



**LECTURE BY H.E PROF. KENNEDY GASTORN, SECRETARY GENERAL, AALCO
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On the Topic of

APPLICATION OF THE RULE OF LAW IN THE INTERNATIONAL SPHERE

On the occasion of the sixtieth anniversary of the United Nations, adopting the 2005 World Summit Outcome, the General Assembly by way of its Resolution 60/1 declared that “[w]e [Heads of State and Government] acknowledge that good governance and rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.”¹

Distinguished colleagues,

I have been entrusted with the task of placing before this august gathering a few lectures on the subject of 'Enhancement of the participation of Developing Countries in the Promotion of International Rule of Law'. As complex and elaborate as the topic of Rule of Law is, especially in the context of international law, and further when the stakes of developing nations are involved, I believe the exercise that awaits me is a critical one. I would like to begin my talks with a presentation on a basic and foundational topic in this regard: 'Application of the Rule of Law in the International Sphere'.

I'm going to begin this lecture by introducing the basic concept of the Rule of Law, as we commonly understand it in the domestic, and nowadays even the international parlance. From there I will go into discussing whether this traditional concept of the Rule of Law, as we commonly understand it in the domestic context, can in fact replicate also in the international arena; given that the international and domestic legal systems work on completely different tangents.

¹ U.N. Doc. A/RES/60/1 (Oct 24, 2005).

Next in the lecture, I will attempt to describe the nature of the Rule of Law that presently exists in the international space. Prof. Joseph Raz States, whether good or bad, rule of law exists in every kind of society; whether they be the most despotic and tyrannical, or those following the traditional ideas of democracy and good governance². So I analyze if the international rule of law has a good or a bad face, followed by enquiring further into how it can ideally be established in the future.

In the final segment of this lecture I will try to chalk out certain basic tenets of the Rule of Law, that are common to the conscience of all nations, and which the international community must try to attain on a global level.

I. INTRODUCTION TO THE CONCEPT OF THE RULE OF LAW

The concept of “the Rule of Law,” and indeed the term itself, has its origin in the constitutional doctrine of the common law. Prof. Albert V. Dicey of England in his phenomenal work, ‘Introduction to the Study of the Law of the Constitution’ in 1885 for the first time gave a concrete meaning to this notion. According to Prof. Dicey the concept broadly meant three things:

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- 1) Absolute supremacy of regular law as opposed to the existence of arbitrariness or a wide discretionary power in the hands of the government officials;
- 2) Equal subjection of all classes to the ordinary law of the land;
- 3) And lastly, such ordinary law should be administered by the ordinary independent courts. That is, the constitutional code is not the source but the consequence of the rights of the individuals, as defined and enforced by the courts”³.

Even though this common law principle has retained the elementary colors that were originally given to it as stated above, the concept has undergone sea changes over the years, and differently

² Prof. Joseph Raz states that “A non-democratic legal system based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies. This does not mean that it will be better than those Western democracies. It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law”. See Joseph Raz, “The Rule of Law and its Virtue” in Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford, 1979), at 210.

³ Albert V. Dicey *Introduction to the Study of the Law of the Constitution* (10th Ed., 1961) at 42.

so in different jurisdictions. A good early example of variations creeping in the concept is the illustrious accomplishments made by the French *droit administratif*, in spite of the criticisms that had been made towards it by Prof. Dicey. The French *droit administratif* subjected government officials in France to special administrative courts, instead of the ordinary courts of the land. The success of the French system coupled with the delayed development of modern administrative law in England, mainly due to the strong influence of Prof. Dicey's political theories there, led to the view that Prof. Dicey's misunderstanding of the French *droit administratif* 'was legendary'. In fact, Prof. Dicey himself in the later editions of his work, 'Introduction to the Study of the Law of the Constitution', had softened his stance against administrative intervention⁴.

It is common knowledge today that Prof. Dicey's formulation had its limitations, and it failed to address a range of freedoms and other human rights. The modern understanding of the notion of Rule of Law, therefore, is not restricted to Prof. Dicey's formulation of the concept⁵.

Eminent British jurist, Lord Bingham of Cornhill, in his 2006 Sir David Williams lecture, *The Rule of Law*, stated that jurists, law-makers and academicians have considered this constitutional principle to be too clear and well understood to call for any statutory definition, and further the principle has been routinely invoked by judges in their judgments. Yet nobody has explained what the expression means, and this has resulted in well-respected authors throwing doubt on its meaning and value⁶. Amongst other academicians endorsing a similar view, Prof. Joseph Raz's opinion seems interesting wherein he comments on the tendency to use the Rule of Law as a shorthand description of the positive aspects of any given political system⁷.

There is no doubt that Rule of Law is an ideal that for a long time now has been recognized, cherished and treasured by all legal systems over the globe, and at all levels. Yet, the term does not have a universal definition that could be agreeable to all, which has led to considerable confusion and incertitude. Needless to say extension of the notion beyond its habitual domestic context into an international one has further complicated the scenario.

⁴ Danilo Zolo and Pietro Costa (Ed.) *The Rule of Law: History, Theory and Criticism* (Springer, Netherlands, 2007) at 106.

⁵ Andrew Sykes, "The 'Rule of Law' as an Australian Constitutional Promise" *Murdoch University Electronic Journal of Law* (Vol. 9, Number 1, Mar, 2002) available at: <http://www.austlii.edu.au/au/journals/MurUEJL/2002/2.html> (Last Visited on: Jul 20, 2016).

⁶ Lord Bingham, "The Rule of Law" at 2, available at <http://www.cpl.law.cam.ac.uk/sir-david-williams-lectures/rt-hon-lord-bingham-cornhill-kg-rule-law> (Last Visited on 13 July, 2016).

⁷ Joseph Raz, "The Rule of Law and its Virtue" in *The Authority of Law: Essays on Law and Morality* (Oxford, 1979), at 210.

II. WHAT DOES INTERNATIONAL RULE OF LAW COMPRISE OF AND HOW IS IT DIFFERENT FROM DOMESTIC RULE OF LAW?

The United Nations for its purposes describes 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. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁸ At the 7th Brandeis Institute for International Judges (BIJ), held in Austria in 2010 with the theme ‘*Towards an International Rule of Law*’ it was agreed upon by all the eminent participants that the essential elements of the Rule of Law, at both international and domestic levels include:

- a) Equality before the law,
- b) Strict observance of due process, and
- c) Judicial independence⁹.

The bone of contention in the discussion was the possibility of the existence of the Rule of Law in the international arena.

The first question which arises with regards to the contentious issue of the possibility of existence of an international Rule of Law, is that how can an essentially common law principle that was originally conceived to control the exercise of power within the domestic constitutional framework, be successfully duplicated in the international legal system where no central power exercises control over the community? Would then such duplication at the international level require a re-conceptualization of the principle of the Rule of Law, as understood in its traditional domestic context?

APPLICATION OF DICEY’S RULES IN A GLOBAL STATE WITH HORIZONTAL POWER SHARING

Firstly, if we start with the assumption that there is no central authority in the international arena similar to what exists in domestic jurisdictions, the preliminary concern that arises is whether the (mere) procedural requirements as propounded by Dicey, and which satisfies the domestic

⁸ UN Doc. S/2004/616 at Para. 6.

⁹ BIJ 2010 Institute Report at 8.

requirements with modifications, will be able to satisfy also the requirements of international law.

To give the notion of Rule of Law, its traditional meaning (as noted above), the substantive soundness of polities such as the English Constitution of the Nineteenth Century England could be presumed by theorists such as Prof. A.V. Dicey, as these were not documents created at one stroke, but a result of contests carried on for years in courts on behalf of the rights of individuals. Substantive soundness of polities existing in the international arena, however, cannot be similarly assumed¹⁰.

In the international sphere the challenge is that there is a horizontal relationship of subjects with other subjects, and not a vertical relationship of subjects to a sovereign. The traditional legal framework of the international system, often described as the ‘Westphalian legal order’, leaves these nation-States, in principle, free to act within their own domestic jurisdiction. In this situation, with no “common sovereign power” to which all nation-States are subject, the Rule of Law framework as proffered by Dicey cannot ensure the guarantee of justice. Thus, the concept of Rule of Law when applied at the international level requires a holistic reconceptualization of the principle, which will incorporate both its process and its substance, taking account of the systemic differences between the domestic and international legal order¹¹.

EMERGENCE OF A GLOBAL SYSTEM OF GOVERNANCE

At this point it is pertinent to mention that even in spite of a common consensus that a central authority akin to what exists in a domestic set-up is absent on the international front, we are nevertheless moving from a sovereign state system to a global system of governance, presided over by an emerging Global State. The idea of this Global State is embodied in a collective of international institutions (most prominently the UN and its off-shoots) and formal and informal global social networks.

That is to say, presently there are in fact constraints upon the exercise of power by sovereigns. Some authors, however, have compared this divisibility of sovereignty to the one that existed during the colonial era; only that the contemporary modes of divisibility of sovereignty are more complex. The slice of sovereignty that is parted with today finds a non-territorial home¹². An extensive corpus of law has arisen since the second half of the twentieth century, to regulate a

¹⁰ Hisashi Owada, “The Rule of Law in a Globalizing World – An Asian Perspective”, *Washington University Global Studies Law Review* (Vol 8 No. 2 2009).

¹¹ *Ibid.*

¹² B.S. Chimni, “A Just World under Law: A View from the South”, *American University International Law Review* (Vol. 22, no. 2, 2007) at 199-220.

wide array of state activities in the international arena. The areas covered include amongst others international regulatory regimes on the use of force and disarmament, environment and trade, transport and communications, oceans, and even outer space. Moreover, the effects of globalization have contributed to the birth of an impressive number of legal frameworks, either global or regional, for economic and social activities among States and individuals that transgress national borders. This has made it impossible for States to be wholly unaffected by the consequences, either political or economic, of actions by or confrontations between other States.

There are also global processes at work that are extending and deepening the social reach of the emerging Global State. For instance, there has come into existence a global network of legislators, judges, bank officials, and police officials trying to collectively address common global problems.

All this has made it imperative that our attention is focused particularly on ensuring the substantive requirements of the international rule of law, without of course losing focus over the procedural requirements as enunciated by Prof. Dicey. If the present Global State fails to transform itself into a Global 'Welfare' State, the present global administration can easily turn imperial or slip into a mishmash of redundant ideas and measures.

THIN AND THICK CONCEPTIONS OF THE RULE OF LAW: SUBSTANTIVE REQUIREMENTS OF RULE OF LAW

Formal or procedural conceptions of the Rule of Law, as those given by Prof. Dicey do not seek to pass judgment upon the actual content of the law itself. Prof. Joseph Raz, a formalist, however, makes it clear that formal requirements of Rule of Law do not simply mean that government action should be authorized by law, as that would make the concept very thin indeed. Any law properly passed by the Parliament would meet the Rule of Law if defined in this manner. This much only is not sufficient for the Rule of Law to sustain itself. The other important aspect of the rule of law is that the laws thus promulgated should be capable of guiding one's conduct in order that one can plan one's life. In this regard, Prof. Raz promulgates a list which specifies certain attributes that the laws should have in order that they can be said to be in compliance with the Rule of Law. The list given by Prof. Raz includes: that laws should be prospective, not retrospective; that they should be relatively stable; that particular laws should be guided by open, general and clear rules; that there should be an independent judiciary; that there

should be access to the courts; and that the discretion which law enforcement agencies possess should not be allowed to undermine the purposes of the relevant legal rules¹³.

Substantive requirements of the Rule of Law, on the other hand go beyond, and are much more than the more basic formal requirements, as noted above. Ronald Dworkin made the proposition more clear by stating that the substantive view of the Rule of Law requires articulation not simply of general concepts of liberty, equality and the like. In addition it demands that the particular conceptions of these broad concepts be revealed. According to Dworkin's proposition Rule of Law is the ideal of rule by an accurate public conception of individual rights; that is, the rules in the book should capture and enforce moral rights.¹⁴ According to Sir John Laws, Rule of Law encompasses within itself characteristics of freedom, certainty and fairness. Here the first element is a substantive component, whereas the second and the third are the more traditional attributes of the formal Rule of Law. The first element yet again points to the fundamental rights of people¹⁵.

With regards to the thin and thick definitions of Rule of Law, thin is usually equated with 'formal', whereas thick is equated with the 'substantive' requirement of Rule of Law. Thick definitions of Rule of Law usually incorporate elements such as a commitment towards gender equality, laws for the protection of minorities and other vulnerable groups, a strong civil society, ideals for sustainable development etc. The rule of law provides the normative and institutional framework by which to enable the equitable realization of basic rights and fair access to benefits accruing from the resources available to countries and their societies. The UN Secretary General recently pointed out in his report on 'Delivering Justice' in 2012 that "Environmental degradation, rapid urbanization, conflict, fragility, severe income inequalities and exclusion of vulnerable groups constitute major challenges to human development and security. Robust principles are needed to underpin the management of our future. The rule of law is a core principle of governance that ensures justice and fairness, values which are essential to our humanity"¹⁶. Again the UN General Assembly in its Resolution 66/102 re-affirmed that "The advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms"¹⁷. This approach

¹³ Paul P. Craig, "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework" (1997) at 2 available at: <http://weblaw.haifa.ac.il/en/JudgesAcademy/workshop3/Documents/A/A/PL-Craig.pdf>. (Last Visited on: Jul 20, 2016).

¹⁴ Ronald Dworkin, *A Matter of Principle* (HUP, 1986) at 11-12.

¹⁵ *Supra* note 13 at 9.

¹⁶ "Delivering justice: programme of action to strengthen the rule of law at the national and international levels" (UN Doc. A/66/749, Mar, 16, 2012) at paragraph 1.

¹⁷ UN Doc. A/RES/66/102, Jan 2012.

echoes the UN General Assembly's unequivocal position on the interconnection between rule of law and sustainable development¹⁸.

Concluding, it can be said that a combination of both the procedural and substantive dimensions is required to establish Rule of Law in the society, whether domestic or global.

III. DISCOVERING THE INTERNATIONAL RULE OF LAW AND ITS USAGE

What is that the international rule of law must comprise of, and how it can, if at all be defined, is the daunting concern and challenge that the world currently faces. In the practical and real sense it was the UN that first and foremost began this formidable and unique journey towards establishing an international rule of law in 1945. Since 1945 the UN and its Members, through its various off-shoots have constantly striven to give practical meaning to the Charter's resolve to establish conditions under which justice and respect for international obligations can be maintained, and to develop legal bases for peaceful relations between States. In the preamble of the Charter, the Peoples of the United Nations express their determination "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". It is in this perspective that the purposes and principles proclaimed in the U.N. Charter are to be understood. Principles such as the sovereign equality of States, the fulfillment in good faith of international obligations, the peaceful settlement of disputes or the prohibition of the threat or use of force in international relations, constitute the foundation of an international society based on the supremacy of the law, equality before the law, and accountability under the law.

Reports of the Secretary General have time and again stressed on strengthening and coordinating UN rule of law activities. They have stated that the demand of the Charter for a rule of law aims at the substitution of right for might, the equal protection of the law as the means to achieve freedom from fear, and freedom from want is the most sustainable form of protection, and that perhaps the United Nation's contributions to such a protection is its most profound achievement¹⁹. Today, the concept of the Rule of Law is clearly visible in most areas of action of the Organization, from the protection of human rights to the maintenance of peace and security, and from the fight against poverty, to the most sensitive political affairs. Moreover, the Organization has put in place mechanisms to ensure that it acts according to the law, for example, criminal accountability of UN officials and experts on mission, or the reform of their internal system of administration of justice. Similarly even outside the UN elements of the Rule

¹⁸ "Informal Discussion on Linkages between the Rule of Law, Democracy, and Sustainable Development", International Development Law Organization, *available at*: <http://www.idea.int/un/upload/Concept-Note-IDEA-IDLO-Italy-rev-5-0-Final.pdf>. (Last Visited on: Jul 24, 2016).

¹⁹ Patricia O' Brien, Keynote Address, BIIJ 2010 Institute Report.

of Law are being firmly established through deliberations between the member-States of various such organizations²⁰.

NEO-COLONIALISM AND ITS EFFECT ON INTERNATIONAL RULE OF LAW

Instruments and instances of neo-colonialism, however, have in particular hindered the aforementioned processes of establishment of a global Rule of Law. A well-known example of neo-colonialism today is the Structural Adjustment Programs that were introduced by world economic bodies like the IMF and the World Bank, based on the neo-liberal ideology, in order to cure the big budget deficits that the developing countries had incurred. Over the years, however, it has turned out that these policies neither managed to alleviate the huge debts, nor in any way improve the economies of the developing nations. Rather poverty has increased as a direct result of these policies²¹. Veteran academicians like Prof. Francis Shor argue that imposing demands for privatization and de-regulation, these programs have eroded the capacity of States to underwrite public investment and development, and further have accelerated the move of the rural poor to the urban slums. SAPs have especially had a negative impact on the agricultural development in Africa, with subsidized and rural infrastructure buildings being reduced and farmers being subjected to international financial institutions, where they found it hard to compete²².

This has happened mainly through the preconditions that are attached to these SAPs. The pre-conditions such as liberalization of economy, minimizing the role of the State has required poor countries to reduce spending on things like health, education and development, while debt repayment and other economic policies have been made the priority. Even though aid has the potential to contribute to democratization, such as by providing technical assistance in electoral processes, strengthening the legislature and judiciary, promoting civil society organizations, imposing rule-of-law conditionality, and by improving education and increasing per-capita incomes. However, as stated by **the International Financial Institution Advisory Commission, the use of IMF resources and conditionality to control the economies of developing nations has undermined the sovereignty and democratic processes of member governments receiving assistance. IMF staffs themselves admit that**

²⁰ *Ibid.*

²¹ Harold Nyikal, "Neo-Colonialism in Africa: The Economic Crisis in Africa and the Propagation of the Status Quo by the World Bank/IMF and WTO" available at: <http://web.stanford.edu/class/e297a/Neo-Colonialism%20in%20Africa.pdf> (Last Visited on: Aug 17, 2016).

²² Francis Shor, "U.S. Economic Imperialism and Resistance from the Global South: A Prelude to OWS", New Politics (Vol XIV-1, 2012) available at: <http://newpol.org/content/us-economic-imperialism-and-resistance-global-south-prelude-ows> (Last Visited on Jul 21, 2016).

the executive branch of borrowing nations likes to use IMF conditions to exact concessions from their legislatures. While this mechanism may sometimes work to achieve desirable reforms, it often does so by shifting the balance of power within countries in ways that distort the constitutionally established system of checks and balances²³.

WAYS AND MEANS TO ESTABLISH AN INTERNATIONAL RULE OF LAW

Deliberations and discussions between States on an international as well as regional level seem to be one of the important and plausible ways to fill in the existing gaps in the attainment of an international rule of law. Intergovernmental consultative bodies like the AALCO are helping in this cause by providing a common platform to the Asian and African States, where they can voice their concerns, which can subsequently reach the international bodies. In this regard, it is particularly important to mention that many of the Asian and African nations, on AALCO platforms, have expressed unequivocal faith in the multilateral Rule of Law activities of the UN, and also eagerly continue to put in their full efforts in supporting such activities.

Regional Organizations like AALCO that are essentially consultative bodies between member States, are today the biggest motivators and constructive players in promoting the international rule of law, as they provide to it the form that it truly and most importantly needs to have: a consensual form. AALCO, for example, has a special link with the ILC. One of its core mandates is to examine subjects that are under consideration by the ILC, and to forward the views of the Organization (Member-States) to the Commission. Moreover, on many occasions AALCO has made valuable recommendations over international platforms, concerning subjects that were of a common concern to the Asia-Africa region. Many of these suggestions have been considered by the United Nations Conference of Plenipotentiaries, thus, helping the Asian-African delegations there to arrive at a common position on certain key issues; and ultimately, facilitating the final adoption of the concerned UN Conventions. To say the least such processes ought to be a preferred means to establish the international rule of law, as they ensure equality and thus, symbolize democracy; upholding the highest tenets of the principle of the Rule of Law.

Another important aspect of establishment of the Rule of Law internationally is the implementation of international laws at the national level. International Organizations again have a huge role and the potential to play a constructive role in that. AALCO, for example, has the mandate to form Model Legal Instruments for its member States to solve international legal problems or implementation of a legal directive. Further, AALCO conducts training and research programs, through holding seminars and workshops, undertaking in-depth research studies, organizing training programs, publishing its various works and upgrading its website, in order to

²³ AH Meltzer, "The Report of the International Financial Institution Advisory Commission" (2000) available at: repository.cmu.edu/cgi/viewcontent.cgi?article=1029&context=tepper (Last Visited on: Aug 17, 2016). See also, Stephen Knack, "Does Foreign Aid Promote Democracy?" *International Studies Quarterly* 48 (2004) at 253.

disseminate international law in the Asian African region. Lastly, from 1978 onwards it has established arbitration centers, under an 'Integrated Scheme for Settlement of Disputes', as a viable alternative to the traditional western arbitration institutions, that would cater to the special needs of the Asia-Africa region.

Today the significance and need for the establishment of the Rule of Law has become more than ever before, as international law has stretched far beyond its application to traditional inter-state relations. In the current globalizing world, the attention of the international community has been increasingly focused on the impact of the international rule of law on individuals. International law today touches every aspect of an individual's life. Thus, there is a need to uphold certain inviolable principles of justice and human dignity. However, it is difficult to declare a single definition of rule of law in the international sphere, as different nations hold different values for it. There is nevertheless an immense scope and possibility that nations can through co-operation work towards a common goal in realizing the objectives of the Rule of Law, which would be amenable to all. The accuracy of this proposition finds concrete evidence in the fact that the maximum law making in the international sphere happens through treaties, which only reflect the consensus of States.

IV. A RULE OF LAW THAT MAY BE APPEALABLE TO ALL

No matter how scattered be the meaning of the concept of rule of law at the domestic as well as international levels there are certain principles that can be derived from the basic idea of the Rule of Law. Professor Joseph Raz, for example, gives certain basic tenets of the principle of Rule of Law, such as: all laws should be prospective, open, and clear; laws should be stable; the making of laws should be guided, open, clear, and general rules; the independence of the judiciary must be guaranteed; natural justice must be observed; courts must have reviewing power over some principles; courts should be accessible; and the discretion of crime-preventing agencies should not be allowed to pervert the law²⁴. Even though later in the essay he does mention that the list is very incomplete, but concedes that the basic elements of Rule of Law as these nevertheless need to be stressed upon, to understand better the values that Rule of Law does not serve and support, and to distinguish the concept of Rule of Law from those negative values²⁵. This is precisely the

²⁴ Joseph Raz, "The Rule of Law and its Virtue" in *The Authority of Law: Essays on Law and Morality*, Clarendon Press, 1979.

²⁵ *Ibid.*

reason why at least a few crucial and indispensable virtues need to be spelt out so that the world has a better idea on how it wants itself to be governed, and negotiations take place on the tables accordingly. Lon Fuller's eight Rule of Law qualities are, for example, very helpful in this regard, which are: a) generality, b) wide promulgation, c) prospective application, d) clarity, e) non-contradiction, f) imposition of reasonable demands, g) constancy, and h) congruence between the written law and its enforcement. Tom Bingham's promulgation of certain essential qualities of Rule of Law is also important here: 1) equality, 2) publicity, 3) legally bound discretion, 4) a good faith exercise of powers, in accordance with the purpose for which it was conferred, 5) protection of fundamental human rights, and 6) access to other means to resolve civil disputes, without prohibitive cost or delay²⁶.

Being specifically mindful of the third world's case in this regard, Prof B.S. Chimni lays out three essential and legitimate claims that ought to constitute the idea of global justice and should be able to establish a global welfare state. These three legitimate claims are the claims for redistribution, claims for recognition, and claims for representation.

Claims for redistribution means that the third world nations should not be denied the economic policy options that the developed world has exercised or is exercising. For example, crucial economic sectors like agriculture that poorer nations for the welfare of their marginal sections have the right to positively protect to a certain degree in the case of multilateral trade, and not be expected to open them to the same extent as the industrialized nations. Secondly, there should be primacy of international human rights law over economic laws, in particular those which internationalize property rights. In other words, there should be in place the practice of social audit of international economic laws. And lastly, in this regard it is important to note the issue of conditionality imposed on third world nations while granting loans, in the name of rule of law observance.

Claims for recognition signify that peoples and cultures deserve respect, albeit within the confines of evolving international human rights law. Reproducing the civilizing mission or misrepresenting the 'Other' can only translate into violence and reduce the possibility of accepting claims for redistribution and representation. The claims for recognition rest on an epistemological foundation that assumes fallibility and corrigibility. It, among other things, calls for adherence to the principles and norms on the prohibition of the threat or use of force contained in the U.N. Charter. A second principle in this regard is that we must take all human suffering equally seriously. For instance, the egregious violation of international humanitarian laws that the world is witnessing today is in great part due to misrecognition. The sufferings of 'Others' is somehow less suffering. Needless to add there are no innocent parties here. A third principle should be that we must not propose a settlement to others that we ourselves would be unwilling to accept if the situation were reversed. The idea of empathy that underlies this

²⁶ Tom Bingham, *The Rule of Law* (Penguin publishers, 2011).

principle embodies the essence of the claims for recognition by seeing the self in the 'Other'. Incidentally, the idea of accepting the claims for recognition at the global level needs to be brought to bear on international law scholarship in a very elementary sense. Western scholarship, with honorable exceptions, still does not take cognizance of the contribution of third world societies and scholars to the evolution and development of international law. This needs to change.

Lastly, **claims for representation** brings forth the important lacuna in international law that key international institutions suffer from democracy deficit. The relationship between the individual will and the general will of society is coming to be structured and mediated in complicated ways at the global level. Sectional interests are often given universal expression. To put it differently, the emerging transnational ruling elite that have the greatest influence over the emerging Global State cannot be seen as representing the interests of the global populace. Other structures may therefore need to be put in place. In other words, there is a need for a direct global democracy where there will be a *global political space* that will parallel the *global economic space*. The second principle in this regard is that procedural justice should be made central to the principle of international cooperation. For claims for representation cannot even be advanced if the fundamentals of discourse ethics are not adhered to, as for example is the case in the WTO negotiations. The third principle is relating to the growing role of international institutions as building blocks of an emerging Global State. Their responsibility in international law must be clearly defined. Lastly, the final principle is that global populations adversely affected by international laws and policies must have a say in the institutions that prescribe and enforce them. The international financial institutions with their weighted voting system are a case in point. There is, in this regard, also a need to support ongoing scholarly efforts to develop principles of global administrative law to increase participation, transparency, and accountability of global networks and bodies.

V. Conclusive Remarks

A global state in the 21st Century is almost in place. However, the question is whether this global state is a welfare state, following the principles of Rule of Law; because if that is not so, this State is soon likely to fall into chaos and turmoil. There is no doubt that the various players in the international arena understand this, and thus, the globe is fast progressing towards firmly establishing a rule of law in the international sphere. However, there is no doubt that this is a daunting task to say the least. A concept that is difficult to deal with in the domestic jurisprudence is being attempted to be understood, defined and applied in the international arena.

Therefore, there is a need to explore the core elements of the principle of Rule of Law, and deliberate upon them so that the nations can decide what they want for themselves. The voice of

developing nations especially has to be paid attention to in this regard, and more platforms created for them to discuss their concerns. A Rule of Law can be established globally only by consultations and consensus amongst nations, as equality is the foremost tenet of the principle of the rule of law.

The next few lectures are about how the Rule of Law can be established in specific areas of international law that presently affect the developing countries the most.