International Rule of Law or Rule of Law Among Nations?
The General Assembly of UN and The Rule Of Law

¿Imperio del derecho internacional o imperio del derecho entre naciones?
La asamblea general de la ONU y el imperio del derecho

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Abstract

Ten years ago with the adoption of the Resolution 61/39 the Rule of Law at the national and international levels, the General Assembly of UN established –for the first time– an express distinction between domestic and international aspects of the Rule of Law and its promotion. Since the adoption of this resolution, the General Assembly has focused the debate on the study of the international aspects of the Rule of Law from the definition proposed by the Secretary General in his Report the Rule of Law and transitional justice in conflict and post-conflict Societies. From this perspective, the General Assembly has been trying to externalize to the international realm some elements of the Rule of Law in order to be applied directly to the field of international relations. On this context we will identify those elements of the Rule of Law which have been extrapolated to the international level, within the practice of the General Assembly, in order to highlight the Rule of Law among Nations which is different from the International Rule of Law that has been developed by the Anglo-American doctrine.

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Resumen

Con la adopción de la Resolución 61/39 titulada "el Estado de Derecho en el plano interno e internacional", la Asamblea General de las Naciones Unidas estableció, por vez primera a finales del año 2006, una distinción expresa entre la vertiente interna e internacional de este principio. Desde la adopción de dicha resolución, la Asamblea General de las Naciones Unidas ha venido centrando su atención en el estudio de la vertiente internacional del Estado de Derecho a partir de la definición que propusiera de tal principio el antiguo Secretario General de las Naciones Unidas, Kofi Annan, en su informe titulado "El Estado de Derecho y la Justicia de Transición en aquellas sociedades que han sufrido un conflicto armado". En este sentido, la Asamblea General de las Naciones Unidas habría extrapolado al ámbito internacional algunos de los elementos clave del principio del Estado de Derecho para ser aplicados directamente al ámbito de las relaciones internacionales. En este contexto, procederemos a identificar dichos elementos con el propósito de demostrar que la Asamblea General de las Naciones Unidas ha venido promoviendo en el plano internacional lo que hemos denominado "Preeminencia del Derecho" frente al "International Rule of Law" defendido mayoritariamente por la doctrina anglo-americana, toda vez que, desde nuestro particular punto de vista, entre ambas acepciones existen diferencia sustanciales que es preciso puntualizar.

Palabras clave: *Asamblea General de la ONU, Estado de Derecho, Estado de Derecho Internacional, Preeminencia del Derecho en Derecho Internacional.*

I. Introduction

While the quest for the Rule of Law beyond nation-state is as old as international law itself, there is ample evidence that this quest, as pointed out by Nollkaemper, will continue be strengthened in the next few decades[2]. Globally, as we know, the Heads of State and Government of Member States of the United Nations granted a strong political support to the promotion and strengthening of the Rule of Law worldwide in the final document approved in the 2005 World Summit[3].

This principle constituted the vertebral column of such document, in which it was explicitly recognized "the need of the existence of a universal adhesion to the Rule of Law and its application in both the National and International level"[4]. The idea regarding the Rule of Law actually pervaded entirely the Summit's final document: it was considered a decisive component for the accomplishments of several objectives, such as the economic growth, the sustainable development and the eradication of hunger and poverty. Furthermore, it was recognized as an objective by itself, fundamental for the peaceful coexistence and cooperation among the States.

Nevertheless, despite the relevance of the Rule of Law, both at national as well as at international level, it is surprising that –in light of the doctrine and the practice of the States, the International Organizations and the International Court's jurisprudence– there is not, nowadays, a generally accepted concept of what it should or could be understood by Rule of Law.

This situation is particularly obvious at international level where it results, at least, complicated to apply the conception of the "Rule of Law" as an expression of the supremacy of law over the –arbitrary– power of States. The idea of the States power submission to the law, as we know, has gone beyond the State borders and, progressively, made its way inside international scenario by means of a principle called by Anglo-American doctrine the *International Rule of Law* that, for the purpose of the present paper, shall be called *Rule of Law among nations*[5] since the *International Rule of Law* refers only to the submission of

2 André Nollkaemper, "The bifurcation of international law: two futures for the international rule of law", in *Amsterdam Center of International Law Research Paper*, nº 4, 2011, p. 1.

3 For further information, see: http://www.un.org/en/events/pastevents/worldsummit_2005.shtml, visited on September, 2016.

4 See paragraph 9 of the *Millennium Declaration*, document A/RES/55/2, September 8, 2000.

5 In light of the reference stated in the fourth paragraph of the preamble of the Resolution 2625 (XXV) of the General Assembly (that is "the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States... would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting *the Rule of Law among nations*").

public power to the law in its formal aspect and the idea proposed by us, according to the international practice of the United Nations, specifically the General Assembly, refers to both formal and substantive sense, that is to say including the protection of human rights as one of its essential elements.

II. The classical doctrinal debate: Is the Rule of Law applicable beyond national States?

The roots for the application of the principle of the Rule of Law to interstate relationships within international society, as pointed out by professor Koskenniemi, could date back to the XVIII century[6]. However, it was until a few years ago that the Rule of Law analysis, from a strictly international point of view, started to take off.

In that sense, it is possible to prove that the study of the States power submission to the law, in the international practice, has been an object of constant attention. Inside the institutional framework of United Nations, for example, the principle of Rule of Law has been a fundamental part in the contents of particular resolutions that have been adopted within the General Assembly. Also, it has played an important role on several reports that the Secretary-General has presented to that Organization's General Assembly.

On the other hand, it has become a recurrent topic of study by the doctrine all over the world[7].

Nevertheless, despite the frequent allusions to this principle in the international realm, it is appropriate to mention that nowadays there is not any consensus regarding its meaning

6 Martti Koskenniemi, "The Politics of International Law", in *European Journal of International Law*, vol. 1, nº 4, 1990, p. 4.

7 See, i.e André Nollkaemper, "The bifurcation of international law: two futures for the international rule of law", *op. cit*. Arthur Watts, "The International Rule of Law", in *German Yearbook of International Law*, vol. 36, 1993, pp. 15-45. Brian Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press, Cambridge, 2004. Charles Sampford, "Reconceiving the Rule of Law for a Globalizing World", in S. Zifcak, ed, *Globalisation and the Rule of Law*, London, Routledge, 2005, pp. 9-31. Dennis Jacobs, "What is an International Rule of Law?", in *Harvard Journal of Law and Public Policy*, vol. 30, nº 1, 2007, pp. 3-6. Duan Jielong, "Statement on the Rule of Law at the National and International levels", in *Chinese Journal of International Law*, vol. 6, nº 1, 2007, pp. 185-188. Ernst Petersmann, "How to Promote the International Rule of Law?", in *Journal of International Economic Law*, vol. 1, 1998, pp. 25-48. Gian Luigui Palombella, "The Rule of Law Beyond the State: Failures, Promises, and Theory", in *International Journal of Constitutional Law*, vol. 7, nº 3, 2009, pp. 442-467. Gordon Christenson, "World Civil Society and the International Rule of Law", in *Human Rights Law Quarterly*, vol. 19, nº 4, 1997, pp. 724-737. Jean Morin, "L´État de Droit: émergence d´un principe du Droit international", in *Recueil des Cours Académie de Droit International*, 1995, Tomo 254, pp. 1-462. Robert Goodin, "Toward an international Rule of Law: distinguishing international Law-breakers from World-be Law- makers", in the *Journal of Ethics*, vol. 9, 2005, pp. 225-246. Simon Chesterman, "An International Rule of Law", in *American Journal of Comparative Law*, vol. 2, nº 56, 2008, pp. 331-362. Stephane Beaulac, "An Inquiry into the International Rule of Law", *European University Institute Working Papers*, nº 14 (2007), 1-29.

and scope. Consequently, when analyzing the States power submission to the law –from an international perspective–, we find ourselves before a vast spectrum of notions and ideas related to the meaning of the Rule of Law.

In this regard, it is possible to affirm that the use of the *International Rule of Law*, as an expression of the idea of the States power submission to the law at international level, generates, in some sector of the doctrine, certain skepticism (i.e. Endicott, Franck, Marmor, Silverstein, Waldron and Williams)[8]. For these authors, the structural differences that exist between domestic and international legal orders represent a great obstacle for the construction of a Rule of Law theory in the international realm. Such differences could be reflected, for example, in the absence of an executive, legislative and judicial power at international level, in the imminent political nature of the solution of international disputes and in the lack of compulsory jurisdiction of the International Court of Justice. Likewise, the asymmetric and vertical relationship that exists between State and who they govern at national level –essential in the theories of Rule of Law–, takes its shape, inside the international social environment, of a horizontal form among sovereign States. From that perspective, as pointed out by R. Higgins, the conception of an *International Rule of Law* would be, at least, complicated[9].

On the other hand, and against this position, it would be possible to identify –at doctrinal level– another school of thought whose thesis would justify the application of this notion at international level (i.e. Beauleac, Christenson, Goodin, Jacobs, Jielong, Köchler, Noallkaemper, Petersmann, Teitel, Watts, etc.)[10]. From their particular appreciation, the international version of the Rule of Law would basically act in accordance with the same objectives than the Rule of Law in the national legal order.

In the first place, the international version of the Rule of Law would act as a break to the arbitrary exercise of States power –both at national and international level–. On one side the international law limits the external sovereignty of States by means of a group of legal norms that restrict certain acts the State can execute against another or against the general interests of the international community of the States as a whole.

8 Andrei Marmor, "The Rule of Law and its limits", in *Law and Philosophy*, vol. 23, 2004, pp. 1-43. Gordon Silverstein, "Globalization and the Rule of Law: a machine that runs of itself?", in *International Journal of Constitutional Law*, vol. 1, nº 3, 2003, pp. 427-445. Jeremy Waldron, "Is the Rule of Law an Essentially Contested Concept (in Florida)?", in *Law and Philosophy*, vol. 21, nº 2, 2002, pp. 137-164. S. Williams, "Indeterminacy and the Rule of Law", in *Oxford Journal of Legal Studies*, vol. 24, nº 3, 2004, pp. 539-562. Thomas Franck, *Political Questions Judicial Answers: Does the Rule of Law apply to Foreign Affairs*, Princeton University Press, New Jersey, 1992. Timothy Endicott, "The impossibility of the Rule of Law", in *Oxford Journal of Legal Studies*, vol. 19, 1999, pp. 1-18.

9 See Rosalyn Higgins, "The International Court of Justice and the Rule of Law", 2007, speech available in: http://www.unu.edu/events/files/2007/20070411_Higgins_speech.pdf, visited on September 2016.

10 See footnote 7 *supra*.

As an example, we could point out the general prohibition of the use of force in the international relations regulated by the United Nations Charter, developed by the Resolution 2625 (XXV) of the General Assembly and devoted as an imperative norm of general international law.

On the other hand, the international law, limits the internal sovereignty of States by means of several legal dispositions that circumscribe the exercise of States power over their nationals –or any other person under their jurisdiction– with respect certain fundamental rights. So it happens, for example, in the field of the legal instruments related to the international protection of human rights, notwithstanding that both the international protection of human rights as well as the prohibition of the use of force in the international relations has a quality of *ius cogens* norms.

Secondly, the international version of the Rule of Law would keep the order and would coordinate the behavior of the States and other subjects of international law. That is, the international version of the Rule of Law would increase the security, contributing for the relationships established among different subjects of international law to be more foreseeable and stable. By making international relations more foreseeable, the discretion would be restricted and, therefore, the arbitrariness of the States would be reduced, thus favoring the existence of a more stable international order and relations.

In any case and beyond this doctrinal debate the truth is that from the General Assembly of the United Nations, especially since the adoption of the resolution 61/39 at the end of the year 2006 –as we will see in the next section of this article– some structural elements or analytical parameters of the domestic Rule of Law were externalized to the international level in order to be applied to the international relations itself.

III. Beyond the doctrinal debate: the General Assembly of UN and the international version of the Rule of Law

As we know ten years ago the General Assembly of the United Nations adopted the resolution 61/39 entitled "The Rule of Law at national and international levels"[11].

This resolution was included into the agenda of the Organization by a request made by the Permanent Representatives of Mexico and Liechtenstein[12]. On this document, the General Assembly of the United Nations, following the guidelines set by the Secretary- General in his

11 See A/RES/61/39, December 4, 2006.

12 See letter attached to the document A/61/142. May 22, 2006.

Report "In larger freedom: towards development, security and human rights for all"[13] and by the "Final Document of the 2005 World Summit"[14], the study of the Rule of Law, both domestically and internationally, raised from a holistic perspective, emancipated, in addition, from the framework of the international protection of human rights and peace- building in post-conflict societies.

On this regard, resolution 61/39 was the precedent from which the General Assembly of the United Nations began to study the principle of the Rule of Law in a broadly international perspective.

In the preamble of the Resolution 61/39, the General Assembly of the United Nations highlighted the promotion of the Rule of Law as a cross-cutting element to the maintenance of peace and international security, the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms. Similarly, the General Assembly pointed out that human rights, the Rule of Law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the Organization.

In resolution 61/39, the General Assembly of the United Nations introduced for the first time into the practice of the Organization, a specific distinction between the Rule of Law domestically and the Rule of Law internationally. In other words, the General Assembly of the United Nations applied the notion of Rule of Law, this time, into the field of international relations. Speaking of the Rule of Law went beyond the national legal connotation that until now had been granted to such legal institution into the practice of the Organization. In resolution 61/39, the General Assembly referred to an international order based on the Rule of Law and international law.

Despite the explicit title of this resolution, the General Assembly of the United Nations did not take a definition of that principle domestically or internationally. The lack of such definition was due basically to the big difference of views and approaches that the delegations participating in the discussions preceding the adoption of Resolution 61/39 had about the meaning and scope of this principle, especially in its international aspect. At the end of the day it was, therefore, the adoption of a vague resolution in which, given the wide divergence of views and approaches that existed among the delegations participating in the general debate,

13 Document A/59/2005. March 21, 2005.

14 Document A/RES/60/1, October 24, 2005.

it was impossible to determine the meaning and scope of the principle of the Rule of Law, especially in its international aspect. In this regard, the General Assembly of the United Nations simply noted, for example, that the principle of Rule of Law at international level was closely related to the peaceful coexistence and cooperation among States, the jurisdiction of the International Court of Justice in accordance with its Statute, the international legality principle, the maintenance of peace and international security, the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms[15].

It should be noted also that in order to take forward the resolution 61/39, the General Assembly of the United Nations had to resort to the use of a very general formula to invoke the principle of the Rule of Law. This was accentuated in the international aspect of this principle, since delegations had not yet assumed that a basic definition of this principle was well defined and generally accepted at international level.

In light of the foregoing, the General Assembly of the United Nations in its resolution 61/39, gave a very broad approach to the study of the Rule of Law, particularly at international level. In this context, such principle was associated with a whole range of central issues for the international legal order, such as the peaceful coexistence and cooperation among States, the jurisdiction of the International Court of Justice in accordance with its Statute, the international legality principle, the maintenance of peace and international security, the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms, but did not specify anything about the concrete definition of the Rule of Law.

Despite not having elaborated deep enough into the scope of the Rule of Law, the merit of the resolution 61/39 was to have established the precedent that laid the foundation for the study of this principle within the Organization outside international protection of human rights as well as the consolidation of peace in post-conflict societies and even its national dimension. In sum, throughout the adoption of resolution 61/39, the United Nations launched the machinery to try to establish the meaning and scope of the Rule of Law at international level.

15 See the Preamble of the document A/RES/60/1, October 24, 2005.

From the precedent set by resolution 61/39, resolutions 62/70[16], 63/128[17], 64/116[18], 65/32[19], 66/102[20], 67/97[21], 68/116[22], 69/123[23], 70/118[24] and 71/148[25] have been approved within the General Assembly of United Nations that are also entitled: "the Rule of Law at national and international levels".

Currently, the general debate continues within the Sixth Committee of the General Assembly and it is expected that in the following sessions it keeps on working to build consensus around the definition of the principle of the Rule of Law at international level, which is essential to determine the mechanisms and concrete actions that must be implemented to ensure an international order based on law[26].

Although even today, there is still no precise definition of the international version of the Rule of Law the debates that have arisen within the Sixth Committee of the General Assembly on the study of this issue have allowed to identify some common characters to the different conceptions and approaches expressed by Member States of the United Nations.

Among these common characters, would include ideas such as, for example, the basic role of international law in regulating international relations, the need to prevent arbitrary and selective application of its rules, the strengthening of the work of the United Nations at international level, the need to implement mechanisms for accountability by States and international organizations, and so on.

It could be perceived, in the same way, a common understanding among Member States of the United Nations about the promotion of an international order based

16 Document A/RES/62/70, December 6, 2007.

17 Document A/RES/63/128, December 11, 2008.

18 Document A/RES/64/116, December 16, 2009

19 Document A/RES/65/32, December 6, 2010.

20 Document A/RES/66/102/, December 4, 2011.

21 Document A/RES/67/97/, December 14, 2012.

22 Document A/RES/68/116, December 16, 2013.

23 Document A/RES/69/123, December 10, 2014.

24 Document A/RES/70/118, December 14, 2015.

25 Document A/RES/71/148, December 13, 2016.

26 See the website of UN on the Rule of Law: http://es.unrol.org/. Specially, see the Declaration of the High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the national and international levels. Document A/RES/67/1, September 24, 2012.

on international law (including fundamental rights of the human beings) against a model of international order governed by the claims of power of a few States over other States. It is on this context that the international version of the Rule of Law, in light of its both formal and substantive dimensions would not only be identified with the *International Rule of Law* but, rather, with the *Rule of Law among nations* in the sense described for us in the introduction of this paper[27].

Furthermore, is possible to identify those structural elements of the Rule of Law –as defined by the Secretary General of the United Nations in his Report "the Rule of Law and transitional justice in conflict and post-conflict Societies"– that, in our view, the General Assembly has extrapolated, *mutatis mutandis*, to international level in order to emphasize the pre-eminence of law in international relations.

IV. The basic elements of the domestic Rule of Law extrapolated to the international level by the General Assembly of UN

The basic elements of the domestic Rule of Law that the General Assembly of UN has externalized to the international realm in order to highlight the pre-eminence of law over the power of States would be:

1. an international order based on law;
2. uniformity of application of international law to all subjects equally;
3. prevention of the arbitrary exercise of power of States;
4. independent and effective implementation of rules of international law; and
5. compatibility of rules of international law with the principle of inherent dignity of human being.

These five basic elements, in our opinion, would capture the essence of the *Rule of Law among nations* that United Nations has projected towards international realm supplementing the *International Rule of Law* –as postulated by Anglo-American doctrine– in a substantial sense. The first four elements would approach closer to the formal theory of the Rule of Law, as it does not prejudge the contents of the rules governing international life, while the last of them is linked more with a substantive conception requiring the compatibility of the rules with the principle of the inherent dignity of human beings and consequently with the promotion and protection of human rights and fundamental freedoms.

27 As pointed out before, the International Rule of Law refers only to the submission of public power to the law in its formal aspect and the idea proposed by us, according to the international practice of the United Nations, specifically the General Assembly, refers to both formal and substantive sense (that is to say including the protection of human rights as one of its essential elements).

V. Definition and legal nature of the *Rule of Law among nations* in light of the practice of the General Assembly of UN: our proposal.

From these elements, which have been extracted from the international practice of the General Assembly of the UN, we could define the *Rule of Law among nations* as:

"A principle in light of which the exercise of States power, and other subjects of international law, would be accountable to a legal system designed to apply to all of them independently, effectively and equally, whose provisions are consistent with international norms and principles derived from the inherent dignity of human beings. It requires, as well, that international community of States as a whole take the necessary measures to ensure adherence to the principles of primacy of peremptory norms of general international law; accountability before the international community; fairness in the application of rules of international law; international legality, non-arbitrariness and transparency".

Following the formula used by the Secretary General of the United Nations on the Rule of Law formulation within post-conflict societies in the definition proposed by us, we can identify the structural elements of the Rule of Law among nations, all of which would set out the substance and structure of this principle and a set of principles related to it as, for example, the primacy of the peremptory norms of general international law, accountability, equity in the application of rules of international law, international legality, non-arbitrariness and transparency. The structural elements are *conditio sine qua non* to speak of the *Rule of Law among nations*, while the related principles reinforce the institution, in the sense that their presence will facilitate the achievement of its objectives but their absence or weakness does not imply the non-existence of such institution.

Thus, the principle of the *Rule of Law among nations*, from the point of view of their structural elements, imply that the exercise of States power, and the other subjects of international law, would be subject to a legal system designed to apply to all of them independently, effectively and equally, being its provisions consistent with international norms and principles derived from the inherent dignity of human beings.

In terms of its legal nature, we could say that the *Rule of Law among nations* would be a general principle of the international law at a very early stage. This would not be, in short, a general principle of law "recognized by civilized nations" in the terms established by Article 38.1.c) of the Statute of the International Court of Justice (as in the case of the Rule of Law), neither would be a general principle of international law (in the case of the *International Rule of Law*). This is in both cases a formal or auxiliary source of international law, but a general principle of the international law in *status nascendi* (the *Rule of Law among nations*) which is different because it refers to the idea of a material source of international law.

Despite the nebulous nature of this principle, derived from its early formative stage, the Rule of Law Among nations –for us– would be, in light of United Nations practice, a general principle of the international law, universal in scope, and instrumental in nature.

The principle of the Rule of Law Among nations has a universal scope. It is derived from the reference stated in the fourth paragraph of the preamble of the Resolution 2625 (XXV) of the General Assembly (that is "the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States... would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the *Rule of Law among nations*") as an inspiring idea driving international order based on law. A general principle of the international law (although still in formation), and its instrumental nature. Because, if that principle manages to consolidate at international level, it would be a fundamental tool to promote the pre-eminence of law in international relations. From this perspective, the *Rule of Law among nations* provides the basis and permeates almost all the international legal system.

Hence, one can speak of the incidence of this principle in areas as diverse as, for example, the international protection of human rights, the international humanitarian law, the law of the Sea, the law of Treaties, the international States responsibility, the treatment of aliens, refugees and asylum seekers, the international protection of the environment, the economic, financial and international trade, the promotion of development, the peaceful relationship between States, the maintenance of peace and international security, and so on.

VI. Concluding remarks

At the end of these pages we can draw, by way of conclusion, the following ideas:

Although even today, there is still no precise definition of the principle of the *Rule of Law among nations*, the debates that have arisen within the Sixth Committee of the General Assembly on the study of that issue have allowed to identify some common elements to the different conceptions and approaches expressed by Member States of the United Nations on the principle of the *Rule of Law among nations*.

Among these common elements, would include ideas such as, for example, the basic role of international law in regulating international relations, the need to prevent arbitrary and selective application of its rules, the strengthening of the work of the United Nations at international level, the need to implement mechanisms for accountability by States and international organizations, and so on.

Despite the foregoing, the problem persists. While the controversial issue is the determination and scope of the meaning of the principle of the *Rule of Law among nations* in the absence

of a specific definition that can be commonly accepted by all States at international level, rather than the common acceptance of its nature as a general principle of the international law *in fieri*.

The attempt to reach a definition that can be commonly accepted by all States which is leaded in the heart of the International Organization by the Secretary-General and the General Assembly, has been hampered by the lack of consensus around the scope and meaning of this principle at international level.

However, the practice of the General Assembly concerning the invocation and employment of the principle of the *Rule of Law among nations* is clear that in speaking of this concept would have been externalized to the international level some structural elements of the domestic Rule of Law from the only explicit definition of this principle that exists within the Organization practice (which was created by the Secretary-General in the field of post-conflict societies).

In that sense, the five basic elements of the Rule of Law externalized –*mutatis mutandis*– to the international realm in the framework of the *Rule of Law among nations* principle would be: an international order based on law; the uniformity of application of international law to all subjects equally; the prevention of the arbitrary exercise of power of States; the independent and effective implementation of rules of international law; and the compatibility of rules of international law with the principle of inherent dignity of human being.

These five basic elements would capture the essence of the *Rule of Law among nations* principle that United Nations has projected towards international realm supplementing the *International Rule of Law* –as postulated by Anglo-American doctrine– in a substantial sense.

In the light of the foregoing, we can conclude that the General Assembly of UN, by promoting an international order based on law rather than promoting an *International Rule of Law* is promoting the *Rule of Law among nations* that is not the same.

Bibliography

André Nollkaemper, "The bifurcation of international law: two futures for the international rule of law", in *Amsterdam Center of International Law Research Paper*, nº 4, 2011, pp. 10.

Andrei Marmor, "The Rule of Law and its limits", in *Law and Philosophy*, vol. 23, 2004, pp. 1-43.

Arthur Watts, "The International Rule of Law", in *German Yearbook of International Law*, vol. 36, 1993, pp. 15-45.

Brian Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press, Cambridge, 2004.

Charles Sampford, "Reconceiving the Rule of Law for a Globalizing World", in S. Zifcak, ed, *Globalisation and the Rule of Law*, London, Routledge, 2005, pp. 9-31.

Dennis Jacobs, "What is an International Rule of Law?", in *Harvard Journal of Law and Public Policy*, vol. 30, nº 1, 2007, pp. 1-6.

Duan Jielong, "Statement on the Rule of Law at the National and International levels", in *Chinese Journal of International Law*, vol. 6, nº 1, 2007, pp. 185-188.

Ernst Petersmann, "How to Promote the International Rule of Law?", in *Journal of International Economic Law,* vol. 1, 1998, pp. 25-48.

Gian Luigui Palombella, "The Rule of Law Beyond the State: Failures, Promises, and Theory", in *International Journal of Constitutional Law*, vol. 7, nº 3, 2009, pp. 442-467.

Gordon Christenson, "World Civil Society and the International Rule of Law", in *Human Rights Law Quarterly*, vol. 19, nº 4, 1997, pp. 724-737.

Gordon Silverstein, "Globalization and the Rule of Law: a machine that runs of itself?", in *International Journal of Constitutional Law*, vol. 1, nº 3, 2003, pp. 427-445.

Jean Morin, "L´État de Droit: émergence d´un principe du Droit international", in *Recueil des Cours Académie de Droit International*, 1995, Tomo 254, pp. 462.

Jeremy Waldron, "Is the Rule of Law an Essentially Contested Concept (in Florida)?", in *Law and Philosophy*, vol. 21, nº 2, 2002, pp. 137-164.

Robert Goodin, "Toward an international Rule of Law: distinguishing international Law-breakers from World-be Law- makers", in the *Journal of Ethics*, vol. 9, 2005, pp. 225-246.

S. Williams, "Indeterminacy and the Rule of Law", in *Oxford Journal of Legal Studies*, vol. 24, nº 3, 2004, pp. 539-562.

Simon Chesterman, "An International Rule of Law", in *American Journal of Comparative Law*, vol. 2, nº 56, 2008, pp. 331-362.

Stephane Beaulac, "An Inquiry into the International Rule of Law", European University Institute Working Papers, nº 14 (2007), 1-29.

Thomas Franck, *Political Questions Judicial Answers: Does the Rule of Law apply to Foreign Affairs*, Princeton University Press, New Jersey, 1992.

Timothy Endicott, "The impossibility of the Rule of Law", in *Oxford Journal of Legal Studies*, vol. 19, 1999, pp. 1-18.