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The United Nations and the International Rule of Law*

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Contents

Ⅰ. Introduction

One important ideal of modern legal systems is described by the phrase 'the rule of law.' The rule of law has been a critical civilizing influence in every free and democratic society. It distinguishes a democratic from a tyrannical society; it secures liberty and justice against repression; it elevates equality above dominion; it empowers the weak against the unjust claims of the strong. Its restraints, no less than the moral precepts it asserts, are essential to the well-being of a society, both collectively and to individuals within it. Respect for the rule of law is thus a basic neighbourhood value, certainly needed in the emerging global neighbourhood.[1] The rule of law,

* This Article was published in *Korean Yearbook of International Law* Vol.1, 1997, pp.79-110.

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1) The Commission on Global Governance, *Our Global Neighborhood*, Oxford: Oxford University Press, 1995.

thus, is or should be regarded as a basic principle of law and politics both in the states and international society.

Although, some people have even said that there is no such element as the rule of law in the international society, it is really true that international law is a really 'law' and the international society exists as a 'legal community.'[2] I think, therefore, the rule of law in the international society should be the subject-matter of great concern. For centuries, many philosophers and internationalists have persistently advocated and searched for the rule of law in the international society in order to maintain permanent international peace and promote common idea and value. International law lays down basic principles and rules governing the relationship among international legal subjects including states, international organizations, and individuals, and thus builds an important foundation for the functioning of international organizations, which, as one of its principal objectives, is to work for the observance of international law and its further development and codification.[3] It is evident that, due to the development of international law and organizations, among the international legal subjects, states are gradually becoming united into a world legal community.

Now, I begin with an attempt to make clear what is the rule of law both in the domestic and international level, and continue to review the way in which its meaning and role can be promoted and strengthened in the international society, especially focusing on the role of the United Nations relating to the rule of law in the international society. Hereafter, I would like to use the term, 'international rule of law' instead of 'the rule of law in the international society.'[4]

Ⅱ. The Concept of the Rule of Law

Why is it necessary to define the concept of the rule of law? There are two reasons: The first is obviously that we must be clear at the outset about the study on the matter of the rule of law: The second is that it is necessary to spell out the ingredients of the rule of law, partly in

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p. 303.

2) The very term 'community' denotes something more than 'society', and indicates a more closely knit group. Peaceful, friendly relations characteristic of a 'community' are lacking in many areas of the world and it may therefore be more appropriate to speak of an international 'society', saving the word 'community' for the unrealistic optimists who shut their eyes to reality. Such semantic arguments may be exaggerated and in the common language of international lawyers the term 'society' and 'community' may be synonymous. See Ingrid Detter De Lupis, *The Concept of International Law*, Stockholm: Norstedts Forlag, 1987, p. 35.

3) William L. Tung, *International Law in an Organizing World*, New York: Thomas Y. Crowell Company, 1968, p. .

4) Arthur Larson, *The International Rule of Law*, Institute for International Order, 1961, p. 3.

order to demonstrate that it is a genuine and real juristic principle and not merely a vague political aspiration or ideology.[5] The rule of law is a convenient term to summarize a combination of ideals and practical legal experience concerning which there is over a wide part of the world, although in embryonic and to some extent inarticulate form, a consensus of opinion among the legal profession.

Two ideals underlie the concept of the rule of law. In the first place, it implies without regard to the content of the law, that all power in the state should be derived from and exercised in accordance with the law. Secondly, it assumes that the law itself is based on respect for the supreme value of human dignity. Traditionally, the concept of the rule of law has seemed to mean the principle of rule(government) of the *Rechtsstaat* or supremacy of law. In its origin, the concept of *Rechtstaat* was formed in German jurisprudence, by which it was once asserted that every rule of laws could be justified, as long as it was exercised only on the basis of law. It did not matter wether the content of law was democratic or not. In a word, in the first place, the rule of law implies without regard to the content of the law that all power in the state should be derived from and exercised according to law.[6]

But the concept of the rule of law has been developed into the concept of 'the supremacy of law' or 'the predominance of Parliament' for the protection of individual freedom and fundamental rights specially under the constitutionalism in England. And in Germany also, the concept of *Rechtstaat* has been changed into the principle of limitation of state(government) power for the protection of human rights. In both cases, 'the content' of law has the primary role in the concept of the rule of law. In this perspective, now it is asserted that the rule of law means the principle of realizing the individual freedom, equality, and other fundamental rights for the human dignity and under the Constitution in domestic level.[7] Therefore, the rule of law requires every state to restrict its governmental power and abide by its law which is made for the protection of human rights. The rule of law has stood as a constitutional barrier between the governor and the governed, between power and people.[8]

Generally, from the constitutional perspective, many scholars usually explain that the rule of law means the principle that restriction of individual rights or the imposition of duties on individuals should be exercised on the basis of the law. The purpose of the rule of law, therefore, lies in the

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5) Geoffrey de Q. Walker, *The Rule of Law*, Melbourne: Melbourne University Press, 1988, p. 7.

6) Franz Neumann, *The Rule of Law*, Heidelberg: Berg Publishers, 1986, pp. 179-180. And cf. Stanley L. Paulson, "Neumann's Rule of Law," *Diritto E Cultura*, Edizioni Scientifiche Italiane, 1/92, pp. 209-216.

7) For the 'minimum conditions' of a juridical system in which fundamental rights and human dignity are respected and 'basic requirements' of representative government under the rule of law, see International Commission of Jurists, *The Rule of Law and Human Rights—Principles and Definitions—*, Geneva, 1966, pp. 5-8.

8) Allan C. Hutchinson Patrick Manahan ed., *The Rule of Law —Ideal or Ideology—*, Toronto: Carswell, 1987, p. 100.

protection and promotion of basic freedom and fundamental rights of individuals, and its constitutional meaning is the 'principle of separation of powers.' From the philosophical perspective, on the other hand, the concept of the rule of law means the 'rule of reason(*ratio*), not of men.'[9] I think that it is the appropriate meaning of the rule of law, moreover, the constitutional meaning of the rule of law can be reconciled with the philosophical meaning of the rule of law on condition that it aims to protect or preserve the fundamental human rights which are to be derived from the reason or the human nature, prohibiting the arbitrary rule of men or power. That is, the ideal of 'the rule of law, not of men' calls upon us to strive to ensure that law itself will rule(govern) us, not the wishes of powerful men. According to this traditional ideal, government must be by 'just and positive laws,' not by 'absolute arbitrary power.' It is, therefore, necessary to note that the concept of the rule of law is based on the values of a free or open society, which means a society that recognizes the supreme value of human personality and conceives of all social institutions, and in particular the state, as the servants rather than the masters of the people.[10]

The International Commission of Jurists has held a number of international meetings, which have contributed decisively to the analysis and elaboration of the concept of the rule of law in accordance with the needs of contemporary society. In 1959, Delhi Conference of the International Commission of Jurists undertook to draw a clear picture of what the rule of law means. It conceived the rule of law as: "the principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of men."[11]

Ⅲ. The International Rule of Law

1. International Society as a Legal Community

Yet, there are some scholars who are inclined to use the term 'anarchy' to designate a society of sovereign states. For them, anarchy necessarily exists when there is no supreme authority to order the state how to act in the international level. Drawing on Hobbes, they usually explain the essence of the 'anarchic' international system by the fact that there is no actor with legitimate authority to

9) Ian Shapiro ed., *The Rule of Law*, New York: New York University Press, 1994, p. 64, 65, 122, 149, pp. 328-330.

10) Robert D. Bryant, *A World Rule of Law, A Way to Peace*, San Francisco: R & E Research Associates, Inc., 1977, p. 6.

11) *Ibid.*, p. 6.

tell a state what to do. But, from the inception of modern international society, states have never carried out their mutual intercourse or relationship in a anarchic manner without any regard to for common rules. Because of international law and institutions, states have known what to do or expect from each other. This pattern of mutual expectations and reciprocal behaviour represents the very fabric of the international order. It is very important to note that the movement towards increased institutionalization of mutual co-operation has also brought about a new consciousness of the importance of international law as the legal framework of international society. If we accept that there is an international society it follows that there must exist an international legal order, for *ubi societas ibi jus*.[12] When we refer to the 'order' of the international society, we necessarily imply that this society is at least 'governed' in the loose sense of the term.[13]

Turning to the contemporary international society, some striking aspects are seen to distinguish the present from the past. These include the extension of international society to a large number of states: the institutionalized co-operation in international organizations, leading to a creation of the United Nations and many other intergovernmental organizations(IGOs): ever increasing interdependence in communications, economic and technical matters: and the emergence of world community or international civil society including the non-governmental organizations(NGOs) and individuals as international actors, as well as the reappearance of human values in international law. The organizational element is one of the most significant features of contemporary international society. The substance of sovereignty is diminished through the activities of a number of international organizations. Most of the organizations have their own legal personality: they are able to act through their own organs, the activities of which are imputed to the organization as a subject of international law. They form a second class of legal persons in the international legal order, thus increasing the number of subjects to which international law applies. And the recognition of individual as not only an object, but also an international legal subject is a historical event of primary importance.[14] International law has begun to run directly to the individual. As the world shrinks through developments of transportation and technology, and recognition of common interests and concerns, so does the distance between the international law and the individual.[15]

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12) Ingrid Detter De Lupis, *op. cit.*, p. 35.

13) Elisabeth Zoller, "Institutional Aspects of International Governance," 3 *Indiana Journal of Global Legal Studies*, 1995, pp. 121-123: One asserts that we can not use the term "world government," but "global governance" in order to characterize the international society today. If 'government' denotes the formal exercise of power by established institutions, 'governance' denotes cooperative problem-solving by a changing and often uncertain cast. See Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* Vol. 76 No. 5, 1997, p. 184.

14) P. K. Menon, "The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine," 1 *Journal of Transnational Law and Policy*, 1992, pp. 151-182.

15) Ronald A. Brand, "The Role of International Law in the Twenty-First Century: External Sovereignty and International Law," 18 *Fordham International Law Journal*, 1995, p. 1695.

The decisive factor in contemporary international society is that the members of international society have formed a legal community without any vertical element of subordination. International society, like other societies, has needed to develop rules to govern behaviour among its members, and judicial machinery for interpreting and developing the rules. In this regard, some scholars once argued that international law was not law in the true sense, as there was no international police force to enforce it, no sanctions if it were disobeyed, and no international legislature.[16] Others, on the other hand, persist that the fact that a legal community, recognized by all, can exist without a constitution providing for enforcement by a competent organ, proves that international law can exist without coercive power, hence, the coercive power is not an element of law.

It must, however, be admitted that such a legal order, in which the only sanction is a kind of self-help by the members, is always in danger of being turned upside down by the powers (or the strongest member). On further examination, we can find the constitution of the international society as a higher law(for example, *jus cogens*) which is the basis of the international society as a legal community and basically regulates the life and acts of the members of the society. It transformed an international society affected by the power politics into a community governed by law, that is, a legal community.[17]

2. The Significance of the International Rule of Law

In its origin, the concept of the rule of law was developed in reference to the modern state: it concerns the internal operations of the state, not the relations among states. Therefore, although the ideal of the rule of law clearly has application to the realization of rule-based association in the society of states, this application is indirect and complex. And even when the courts hold government to the rule of law, 'the rule of international law' is not guaranteed. Obstacles to international association on the basis of common rules would exist even if all states were governed by the rule of law in their internal affairs. The reluctance of sovereign states to conduct themselves according to the rule of law in their relations with each other is a main problem. This reluctance is illustrated by the advocacy by many states of dispute settlement provisions in multilateral treaties according to which compulsory arbitration or judicial settlement is to be replaced by what is referred to as 'free choice of means,' which has evidently been taken by some states to mean free choice in their international legal obligations. They, thus, assert that international law exists in the absence of institutions for securing the rule of law in the strict sense.[18]

16) The Commission on Global Governance, *op.cit.*, p. 304: Anthony D'Amato, "Is International Law Really 'Law' ?" 79 *Northwestern University Law Review*, 1984, pp. 1293-1314.

17) Hermann Mosler, *The International Society as a Legal Community*, Alphen aan den Rijn: Sijthoff & Noordhoff, 1980, pp. 11-16.

18) Terry Nardin, *Law, Morality, and the Relations of States*, Princeton: Princeton University Press, 1983,

But, I suggest, this is simply a lack of information and basis upon the subject.[19] There are much developments in the international society that results in significant change in the concept of international law. No longer is state conduct immune from international scrutiny, or even from sanction. Mechanisms are being created through which 'sovereign' conduct is held accountable to international law. If the role of the sovereign is to provide security, and strengthening the international rule of law results in increased security, then the role of the sovereign must be to strengthen the international rule of law.[20]

Indeed, the rule of law has been repeatedly heralded as the foundation for international order. For example, the Copenhagen Document resulted from the CSCE(the Conference on Security and Co-operation in Europe) meeting held in Denmark in June 1990. That document has been variously proclaimed to be 'an International *Carta* for the Rule of Law' and 'the *Magna Carta* of the New World Order.' It embraces the 'pillars of the new order in Europe' as expressed in five parts: (1) rule of law: (2) freedom of expression, association and thought: (3) democratic values and institutions: (4) the rights of national minorities: and (5) the 'human dimension'(including human rights, human contacts, and issues of a related humanitarian character).[21]

The Moscow Document resulted from the CSCE meeting hosted by the USSR from September 10 to October 4, 1991. Among its substantive provisions, two areas specially contribute to the 'constitutional' character of the process. First, the Moscow Document clearly establishes that human rights are no longer a matter of the internal affairs of CSCE states, but rather of general concern to all states. Second, the document elaborates 'the human dimension mechanism,' which provides a framework for a mission of experts to assist in the resolution of a human dimension problem.[22] Both separately and concurrently with the CSCE process, there exists a strong movement toward a general embrace of the compulsory jurisdiction of the International Court of Justice as the chief cornerstone for the rule of law engagement in the international order.

At the Heads of State Meeting of the UN Security Council on January 30, 1992, world leaders impressively called for observing the rule of law in the conduct of international relations and for strict adherence to the law of the UN Charter. And in their respective pronouncements, the Heads of State took up a widespread sentiment among states and governments that the rule of law and law enforcement ought to be given priority in international relations, particularly in the field of international human rights protection.[23]

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pp. 183-185.

19) Schuyler W. Jackson, "The Rule of Law Among Nations," H. Malcolm MacDonald *et al* eds., *The Rule of Law*, Dallas: Southern Methodist University Press, 1961, p.71.

20) Ronald. A. Brand, *op. cit.*, pp. 1695-1697.

21) Ernest S. Easterly, Ⅲ, "The Rule of Law and the New World Order," 22 *Southern University Law Review*, 1995, pp. 161-167.

22) *Ibid.*, p. 170.

23) Jost Delbruck, "A More Effective International Law or a New 'World Law'?—Some of the Development

As mentioned above, International Commission of Jurists has contributed decisively to the analysis and elaboration of the concept of the rule of law in accordance with the needs of contemporary international society. It defined the term 'rule of law' as follows: "the rule of law includes the establishment of social, economic, educational and cultural conditions under which humanity's legitimate aspirations and dignity may be realized." It seems to me that this definition is based on the approach which connects the institutional approach with the philosophical or value-approach of the rule of law, so I agree on this definition.[24] I think the concept of rule of law means that in every human society including both domestic and international level, the principle of government of that society which is to be reconciled with the reasonable human nature only could be justified.

In the international society, therefore, the concept of the rule of law could be, or rather should be applied and realized for the international protection of fundamental human rights, as well as promotion of human welfare and social justice. The concept of the rule of law which can be applied to an international society means that international society should be ruled by the established international law through the active role of the international organizations, as well as states, and the international conflicts and disputes should be settled peacefully and justifiably by the international law and internationally agreed methods for settling international disputes including by the International Court of Justice and other international tribunals. And, of course, the aim and objective of the international law and organizations should be to protect or promote the fundamental human rights[25] through the maintenance and promotion of international peace

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of International Law in a Changing International System," 68 *Indiana Law Journal*, 1993, p. 706.

24) One could define 'the rule of law' in terms of the values which that institution is designed to serve, such as human dignity or individual fulfilment through the full development of one's capacities; or in terms of the several principles whereby those institutions are to be safeguarded, such as the rule that a legal basis must be shown for every government action interfering with the rights of the citizen; or in terms of the parliaments and the police who are responsible for doing the safeguarding, in their own distinctive ways; or finally, in terms of the procedures which those institutions use for that purpose, such as public hearings, jury trial, *habeas corpus* and the like. There is some overlapping between all four of these approaches, especially between the principles, institutions, and procedures approaches. Thus I would like to reduce the number of possible classifications to only two—the 'values' approach and the 'institutional' approach which also incorporates the principles and procedures whose function it is to maintain the rule of law. We can readily distinguish two main contested views: a primarily instrumental(institutional) approach and a more substantive(values) approach. The institutional version holds that the rule of law is a prerequisite for any efficacious legal order. The substantive version, on the other hand, holds that the rule of law embodies tenets of a particular political morality. Geoffrey de Q. Walker, *op. cit.*, pp. 7-12.

25) The post-World II era has been the start of international protection of human rights. Especially, the U.N. Charter obligates member states to promote universal respect for human rights and not to discriminate on the basis of race, sex, language, or religion in implementing human rights obligations. Based on this broad obligation, the international community has extensively codified classical human rights for the protection of individual fundamental rights and freedoms. In addition, the international

and security. Therefore, we should be also concerned with the role of law relating to actions of the international organizations, especially the constitutional frame and authoritative guidance with respect to the UN operation.[26]

Ⅳ. The United Nations and the International Rule of Law

1. The Role of the United Nations

The role of the United Nations in legal affairs—as spelled out in the Charter—is to promote the judicial settlement of disputes between states and encourage the development and codification of international law. A central task of the United Nations is the adjustment or settlement of international disputes by peaceful means in conformity with the principles of justice and international law, as called for in Article 1 of the UN Charter. And under Article 13 of the UN Charter, General Assembly's functions is "encouraging the progressive development of international law and its codification."[27] Indeed, the United Nations and its members, from its foundations, regarded its role relating to the international rule of law including the codification of international law as an important part of its tasks. Its role relating to the international rule of law is very important for the realization or effectuation of its aim or purpose, because the purpose of the United Nations is to maintain international peace and security, to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all.[28]

The Charter of the United Nations is filled with a commitment to strengthening the international rule of law, especially, in peace and human rights affairs. In the Preamble, a pledge is made "to establish conditions under which justice and respect for obligations arising from

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community has codified economic, social, and cultural rights directed at improving the economic, social, and cultural conditions of the individual to make the enjoyment of fundamental rights and freedoms more meaningful. More recently, the international community has attempted to define and codify group rights and rights of peoples, so-called 'third-generation rights.' These 'rights' or standards of achievement are intended to enhance the political, economic, social, and cultural self- determination and development of peoples to ensure the full and equitable participation of all nations, rich or poor, in the international community of states. Jost Delbruck, *op. cit.*, p. 712.

26) Richard A. Falk, "The United Nations and the Rule of Law," 4 *Transnational Law & Contemporary Problem*, 1994, pp. 612-613.

27) United Nations, *Basic Facts about the United Nations*, New York: United Nations, 1995, p. 253.

28) See the Preamble of the U.N. Charter.

treaties and other sources of international law can be maintained." This broad world order goal is reaffirmed as a 'Purpose of the United Nations' in Article 1(1) where it is undertaken to resolve international disputes in conformity with the principles of justice and international law. I think, therefore, it is very useful to consider what extent this mandate promoting the international rule of law has been carried out, and to identify areas of disappointment.

It is somewhat true that the United Nations has advanced the cause of peace and justice, and international law is playing a primary role in relation to these prospects. These days, the end of the Cold War or East-West rivalry between the United States and the former Soviet Union, and their respective blocs, should open wide the gates of opportunity for the effectuating the role of the United Nations. But, on the contrary, one might find a climate of skeptical assessment based on disappointing UN responses to a series of changes and challenges with which the international society now is confronted.[29]

Peace and security activity is still arguably the most controversial and challenging domain of UN activities.[30] In the first place, there is one view that we must review the legitimacy of the UN activity for the maintenance of the peace and security. The scope of inquiry undertaken here, therefore, must contain the role of law relating to UN operations—that is, law as a constitutional frame and as authoritative guidance with respect to contested action. The core issue of 'constitutionality' in peace and security actions has several additional dimensions that need to be addressed. First, there is the question of double standards and selective action, not treating equals equally, that became especially salient over the years. Second, there is the crucial set of issues regarding the tension between respect for sovereign rights and a less statist definition of peace and security as illustrated by controversies about humanitarian assistance and the impact of such undertakings on Article 2(7)'s mandate not to intervene in matters essentially within 'the domestic jurisdiction' of member states. Third, there is a question, largely unexplored in the scholarly literature, of whether the United Nations, when it uses or authorizes force, should have its mandate more tightly constrained by law than comparable actions by states which are governed by the traditional law of war as set forth mainly in the Hague and Geneva Convention, as well as the two Geneva Protocols. Finally, there is the question of whether the latent potential already contained in the existing framework of UN law can be used to facilitate a process of global reform, or whether it is essential or more beneficial to alter or replace this framework by amending the Charter.

But, in this study, we should be concerned with 'the contributions' of the United Nations relating to the international rule of law. The United Nations is providing, through its sponsorship of law-making treaty negotiations and official conferences on major global challenges, the basis for

29) Thomas G. Weiss *et al.*, *The United Nations and Changing World Politics*, Boulder: Westview Press, 1994, pp. 83-88.

30) Richard A. Falk, *op. cit.*, pp. 612-616.

the progressive development of international law responding to the rapidly evolving priorities and values associated with commitment to achieving a just and sustainable world order. Such contributions to the wider rule of law in the international society are indicative of a general UN disposition that also should be favorable to law in its own operations. It also is relevant, in this wider sense, to note UN contributions to law-making and law application via the International Law Commission and the International Court of Justice. Both UN organs play major roles in enunciating and developing international law cross a wide range of subject matters. Also, the law-declaring and law-making resolutions of the General Assembly, the status of which are a matter of persistent debate among internationalists, have exerted a definite, although uneven and controversial, influence on the growth of international law in the past half century. Over the past four decades, the United Nations has played a primary role in the codification of international law in various areas.[31]

In the background of this role, there are two broad world order concerns that condition the contemporary operative roles of international law. First is the emergence of a series of problems that overwhelm the problem-solving capacity of even the most powerful and activist sovereign states—problems such as climate change, ozone depletion, reductions in bio-diversity, as well as transnational flows of disease, drugs, refugees, pollutants, crime, information and communication. Second, and more fundamental, the state has itself lost ground in relation to the projection of its authority—both directly and indirectly.[32]

Finally, we can find one more aspect of the UN relationship to the international rule of law. It is the role played by the United Nations in nurturing transnational democratic initiatives—the manifold expressions of the voluntary and spontaneous actions of citizens and their organizations that are being generated by civil society.[33]

2. The Organs of the United Nations

1) overview[34]

In the strict sense of the term, neither the United Nations nor any of its Specialized Agencies was conceived as a legislative body. Their charters and governing instruments contemplated that their objectives would be carried out mainly through recommendations aimed at coordinating or harmonizing the actions of their member states. Although it has often been emphasized that they

31) United Nations, *Everyone's United Nations*, New York: United Nations, 1986, pp. 365-397.
32) Richard A. Falk, *op. cit.*, pp. 620-621.
33) *Ibid.*, p. 616.
34) Christopher C. Joyner ed., *The United Nations and International Law*, Cambridge: Cambridge University Press, 1997, pp. 3-19.

are not legislatures, most UN organs have acted much like parliamentary bodies in their proceedings. As for applying and interpreting the international law, it take place continually throughout the UN system. For a long time compliance and enforcement of international law were on the margins of UN concern. It is true that the task of UN law-making and law-applying carried on pretty much without serious consideration of means of ensuring compliance.

Nonetheless, we can get a clear view the whole array of the various compliance and enforcement processes used by UN organs by classifying them into several categories: First are the reporting and supervision procedures in a particular treaty or code of conduct. These procedures are most familiar in the human rights area. A second broad category of mechanisms for inducing compliances may be characterized as 'facilitative.' They include measures taken by the United Nations to assist states in carrying out obligations imposed by international law or by specific decisions of the organs. A good example is the use of armed peace-keeping forces to assist governments to comply with transborder truce and cease-fire agreements. A third category of compliance measures directly penalizes a law-breaking state by expelling it from the Organization or from taking part in some of the latter's activities. For example, the Charter provides for expulsion for persistent violations of the principles contained in the Charter. A fourth category of compliance measures is non-military enforcement action taken by the Security Council under Article 41 of Chapter Ⅶ of the Charter. This applies only when the Security Council has found a threat to the peace, or a breach of peace or act of aggression. Sanctions under Article 41 have come to be seen as the quintessential type of international enforcement. The fifth category of compliance measures or enforcement is the use of armed force pursuant to Chapter Ⅶ of the Charter. It must be noted that the Security Council has applied its authority under Chapter Ⅶ by authorizing member states to use armed force as necessary to give effect to its decisions. The sixth category is the judicial settlement. It is of particular significance for legal order. And it is employed in both international and national tribunals. In this regard, the International Court of Justice is potentially the most important. In addition to these measures, 'self-help' or 'counter-measures' of states and public opinion of international society can be used in achieving compliance.

2) International Court of Justice

The International Court of Justice(ICJ), created in 1946 as the principal judicial organ of the United Nations, exists to settle disputes brought before it by states in accordance with international law. The International Court of Justice succeeded the Permanent Court of International Justice(PCIJ), which had functioned as the judicial arm of the League of Nations. It gives judgements on contentious cases brought before it by states, and hands down advisory opinions at the request of U.N. organs and specialized agencies. Since its inception, states have submitted over 72 cases to it, and 22 advisory opinions have been requested by international organizations. Nearly

all cases have been dealt with by the full Court, but since 1981 four have been referred to special chambers at the request of the parties. Eleven contentious cases are pending.[35]

The disputes decided by the Court have dealt with a wide range of subjects, including: territorial rights; the delimitation of territorial waters and continental shelves; fishing jurisdiction; questions of nationality and the right of individuals to asylum; territorial sovereignty; the right of passage over foreign territory. The Court's advisory opinions have addressed such issues as: the competence of the General Assembly to admit a state to the United Nations; the capacity of the Organization to claim reparation for damages; the reservations that could be attached by a state to its signature on an international convention; appeals against judgements of the administrative tribunals that consider staff issues in the United Nations and the International Labor Organization(ILO); the presence of South African in Namibia; and the status of Western Sahara.[36]

Nevertheless, in a world of international legal disputes, the International Court of Justice, the principal judicial organ of the international community, has paradoxically few disputes on its docket. Viewed over the years, the Court has never been overworked. On the contrary, the general opinion is that its significant contributions to the settlement of international disputes and to the clarification and development of international law would be more significant if it had more business. But, anyway, it may be said that a decision by the International Court of Justice come fairly close to international legislation.[37]

In addition to the International Court of Justice, the United Nations has recently expanded its juridical functions by creating special international tribunals that deal with violations of humanitarian law in the former Yugoslavia and in Rwanda. The Security Council created the war crimes tribunal for the former Yugoslavia in 1993,[38] and acted similarly to set up a special tribunal to deal with persons accused of committing crimes against humanity and genocide in Rwanda in 1994.[39] Both juridical bodies are *ad hoc*, criminal courts created by Security Council resolutions. Modeled after the 1945 Nuremburg Military Tribunal, the decisions of both tribunals are legally binding.[40]

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35) United Nations, *supra* note 27, p. 253.

36) *Ibid.*, pp. 253-257; Christopher C. Joyner, *op. cit.*, pp. 366-374.

37) Evan Luard, rev. by Derek Heater, *The United Nations: How It Works and What It Does?*, New York: St. Martin's Press, 1979, p. 87.

38) The formal name of this tribunal is the 'International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991.' See, UN Security Council Resolution 827, of May 25, 1993.

39) The name of this Tribunal is the 'International Tribunal for Rwanda.' The sole purpose of the Tribunal is to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda or committed in neighboring states by Rwandans during 1994. See, UN Security Council Resolution 955, of November 8, 1994.

40) Christopher C. Joyner, *op. cit.*, pp. 437-438.

3) International Law Commission

The International Law Commission(ILC), established by the General Assembly in 1947 to develop and codify international law, develops new rules of international law and strives for the more precise formulation and systematization of existing customary international law. The mandate of the International Law Commission is derived from a 1947 General Assembly resolution that established the Commission and approved its statute. The General Assembly acted pursuant to Article 13(1)(a) of the Charter, which empowers it to "make recommendations for the purpose of: (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification." The Statute echoes that the Commission's task is "the promotion of the progressive development of international law and its codification."[41] And the progressive development of international law was defined as "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of states."[42] Codification was to be "the more precise formulation and systemization of rules of international law in fields where there already has been extensive state practice, precedent or doctrine."[43]

It meets annually in Geneva and is composed of 34 members, who serve in their individual capacities as legal experts, elected by the General Assembly so as to reflect "the principal forms of civilization and the principal legal systems of the world." Since 1949, when it held its first session, the Commission has prepared draft articles on various aspects of international law, some chosen by the Commission itself and others referred to it by the General Assembly or the Economic and Social Council. Most of its drafts have been used the basis for conventions adopted by the Assembly or by international conferences. In other instances, the Assembly has taken note of the Commission's work and brought it to the attention of Member States for consideration.[44]

But, recently, a study by UNITAR(the UN Institute for Training and Research) asserts that the International Law Commission "is no longer playing the central role in the law-making process that it could and should play."[45] In this regard the Chairman of the Commission stoutly defended its work before the General Assembly's Sixth Committee, pointing out that the International Law Commission "was constantly seeking to improve its working methods."[46]

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41) Statute of the International Law Commission, Art. I, para. 1.

42) *Ibid.*, Art. XV.

43) *Ibid.*, Art. XVI.

44) United Nations, *supra* note 31, pp. 374-376.

45) Thomas M. Frank & Mohamed ElBaradei, "Current Development: The Codification and Progressive Development of International Law: A UNITAR Study of the Role and Use of the International Law Commission," in 76 *American Journal of International Law*, 1982, p. 630.

46) The International Law Commission proposes legislation, but there is no body to pass it into binding law. Legislation, in the strict sense, does not yet exist at the international level. Evan Luard, rev. by Derek Heater, *op. cit.*, p. 87.

4) Security Council

Security Council is a principal organ which has played a primary role in maintaining international peace and security. Peace and security activities is arguably the most controversial and challenging domain of UN activity. It provides the public with a litmus test of the effectiveness of the Organization as a whole with respect to promoting the international rule of law and global concerns of the world community. As mentioned above, Security Council may take measures relating to international rule of law, one of which is non-military enforcement action taken under Article 41 of Chapter Ⅶ of the UN Charter, the other is military enforcement action taken under Article 42 of Chapter Ⅶ of the UN Charter.

Indeed, especially during the Cold War era, the East-West rivalry and anachronistic, entrenched interests of the permanent members presently inhibited any dramatic enhancement of UN peace and security capabilities. There is still a reluctance to compromise this capability by allowing the autonomous capabilities of the United Nations to provide peace and security.[47] The fact that member states have not concluded agreements with the Security Council to make armed forces available at its call has limited the Council's power to mandate military action. It could do no more than authorize members to use troops as necessary to achieve prescribed goals.[48]

5) UN Commission on International Trade Law

In order to, or at least reduce or remove, legal obstacles to the flow of international trade, the General Assembly, in 1966, established the UN Commission on International Trade Law(UNCITRAL). The Commission consists of 36 states representing the various geographic regions and principal legal systems of the world. Its mandate is to promote the progressive harmonization and unification of laws governing international commerce and trade. The Commission prepares new international legal texts on trade law and encourages wider participation and uniform interpretation of existing international instruments. It also offers training and assistance in international trade law, particularly to developing countries. Since 1968, when it held its first annual session, UNCITRAL has concentrated on priority topics relating to international trade: international sale of goods; international payments; international commercial arbitration; and international legislation on shipping. With regard to the international sale of goods, it has considered uniform legal rules governing sales contracts, time-limits and limitations, general conditions of sale and standard contracts.[49]

47) Richard A. Falk, *op. cit.*, pp. 638-639.
48) Christopher C. Joyner, *op. cit.*, p. 16.
49) United Nations, *supra* note 31, p. 377.

6) General Assembly

The General Assembly studies international legal questions, and makes recommendations to encourage the development and codification of international law. Within the General Assembly, legal issues are considered by the Sixth (Legal) Committee. The General Assembly has also created subsidiary bodies, both permanent and *ad hoc*, to consider specialized legal matters. The reports of these bodies(principally, the International Law Commission) are debated in the Sixth committee, which recommends action to be taken by the Assembly in plenary session. In addition to considering and acting on reports of the International Law Commission and UNCITRAL, the General Assembly also promotes the progressive development and codification of international law by conducting its own studies and assigning work to other subsidiary bodies. In 1967, it adopted a Declaration on Territorial Asylum. In 1974, it adopted a definition of what constitutes aggression by one state against another. In 1970, after eight years of work, the Assembly adopted 'the Declaration on Principles of International Law concerning Friendly relations and Co-operation among States in Accordance with the UN Charter.'[50]

At the fiftieth session of the General Assembly, the Sixth Committee reviewed the annual reports of the International Law Commission, the UN Commission on International Trade Law, the Special Committee on the Charter of the UN and on the Strengthening of the Role of the Organization(Special Committee) and the Committee on Relations with the host Country (Host Country Committee). The Sixth Committee also considered a new item aimed at entrusting the trusteeship Council with the common heritage of mankind, proposals for two new legal instruments relating to (1) the establishment of a permanent international criminal court, and (2) the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as well as other topics concerning international terrorism, review of the UN Administrative Tribunal's judgements, the UN Decade of International Law and the UN Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.[51]

7) Secretariat Legal Functions

The 'Office of Legal Affairs' deals with all legal matters relating to the UN. Its responsibilities include advising the Secretariat and other organs on legal and constitutional questions; promoting and developing the rule of law in the affairs of the UN; maintaining and defending the legal interests of the Organization; and providing assistance to organs and conferences working in the legal field. It also provides legal services to the UN Development Programme(UNDP) and its

50) *Ibid.*, pp. 380-386.

51) Virgina Morris and M.-Christiane Bourloyannis-Vrailas, "The Work of the Sixth Committee at the Fiftieth Session of the UN General Assembly," 90 *American Journal of International Law*, pp. 491-500.

subsidiary and affiliated programmes and funds, as well as other extra-budgetary administrative structures such as the United Nations Children's Fund. The Secretariat registers and publishes treaties, acts as a depository of international instruments, services the various legal bodies within the Organization and administers 'the UN Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.'[52]

V. The Efforts of the UN for Strengthening of the International Rule of Law

1. Overview

When the founders of the UN drew up the Charter, the international rule of law loomed as one of its central components. They established the International Court of Justice at The Hague as the 'cathedral of law' in the global system. But, states were free to take it or leave it, in whole or in part. The rule of law was asserted and, at the same time undermined. Each state could decide whether it was going to accept the compulsory jurisdiction of the Court. And a great many did not accept. Thus, from the outset, the court was marginalized. International law includes the body of legal rules and principles that apply among states and also between them and other actors, including those of global civil society and other international organizations. The standing of international law is now unquestioned. The challenge today is to sustain the respect for law that has developed. Although it is true that even though states are sovereign they are not free individually to do whatever they want, it is also true that sovereign states are reluctant to obey the international law as far as possible.

The establishment of the rule of law is recognized to be absolutely necessary, both to ensure protection of human rights and provide a firm basis for international peace and security, as well as economic and social co-operation. Indeed, the United Nations has played a leading and dynamic role concerning the international rule of law. But, as a traditional international inter-governmental organization, the United Nations is dependent on the sovereign will of each of its members. Neither the Organization itself nor its Secretary-General possesses independent power of decision-making.[53] So, many scholars think that the United Nations should be restructured or strengthened for the more role of the international rule of law than ever. I think also that the United Nations and its system should be fully reformed through the transformation of the Organization to bring greater

52) United Nations, *supra* note 31, pp. 395-397.

53) Gabriel M. Wilner, "The Role of the United Nations in the Maintenance of Peace before and after the Year Two Thousand: Introduction," 26 *Georgia Journal of International and Comparative Law*, 1996, p. 2.

unity of purpose, greater coherence of efforts, and greater agility in responding to an increasingly dynamic, changing, and complex world. Especially, the United Nations should promote world-wide democracy and international rule of law much more than it have promoted.[54]

2. The UN Decade of International Law[55]

The rule of law has been repeatedly heralded as the foundation for international order. On December 16, 1989 the General Assembly of the United Nations adopted Resolution 44/23 in which it proclaimed the 1990s 'Decade of International Law'. The idea for such a decade had officially been launched five months earlier, on June 29, 1989, at a Ministerial Meeting of the Non-Aligned Movement held in The Hague to commemorate the ninetieth birthday of the First Hague Peace Conference. In the Declaration issued at the end of this meeting, the UN General Assembly was requested to proclaim the Decade. The proposal included the suggestion to hold Third (Hague) Peace Conference at the end of the Decade, in 1999. With the adoption of G.A. Resolution 44/23, the United Nations has taken over the initiative, and an open- ended working group of the Sixth (Legal) Committee of the Assembly will soon present its recommendations.

According to operative Paragraph 2 of G.A. Resolution 44/23, the main purpose of the Decade is as follows:

a. To promote the acceptance of and respect for the principles of international law;
b. To promote means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice;
c. To encourage the progressive development of international law and its codification;
d. To encourage the teaching, study, dissemination and wider appreciation of international law.

Pursuant to operative Paragraph 3 of G.A. Resolution 44/23, the Secretary-General of the UN has requested member states, international bodies and non-governmental organizations to present him with their views on the programme of action to be taken during the Decade, including the possibility of holding a third international peace conference. On September 12, 1990, the Secretary-General present his report containing the first reactions.[56] On September 21, and

54) U.N. Secretary-General, "The Secretary-General Statement to the Social Meetings of the General Assembly on Reform"(through the Internet), New York, 16 July 1997.

55) For more detailed information, see Marcel Brus, Sam Muller, Serv Wiemers ed., *The United Nations Decade of International Law*, Dordrecht: Martinus Nijhoff Publishers, 1991.

56) United Nations Decade of International Law, Report of the Secretary-General, U.N. Doc. A/45/430(1990); U.N. Doc. A/45/430/Add. 1 (1990) and UN. Doc. A/45/430/Add. 2(1990). 13. U.N. Doc. A/45/430, at 6.

October 8, two addenda were added. In general, the proclamation of the Decade was welcomed by all states, international organizations, and non-governmental organizations that have responded to the request of the Secretary-General to supply him with their views.

Thus far, the UN Decade has been organized into inclusive two-year terms: first term 1990-1992; second term 1993-1994; third term 1995-1996; and final term 1997-1999.[57] States have been invited to submitted suggestions for consideration by Sixth Committee of the General Assembly, in particular, with regard to the areas of international law which states considered ripe for codification or progressive development of international law. International organizations have been encouraged to report to the Secretary-General on ways and means for implementing multilateral treaties to which they are parties. And, both states and international organizations have been encouraged to publish summaries, repertoires, or yearbooks of their practice.[58]

3. The Reform of the UN[59]

The end of the Cold War has brought crucial changes in the world, resulting in a new emphasis on the international rule of law, establishing democratic institutions and concern for humanitarian needs, as well as human rights.[60] The post-Cold War world is beset by an epidemic of serious difficulties within states: persecutions, civil wars, rebellions, secessionist

57) By its resolution 51/157 of 16 December 1996, the General Assembly adopted the programme of activities for the final term(1997-1999) of the Decade.

58) Sompong Sucharitkul, "Legal Developments in the First Half of the United Nations Decade of International Law," *ASIL Interest Group on the UN Decade of International Law Newsletter* (Issue No. 11), June 1996, pp. 3-13.

59) There are some printed materials on U.N. Reform as follows: Erskine Childers with Brian Urquhart, *Renewing the United Nations System*, New York & Uppsala: Ford Foundation & Dag Hammarskjold Foundation, 1994; Commission on Global Governamce, *Our Global Neighborhood*, New York: Oxford University Press, 1995; Independent Working Group on the Future of the UN System, *The United Nations in its Second Half-Century*, New Haven, Yale, 1995; Tatsuro Kunugi, Makoto Iokibe, Takahiro Shinyo and Kohei Hashimoto, *Towards a More Effective UN*, Tokyo: PHP Research Institute, 1996; Joachim W. Miller, *The Reform of the United Nations*, New York: Oceana, 1992; George Soros(Chairman, Independent Task Force Sponsored by the Council on Foreign Relations), *American National Interest and the United Nations*, New York: council on Foreign Relatuions, 1996; South Centre, *For a Strong and Democratic United Nations: a South Perspective on UN Reform*, Geneva: South Centre, 1996; United Nations Commission on Improving the Effectiveness of the United Nations, *Defining Purpose: the U.N. and the Health of Nations*, Washington: US Commission, 1993; Harold Stassen, *United Nations—A Working Paper for Restructuring—*, Minneapolis: Lerner Publations Company, 1994; Vicenc Fisas, *Blue Geopolitics—the United Nations Reform and the Future of the Blue Helmets—*, London: Pluto Press with Transnational Institute(TNI), 1995; Maurice Bertrand and Daniel Warner eds., *A New Charter for a Worldwide Organization*, The Hague: Kluwer Law International, 1997.

60) Dick Thornburgh, "Today's United Nations in a Changing World," 9 *American University Journal of Lnternational Law and Policy*, 1993, p. 215.

movements, genocide campaigns, and other such horrors. And the chaos, privation, and instability generated by despotic regimes, failed and failing states, and dissolving societies are prominent features of our time.[61] The United Nations faces, therefore, not only unprecedented demands, but also great opportunities. That is why an effective and efficient United Nations—a United Nations which is focused, coherent, responsive and cost-effective—is more needed than ever. Now it is admitted that the United Nations should be reformed to be a more strong and effective Organization.

Thus, recently, the Secretary-General submitted his report "Renewing the United Nations: A Programme for Reform," which has the most extensive and far-reaching reforms in the fifty-two-year history of the Organization. But, this report does not include other fundamental reform proposals for strengthening the international rule of law than reforming the Security Council, establishing an International Criminal Court, and enhancing its human rights programme.[62]

But, I think that the United Nations should be fully and entirely reformed in order to play an active role in, not only maintaining international peace and security, but also widening the scope and role, and improving the effectiveness of international law in order to strengthen the international rule of law. In the first place, the Security Council will need to be restructured if it is to play an effective role in future global peace management.[63] And, accordingly, some appropriate body should be mandated to explore ways in which international law-making can be expedited. In this regard, the International Law Commission should be revamped and have a

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61) Inis L. Claude, Jr., "Peace and Security: Prospective Roles for the Two United Nations," *Global Governance* Vol. 2 No. 3, 1996, p. 289.

62) The actions and recommendations focus primarily on the following priority areas:
- Esatblishing of a new leadership and management structure:
- Assuring financial solvency:
- Intergration of twelve Secretariat entities and units into five:
- A changed management culture accompanied by management and efficiency measures:
- Instituting a through overhaul of human resources policy and practices:
- Promoting sustanied and sustainable development as a central priority of the United Nations:
- Strengthening and focussing the normative, policy and knowledge-related functions of the Secretariat and its capacity to serve the United Nations intergovernmental bodies:
- Improving the Organizations capacity for post-conflict peace-building:
- Bolstering the international efforts to efforts to combat crime, druhs and terrorism:
- Extending human rights activities:
- Advancing the disarmanent agenda:
- Enhancing response to humanitarian needs:
- Effecting a major shift in the public information and communications strategy and functions:
- Addressing the need for more fundammental change.

See "Renewing the United Nations: A Programme for Reform" and for more detailed contents, see also "Report of the Secretary-General" through the Internet.

63) Peter Mutharika, "The Role of the United Nations Security Council in African Peace Management: Some Proposals," 17 *Michigan Journal of International Law*, 1996, p. 537.

wider capacity for international law-making. If so, it could formally coordinate international law-making, setting timetables and establishing lines of authority.[64] One more necessary condition for strengthening the international rule of law is an efficient monitoring and compliance regime.[65] Many states and scholars have given thoughts to ways of increasing recourse to the International Court of Justice. In 1971 the American Society of International Law(ASIL) established the Panel to study the ways of strengthening the role of the Court.

Those who wish to belong to the community of nations should be willing to abide by its rules and demonstrate their willingness by accepting the competence of the Court as its highest legal body. It is required that each member of the UN should accept the compulsory jurisdiction of the Court.[66] The American Bar Association(ABA) is also interested in the method of strengthening the role of the Court, especially the widening its advisory jurisdiction.[67] In this regard, the Security Council should make greater use of the Court as a source of advisory opinions. Although the Security Council is, of course, the supreme organ of the United Nations, we need to consider whether the Security Council should subject its own decisions to judicial review by the Court, at least on procedural matters. If it did so, the Security Council would be in the same positions as several member states in their own jurisdictions, where courts can adjudicate on the legality of state action. I think it is necessary to give explicit power to the International Court of Justice to review the legality at international law of Security Council.[68]

The absence of an International Criminal Court discredits the international rule of law, because its role is to prosecute and punish persons responsible for international crimes such as genocide, crimes against humanity, and war crimes. Recent horrific human tragedies which we could see in Former Yugoslavia, Somalia and Rwanda have made it more imperative than ever to do so. Indeed, the concept of an International Criminal Court is an old one. Efforts to establish such a court date back to 1945. A major step forward establishing the court was taken in July 1994, when the International Law Commission adopted statute for a proposed court.[69] As we noticed above, it will be established soon. In June 1998 a diplomatic conference will convene to finalize and adopt a treaty that would establish an International Criminal Court.

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64) The Commission on Global Governance, *op. cit.*, pp. 329-331.

65) *Ibid.*, pp. 325-326.

66) *Ibid.*, pp. 308-313.

67) Stephen M. Schwebel, "Widening the Advisory Jurisdiction of the International Court of Justice without Amending its Statute," 33 *Catholic University Law Review*, 1984, pp. 355-356.

68) The Commission on Global Governance, op. cit., p.319. Some scholars assert that yet in many states, including the United States, this power of judicial review by the highest national courts has arisen even in the absence of explicit constitutional or statutory language. In addition, the U.N. Charter refers to the International Court of Justice as the Organization's 'principal judicial organ'. It can be argued that this implies a power of judicial review on the basis of the principle of implied power. See, *ibid.*, pp. 319-320.

69) *Ibid.*, p. 323.

Finally, I suggest that a standby military force should be established, which can be composed of units from national military forces of member-states to be available on call by Security Council under conditions carefully defined agreements to be concluded pursuant to Article 43 of the Charter. But the difficulties in obtaining military forces required for enforcement through the special agreements under Article 43 of the Charter have led to demands for new arrangements to ensure the availability of forces when required. For example, an independent force of volunteers has been prominently advocated, along with the idea of governmental standby forces on call by the Security Council.[70]

Ⅵ. Conclusion

Yet, it may be true that there can be no authoritative international rule of law until most international legal subjects and other international entities have a common political will or *opino juris communitatis*, or are under a world government. Indeed, the weakness in the international legal system today are largely a reflection of weakness in the decentralized structure of the international society. But, it is also true that the organizational element is one of the most significant features of contemporary international society. The decisive factor in this international society is that the members of international society have formed a legal community on the basis of international law and international organizations.

The international society or world community has at least the beginnings of a potentially effective legal system to support global governance other than world government. The United Nations, among lots of intergovernmental organizations relating to the international rule of law can most effectively promote the law-making process, encourage law observance and enforce the law. As we noticed above, especially, the end of the Cold War gave new visibility to the United Nations and raised hopes for a more effective international legal order. Since the end of the Cold War, international society has been undergoing a thorough change, which results in a need for a new world order, establishing liberal and democratic systems and great concern for the international rule of law for social, economic and humanitarian needs, as well as human rights.

The establishment of the international rule of law is recognized to be absolutely necessary, both to ensure the protection human rights and to promote the common values and welfare in world community. The United Nations faces, therefore, unprecedented demands and opportunities towards the new century. The United Nations itself and its member states must strive to ensure that the world community of the future is characterized by law, not by lawlessness. Although there is urgent need for more international legal rules, for better compliance mechanisms, and for

70) Christopher C. Joyner, *op. cit.*, pp. 16-17.

more effective enforcement machinery, common political will and attitude on the part of international actors such as states, international organizations, as well as individuals is indispensable requirement for progress in this direction.