction solve issues regarding the international law. The ICJ is the key judicial organ of the United Nations. It deals with cases about disputes between States (these may relate to boundary disputes, national sovereignty, the breach of a treaty) that have agreed to resort to the court and also delivers consultant opinions on legal matters submitted by certain authorized UN organs and agencies (like the World Health Organization). The rulings of the court are final and unamendable. There is no doubt that the ICJ has actively contributed to the promotion of the international rule of law; It solves

disputes between States peacefully and prevents their escalation into armed conflict; It aids in the interpretation of international treaties and laws; Judgements are generally respected and if a State does not comply with them, the other party may seek justice to the Security Council and its potential sanctions; Lastly, the ICJ is considered as “the only court with universal and general jurisdiction”, as States accept its jurisdiction (though informally) immediately when signing the UN Charter. The ICJ’s weak points include the facts that only 70 out of 193 Member-States of the UN have formally recognized its compulsory jurisdiction, a case can reach the ICJ only with the consent of the two parties and P5 members may veto its decisions if they are against their interests.

The International Criminal Court (ICC) is responsible for examining and trying cases related to genocide, war crimes, crimes against humanity, and crimes of aggression. Therefore, it constitutes the permanent international court responsible for the implementation of International Humanitarian and Criminal Law by trying persons and not States. The primary goal of the court is to combat impunity. Albeit the fact that there is no formal link between the ICC and the UN, the court works closely with it, particularly through the Security Council. It is important for the upholding of the rule of law internationally, as it has sought and delivered justice for grave atrocities and human rights violations taken place in DR Congo, Sudan, Libya, etc. Also, the court is known for holding free and fair trials, always with respect towards the rights of both the victims and the accused during formal procedures. However, the lack of formal link with the UN undermines its efficiency, which is further aggravated by the fact that countries like China, India, Pakistan, Indonesia, Turkey and the United States of America are not members of it. The USA has not ratified the Rome Statute of the ICC because of fears that it would prosecute American military officials, while other countries like the Russian Federation have withdrawn from it. What is more, the ICC is constrained to trying cases of crimes committed after July 1, 2002. Lastly, it only has jurisdiction for crimes committed in territories which have signed the Rome Statute, and only by a citizen of such a country, unless there is the intervention of the Security Council.

Two other ad hoc (non-permanent) tribunals used to exist and with the establishment of the permanent ICC, they currently do not function. These are the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, which were established in order to deal with crimes committed during war in these territories. Lastly, there is the International Tribunal for the Law of the Sea, which was created by the UN Convention on the Law of the Sea, to adjudicate disagreements stemming from issues regarding the interpretation and implementation of the aforementioned Convention.

## MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

### Denmark

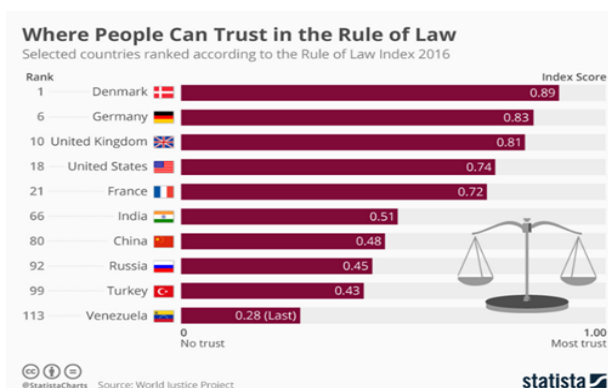
Denmark scored the highest position at the Rule of Law Index of the World Justice Program in 2016. It was second to none in the categories of government accountability and absence of corruption. Denmark is known for its high standard of living, transparency and proper function of the State, and particularly the judiciary for its efficacy and independence.

### Venezuela

Venezuela is the country with the lowest level of rule of law at the 2016 Rule of Law Index. The situation has deteriorated since 2014, given the political and institutional instability in the country. President Nicolás Maduro has insistently endeavored to seize control of the Supreme Court of Justice and suspend the powers of the former National Assembly (legislature). Human rights violations and impunity rates have soared. The Attorney-General Office's statistics indicate that 99% of human rights complaints do not reach justice.

### Saudi Arabia

The Kingdom of Saudi Arabia is a monarchy ruled by the Shari'a, namely the Islamic law. It resembles a theocracy while being authoritative; the King possesses power over all State institutions but at the same time abiding by a strict version of the Koran's principles. A code implemented in 2002 called for the respect of human rights, like the right to consultancy before the trial, and prohibited the use of physical and psychological violence. These reforms would resemble efforts to establish the rule of law if implemented. As a matter of fact, though, the judiciary and the police have not respected them.



#3 Country Rankings in the World Justice Project 2016 Rule of Law Index

### Yemen

Yemen is the example of a country with very fragile institutions and poor rule of law due to the civil war that has been afflicting it since 2015. Severe human rights violations have been reported, and the government repeatedly interferes to the supposedly impartial judiciary, while court rulings are scarcely implemented. Although Yemen is



making steps of transitional justice towards structural reforms, democracy is far from being implemented; In 2012, presidential elections were held with only one candidate and the time of the next election still remains undefined.

### **United States of America**

Despite its high score at the Rule of Law Index, the USA faces certain issues about the rule of law. Many accuse the government of lacking transparency in procedural matters and the Congress of not taking the appropriate measures to solve this. There have been leaks about crime impunity of officials and secret court rulings are the reality. The USA has also violated certain treaties, like the War Powers Resolution. This is of importance, as it is a P5 member and can veto any decision of the ICJ against it about the violation of a treaty.

### **Turkey**

Because of the April 2017 referendum on Constitutional Amendments, President Erdogan was granted augmented powers, like over the appointment of members of the Supreme Board of Judges and Prosecutors. He even went as far as to suspend from their jobs more than 150,000 teachers, journalists and judges who would be a threat to his regime. The virtual inexistence of democracy and rule of law has made discussions about EU membership cease.

### **World Justice Project (WJP)**

The World Justice Project is a non-governmental organization whose aim is to advance the rule of law domestically in every corner of the globe. The WJP acts as an international network for collecting data about the rule of law in different countries and using it for the progression of research upon the matter. Its most notable activity is the annual Rule of Law Index, which is a ranking of countries according to their level of rule of law, taking into consideration many different parameters concerning the behavior of the State. One of them is the existence of government corruption, which may include from petty bribery incidents to major frauds committed by governmental agencies.

### **International Law Commission (ILC)**

The ILC is a commission of legal experts that was established by the UN General Assembly with the purpose of aiding the development and codification of the international legal framework. Its role is to make proposals about the drafting and signing of new treaties and to make reports for the codification of international law.

## TIMELINE OF EVENTS

Date	Description of event
June 1945	Signing of the United Nations Charter and the Statute of the International Court of Justice
1947	Establishment of the International Law Commission (ILC) by the UN General Assembly
June 1993	The first time the General Assembly has considered the issue of the rule of law at the World Conference on Human Rights
July 2002	The creation of the International Criminal Court (ICC) and the Rome Statute
May-June 2010	The Review Conference of the Rome Statute of the International Criminal Court with two successful amendments
November 2012	Declaration of the High-level Meeting of the General Assembly on the rule of law at the national and international levels
December 2015	The International Criminal Tribunal for Rwanda officially ceased its function
December 2017	The International Criminal Tribunal for the former Yugoslavia officially ceased its function

## RELEVANT RESOLUTIONS, TREATIES AND EVENTS

### United Nations Charter

The UN Charter is the “constitutional” document of the UN and the fundamental international legal document on which all international treaties and conventions are grounded. As Article 103 of the UN Charter reads: “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

### Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels

This General Assembly resolution in the form of a declaration was the product of a meeting that took place during the 67<sup>th</sup> session of the GA. Heads of State and Heads of Delegation congregated to discuss the rule of law on the national and international levels and agreed that “[their] collective response to the challenges and opportunities arising from the many complex political, social and economic

transformations before [them] must be guided by the rule of law, as it is the foundation of friendly and equitable relations between States and the basis on which just and fair societies are built”.

### **Resolution A/RES/66/102 on “The rule of law and transitional justice in conflict and post-conflict situations”**

This Resolution adopted by the Legal Committee of the UN recognized the rule of law as “a key element of transitional justice”. It stressed the importance of intergovernmental cooperation in order to “enhance technical assistance and capacity-building” of Member-States and to assess relevant efforts made to achieve these goals.

## **PREVIOUS ATTEMPTS TO SOLVE THE ISSUE**

### **Pledges**

On the occasion of the UN High Level Meeting on the Rule of Law on the Local and International Levels, Member-States signed pledges, namely documents which ratified their commitment to certain actions, in order to boost the rule of law on both levels. For instance, Italy pledged to sign certain treaties and to formally recognize the compulsory jurisdiction of the ICJ, while others referred to the combating of terrorism and legislative reform. Many countries successfully implemented their promises.

### **Special Rapporteurs of the Human Rights Council (HRC)**

Special Rapporteurs are independent experts on specific issues who are appointed by the UN HRC. They are sent to certain countries to publicly report and monitor human rights violations while also having an advisory role. Regarding the question of the rule of law, the HRC has so far appointed the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

### **Ombudsman Institutions**

An Ombudsman is a legislative commissioner that is appointed by a country’s government and is responsible for investigating citizens’ complaints regarding the actions of administrative actors. They act as arbiters between the government and the individual. The institution originated in Sweden and has been transferred in

various forms to Scandinavia, New Zealand, the United Kingdom et cetera. The power they possess is solely recommendatory.

### **Review Conference of the Rome Statute of the International Criminal Court**

During June and May 2011, a Review Conference of the Rome Statute of the International Criminal Court was held in Uganda, with two successful amendments. “The first one is to extend the jurisdiction of the Court over some war crimes committed in non-international conflicts. The second one defines the crime of aggression and lays out conditions for the jurisdiction of the Court to be in force”<sup>8</sup>.

### **POSSIBLE SOLUTIONS**

The rule of law may be a principle of democratic governance, however the UN is responsible for promoting it globally, where possible. Therefore, it would be a good idea for the Legal Committee to find ways, through special programs and conferences, to encourage dialogue with non-democratic Member-States. The UN can support transitional justice in countries like Yemen by funding programs to establish courts and tribunals, prison institutions and organizing the police and ombudsmen, or by creating a HRC Special Rapporteur for transitional justice.

Delegates of the Legal Committee should also consider the strengthening of the rule of law on a global level through the codification of international law. This could be done by proposing the drafting of new laws, through the creation of treaties, in areas that they believe have not been adequately addressed so far. Additionally, another solution would be the more precise shaping of international laws on subjects that have already been addressed by States, with the revision of ineffective treaties. Both major international courts, namely the ICJ and ICC, have certain grave flaws and it is absolutely necessary that they be addressed, with changes to their Statutes. Delegates could propose certain amendments to the Statute of the ICJ and another Review Conference of the Statute of the ICC could be organized under the aegis of the UN.

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<sup>8</sup> ICC - Review Conference of the Rome Statute concludes in Kampala, [asp.icc-cpi.int/en\\_menus/asp/reviewconference/pressreleaserc/Pages/review%20conference%20of%20the%20rome%20statute%20concludes%20in%20kampala.aspx](http://asp.icc-cpi.int/en_menus/asp/reviewconference/pressreleaserc/Pages/review%20conference%20of%20the%20rome%20statute%20concludes%20in%20kampala.aspx).

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