

*Nazmul Arifeen***GLOBAL GOVERNANCE, UNITED NATIONS AND THE NON-STATE ACTORS: THE UN RESOLUTION ON THE RULE OF LAW 2012****Abstract**

Some International Relations (IR) scholars, primarily those belonging to the dominant realist schools of the discipline, often undervalued the importance of International Organisations i.e. the United Nations arguing that a 'world government' is not attainable in an international system composed of sovereign states of equal status. While that claim is largely valid and a global government remains an unattainability in the foreseeable future, however, as this article argues, global governance—a process through which different actors, both state and non-state, achieve goals through informal and formal structures which in a way contribute in achieving order in the international system—is feasible. Since its inception, the UN has played a commendable role in this regard. Unlike its predecessor, it has been remarkably successful in managing the complexity of global affairs. The organisation is increasingly playing significant role in different spheres of international affairs. Taking the case of the high level meeting on the rule of law at the 67th session of the UN General Assembly, this paper argues that the UN has achieved the objectives of global governance by accommodating emerging new actors including non-governmental and civil society organisations. In doing so, the paper explores how non-state actors use informal structures and international norm setting mechanisms to complement the UN in achieving its objectives of global governance.

1. Introduction

Following a high level meeting, participated by the heads of states and governments as well as non-state actors, at the 67th session of the United Nations General Assembly (UNGA) on the rule of law, the United Nations (UN) approved on 24 September 2012 a resolution¹ entitled the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. As a result of a resolution adopted during the 66th UNGA, the UN opted for the rule of law as a theme for this high-level meeting. The UN has considered the rule of law as an agenda since 1992 with renewed interests since 2006. In the following years, the UN adopted resolutions at least five times and produced a number of documents including a report of the UN Secretary General that catalogued the efforts put together so far by the UN on the rule of law at the national and international levels. The purpose of the UN's emphasis on the rule of law is not limited to the application

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¹ Resolution No. A/RES/67/1.

of it at the international level; rather, the UN has been active in promoting rule of law at the national level through promoting and strengthening democracy and other national legal institutions viz. the judiciary. However, the outcome document at the 67th UNGA marked the latest development of the UN's endeavour in recent years to promote rule of law at the national and international levels. From a global governance perspective, this was a momentous event owing to two distinct reasons: strengthening the rule of law at the national and international levels augments the UN's future role in global governance and it provides non-state actors including civil society and non-governmental organisations with an opportunity to maneuver and delineate their positions in the meeting, thus contributing to emerging global governance.

This paper analyses the developments at the UNGA from a global governance perspective. It begins by asking some fundamental questions with a view to unravelling some governance problems at the global level: what does global governance entail in the post-Cold War international politics and what are its characteristics? What role does the UN play as far as global governance is concerned? Observed through a global governance lens, why is the Resolution No. A/RES/61/1 a significant event? And finally, what were the agenda of the civil society and non-governmental organisations as far as the resolution on the rule of law is concerned? Addressing these questions the paper seeks to unravel both the emerging role of non-state actors and locate their position in the global governance spectrum.

Following the introduction, the paper begins with an exposition of the conceptual underpinnings of global governance in section two. It, then, moves on to explore the role played by the UN in an increasingly globalised world in third section. The fourth section specifically addresses the resolution on the rule of law² to show that how non-state actors fit into the emerging global governance architecture. In the fifth section, the paper analyses the role played by non-state actors *vis-à-vis* the resolution. The final section draws conclusions based on the discussion.

2. Global Governance: The Conceptual Framework

International system consisting of states, in the absence of a supranational authority to impose order, is anarchical by nature. Yet, at any given time, there are fewer visible conflicts at the global level compared to those occur within the nation-states run by governments. While there is no world government in place with supreme power and authority that can be exerted over states in the international system, however, a remarkable level of order and stability exists at the global level.³ Although the UN exists, but it is in no way a "world government"; rather, a mere association of states. In that sense, it can be argued that the world is *governed* without the existence or even necessity of a government.

² *Ibid.*

³ See Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, New York: Palgrave Macmillan, 2002.

To grasp the complexities of global governance, one needs to go beyond the traditional understanding of international political organisation. Because when it comes to world's organisation, our focus is often narrowed down to the notions of nations and states, as our understanding of politics is often limited to these entities considered to be the foundations of politics.⁴ But scholars have raised questions whether states are the only primary actors, as often portrayed by realist scholars. They contend that neither are states only predominant actors in the international politics, nor have they lost their relevance in the age of globalisation. This is not to argue that states have lost their rights of sovereignty, rather the realm over which these exclusive rights, e.g. sovereignty and legitimate use of violence, can be exerted is dwindling, as the concept of state boundaries is becoming more and more blurred owing to rapid changes ensuing globalisation. The authority that states used to exclusively enjoy once is increasingly diffused and their hierarchy is diminished as well.⁵

Before we delve into the discussion on global governance, it is worthwhile to probe into the theoretical underpinnings of the term 'global governance'. The term is often mistakenly taken for 'world government', although 'governance' is very different from 'government'. While both government and governance consist of rule systems and steering mechanism through which authority is exercised to enable the governed to move towards a desired goal, but the rule systems of government consists of formal structures and institutions for addressing diverse issues. On the other hand, the rule systems of governance is much broader in sense. It implies collective attempt—both public and private—that uses informal as well as formal structures to make demands, frame goals, pursue policies and generate compliance.⁶ Governments produce compliance through formal privileges such as sovereignty and constitutional legitimacy, on the contrary, governance generates rule systems from traditional norms and habits, informal agreements, shared premises, successful negotiations and other practices that lead people to comply with their directives. In that sense, as the demand for governance increases with the proliferation of complex interdependencies, rule systems can be found in non-governmental organisations, international corporations, civil societies, many other types of non-state agents and even in some intergovernmental organisations⁷ that are not considered to be

⁴ James N. Rosenau, *Study of World Politics: Volume II Globalization and Governance*, New York: Routledge, 2006, pp. 111-123.

⁵ *Ibid.*

⁶ James N. Rosenau, "Strong Demand, Huge Supply: Governance in an Emerging Epoch", in Ian Bache and Matthew Flinders (eds.), *Multi-level Governance*, New York: Oxford University Press, 2004, pp. 31-32.

⁷ The idea that whether or not intergovernmental organisations are non-state actors is contested. Paul Reuter contends that such organisations are groups of states "which can permanently express a juristic will distinct from that of its individual members". See Paul Reuter, *International Institutions*, London: Allen & Unwin, 1958, p. 214, cited in Clive Archer, *International Organizations*, 3rd Edition, London: Routledge, 2001, p. 32. Intergovernmental organisations enjoy certain level of autonomy *vis-à-vis* their positions on various issues. Besides, once the intergovernmental organisations are functional more often with their own bureaucracy, their roles are no longer contingent upon the acceptance by the member states. This gives such bodies a certain level of autonomy with regard to their actions. *Ibid.*, p. 81. In addition, some of these bodies allow significant level of non-governmental organisations' involvement in their activities.

governments.⁸ While a world government would entail transfer of sovereignty, decision making authority from nation-states to a higher authority, on the other hand, global governance denotes how decisions are taken at the global level, cooperation between and among different entities.⁹

Table 1: Difference between government and governance		
	Government	Governance
Actors	Public	Both public and private
Compliance mechanism	Sovereignty, constitutional legitimacy	Traditional norms and habits, informal agreements, successful negotiations
Structure	Formal structures and institutions	Informal and formal structures

Source: Based on James N. Rosenau, *op. cit.*

Nevertheless, the United Nations is not a world democracy entrusted with political will and legitimate monopoly over violence to rule the society of nation-states. Some scholars have argued that it is highly unlikely that a form of global governance would emerge in the foreseeable future that would replace the nation-state system.¹⁰ Rather than being replaced by a global government, nation-states are complemented by other actors including non-governmental organisations, intergovernmental organisations, civil society and transnational corporations, among others. Therefore, global politics is “characterized by the decreased salience of states and the increased involvement of non-state actors in norm- and rule-setting processes and compliance monitoring”.¹¹ Moreover, the scope of global governance is not necessarily limited to national and international spheres; rather it permeates into sub-national, regional and local spheres as well. At the state level, governance is done by governments whereas at the global level, it is often managed by multiple governments and other sources of authority that include non-state actors which may emerge from sub-national level as well. This can be imagined as governance without the presence of a world government. To put it in philosophical terms, global governance would be similar to what Immanuel Kant referred to as *cosmopolis* and a world government can be compared to *Leviathan* of Thomas Hobbes.¹²

For example, non-governmental organisations are found to be greatly involved in drafting the texts of the United Nations Commission on International Trade Law (UNCITRAL) which is an intergovernmental organisation. Given these characteristics of the intergovernmental organisations, they have also been considered as non-state actors in this paper.

⁸ James N. Rosenau, *op. cit.*

⁹ Pascal Lamy, “The WTO’s contribution to global governance”, in Gary P. Sampson (ed.), *The WTO and Global Governance: Future Directions*, New York: United Nations University Press, 2008, pp. 40-41.

¹⁰ Joseph S. Nye Jr. and John D. Donahue (eds.), *Governance in a Globalizing World*, Virginia: R. R. Donnelley and Sons, 2000, pp. 12-14.

¹¹ Tanja Brühl and Volker Rittberger, “From international to global governance: Actors, collective decision-making, and the United Nations in the world of the twenty-first century”, in Volker Rittberger (ed.), *Global Governance and the United Nations System*, New York: United Nations University Press, 2001, p. 2.

¹² Pascal Lamy, *op. cit.*

Thus, there are two concurrent features of the emerging global order: while the authority of non-state entities continues to augment, at the same time, the autonomy of national governments is eroding due to various international norms and treaties that rule out the possibility of states' arbitrary or whimsical behaviour disregarding international community. As other influential actors rise at the global stage, national governments are yielding their monopoly of representing their societies on the international scene, often contesting the legitimacy of official positions.¹³ Non-state actors are seen functional in the role of such international agenda setting and collective decision-making.

This comparative nascent phase of global governance embodies some key features. Timothy Sinclair made a distinction between international institutions driven by states and global governance induced by the private actors.¹⁴ According to him, global governance denotes the organisation of international life by private e.g. non-state actors in great measure. He criticised the international institutions dominated by the state thereby remain open to politicisation. Few would deny the fact that private actors are adept at providing solutions to international problems that cannot be addressed by normative thinking. Klaus Dodds, on the other hand, suggested¹⁵ that international institutions do not exist independently of other agents, e.g. non-state actors, and structures. As far as global governance is concerned, it is difficult to distinguish between states and private actors. He, therefore, advocates for deepening of institutions and, maintains that global governance is based on rules and law embedded in the world institutions. Therefore, two arguments follow that, both the rule of law promoted by international institutions as well as the emergence of private or non-state actors play a growing role in the governance of global politics.

3. The United Nations and Global Governance

The United Nations is the only international organisation in existence with universal membership, albeit of states, that encompasses almost every ambit of human life. It is also the most obvious example of an international organisation that has successfully accommodated virtually all states of the world. There is almost nothing in human life that does not fall within the broad agenda of the UN. The emergence of the UN represents a particular world order viz. the post World War II era. Debate exists among scholars whether the founders of the UN wanted to make the organisation a supranational government. To some scholars, the organisation was

¹³ Nora McKeon, *The United Nations and Civil Society: Legitimizing Global Governance –Whose Voice?*, New York: Zed Books, 2009, p. 7.

¹⁴ Peer Schouten, "Theory Talk #5: Timothy Sinclair on Social Forces, Transnational Corporations and Global Governance", *Theory Talks*, available at <http://www.theory-talks.org/2008/05/theory-talk-5.html>, accessed on 27 November 2012.

¹⁵ Peer Schouten, "Theory Talk #6: Klaus Dodds on James Bond, the Final Argument for a Geopolitical Approach to International Relations, and a Russian Flag on the Bottom of the Ocean", *Theory Talks*, available at <http://www.theory-talks.org/2008/05/theory-talk-6.html>, accessed on 27 November 2012.

nothing more than an association of sovereign states intended to salvage humanity from another scourge of war¹⁶ – an enthusiasm that rightly captures the sentiment of world leaders in the wake of World War II.

When founded, the UN could not possibly foresee what world order would emerge in the wake of rapid decolonisation and proliferation of international and national non-governmental organisations. The world is more integrated today than the time the UN was created. “The enormous growth in people’s concern for human rights, equity, democracy, meeting basic material needs, environmental protection, and demilitarization has today produced a multitude of new actors who can contribute to governance.”¹⁷ In the last more than six decades, the global politics has witnessed the rise and fall of bipolar world to the emergence of a multipolar world as pointed out by Fareed Zakaria¹⁸. Some authors believe that in this constantly changing world, the failure to adapt to the demands and voices of divergent and emerging new actors, both state as well as non-state agents like civil society and transnational corporations, would mean two things for the UN: either the organisation runs the risk of losing its relevance to the twenty-first century’s ever-growing political complexity or being replaced by stronger and more accommodative form of international organisation.¹⁹ Thankfully, the UN charter outlines, albeit vaguely, some of its functions that gave the organisation the necessary framework it required to assume a future role of a supranational government.²⁰ The gradual institutional change within the UN with its offshoot agencies, sub-organs and various commissions afford it the functionality and leverage to address the most pressing issues of the contemporary world. Compared to any such organisation that existed in human history, the UN possesses attributes to manage complex governance challenges of contemporary world politics.

To understand the global governance output of the UN, it can be conceived as the UN’s capacity to provide government-like services in absence of world government.²¹ Indeed, in any international humanitarian crisis and conflict, states and other actors look up to the UN to undertake initiatives to resolve the matters. When it comes to combating problems that are truly global in nature, e.g. climate change or nuclear proliferation, the UN is the single legitimate body that has both the mandate and capacity to act as pseudo-hierarchical authority. This does not obviously mean that the UN at one stage would evolve as a government of society of states, but

¹⁶ W. Andy Knight, *A Changing United Nations: Multilateral Evolution and the Quest for Global Governance*, New York: Palgrave Macmillan, 2001, pp. 161-162.

¹⁷ Commission on Global Governance, *Towards the Global Neighbourhood: The Report of the Commission on Global Governance*, Oxford: Oxford University Press, 1995, cited in Nora McKeon, *op. cit.*, p. 6.

¹⁸ See Fareed Zakaria, *The Post-American World*, New York: W. W. Norton & Company, 2008.

¹⁹ Roger A. Coate, W. Andy Knight and Andrei I. Maximenko, “Requirements of Multilateral Governance for Promoting Human Security in a Postmodern Era”, in W. Andy Knight (ed.), *Adapting the United Nations to a Postmodern Era: Lessons Learned*, New York: Palgrave Macmillan, 2001, p. 16.

²⁰ *Ibid.*

²¹ Thomas G. Weiss and Annelies Z. Kamran, “Global Governance as International Organization”, in Jim Whitman (ed.), *Palgrave Advances in Global Governance*, New York: Palgrave Macmillan, 2009, p. 82.

it implies its ability to foster international cooperation between divergent and new actors that are not necessarily states.

But question arises with regard to how the UN accomplishes these arduous tasks of governing. If we look at the patterns of the UN's actions, one of its modes of functioning is to transform ideas into international norms, laws and institutions, thereby creating rules of the game by which states must act to remain legitimate stakeholders of international society. The UN, therefore, acts by setting international standards. The Universal Declaration of Human Rights is one such example of how ideas are transformed into inviolable international norms. Thus, despite not being a government, the UN regulates states' behaviour in substantive way. As shown in this particular case taken up by this paper, the UN, with the involvement of both state and non-state actors, is consciously promoting respect for the rule of law across the globe. If successfully implemented, the UN Resolution on the rule of law of 2012 would emerge as new standards for international society.

4. High Level Meeting on the Rule of Law at the National and International Levels

It is customary that the UNGA's regular session begins each year on Tuesday in the third week of September and the discussion goes on for the next one year. World leaders gather at the UN headquarters at the beginning of each session. The formal gathering of world leaders at the 67th session of UNGA was held from 18-28 September 2012 at the UN headquarters in New York. This year's theme for the General Assembly was "Bringing about adjustment or settlement of international disputes or situations by peaceful means". Apart from the regular General Debate, there were high level meetings on the rule of law, sustainable energy, scaling up nutrition, peace building and fifteen years of the Chemical Weapons Convention. The session on the rule of law was a significant milestone owing to the fact that it was the first ever high level meeting on the issue held in the gathering. This attempt by the UN was aimed at codification and universal application of international law which has deeper implications for national, regional and international politics.

Before we set out to discuss the rule of law at the national and international levels, question can be asked why does it behoove upon the UN to promote such agenda in an international forum like itself? The answer to this question also has relevance to the notion of global governance. As an international body tasked with the welfare of humanity and preserving peoples from scourge of war, the UN faces multifarious challenges when it comes to compliance of international law by nation-states. Despite its overarching activities that encompass many aspects of human life, the UN is not government *per se* and, therefore, does not possess a police force to enforce laws. To overcome this shortcoming, it depends upon the voluntary endorsement and acceptance of such laws by states, the hitherto dominant actors in the international system. On the other hand, scholars often argue that international

law is not law in true sense. Since there is no world legislature to enact such laws, it is the sovereign states that voluntarily approve of and ratify such laws. It is also, in essence, how governance is managed at the global level. Without the existence of a global lawmaking body, the UN carries out the task by involving states and non-state actors like civil society thereby setting international norms.²²

A norm-setting endeavour by the UN in recent times is the promotion of rule of law at the national and international levels. The success of the onerous task is, nevertheless, largely dependent upon the voluntary acceptance by the sovereign nation-states. The following discussion brings into forefront some of the activities undertaken by the UN.

At the international level, the UN efforts to promote international law include persuading states to sign and ratify international treaties and other instruments, setting international standards, as well as providing material and logistical support for the application of law. In addition to these, the UN provides assistance to the implementation of international law at the domestic level.

The high level meeting came up with a declaration at the end of the meeting which was later passed as a General Assembly resolution. The draft that was circulated by the President of the General Assembly on 19 September 2012 included 42 articles in three sections, in addition to a brief preamble.

The first section delineates the importance of the rule of law as a prerequisite for an international order based on the rule of law and its equal applicability to all states and international organisations. The declaration interlinked democratic values and the rule of law which are mutually inclusive. Economic growth, sustainable development, poverty alleviation and human rights all are contingent upon the robust adherence to and practice of the rule of law. The core values of international norms can be found in diverse experience of national practices of international community. Therefore, these values are not alien to societies across the world. However, there is a need for sharing these national practices of the rule of law through dialogues and negotiations.

The resolution stresses the significance of national ownership of such rule of law principles. After all, it is respective states who will apply these laws in their own contexts. Connected with this is the autonomy of the legal institutions that must be able to work with fairness and integrity. To this end, the resolution highlights informal justice mechanisms that are in line with the core values of international human rights. All people, particularly women and children, should be treated equally before the law.

²² See Commission on Global Governance, *Our Global Neighborhood*, New York: Oxford University Press, 1995, available at <http://www.sovereignty.net/p/gov/ogn-front.html>, accessed on 21 January 2013.

The section two acknowledges the contribution of the UN and its various organs regarding the promotion of the rule of law. The General Assembly has contributed to the promotion of the rule of law “through policy making and standard setting” and thereby progressing evolution of international law. The Security Council, the Economic and Social Council (ECOSOC), the International Court of Justice, the International Tribunal for the Law of the Sea and International Law Commission all have played substantial role in strengthening the rule of law in their respective domains.

The third section enumerates the obligations of states under international law and its domestic implementation. States were asked to “strengthen the rule of law through voluntary pledges in the context of the high level meeting”. In this connection, the role of relevant civil society actors and other non-governmental organisations in supporting capacity-building and technical assistance was stressed.

A number of other resolutions related to the rule of law were adopted at the 67th UNGA.²³ A resolution²⁴ pertinent to the rule of law was adopted on 14 December 2012 and it contained 17 articles.²⁵ It further builds on the issues related to the rule of law. The resolution welcomes the “dialogue initiated by the Rule of Law Coordination and Resource Group and the Rule of Law Unit in the Executive Office of the Secretary-General”. It emphasised the importance of implementation of the rule of law at the domestic level and providing technical assistance upon the request of the respective states. The International Court of Justice, the United Nations Commission on International Trade Law and the International Law Commission were requested to continue to provide comments and reports related to the promotion of the rule of law. Finally, it was also decided that at the 68th UNGA the rule of law will be discussed by the member states and the resolution invites the member states to comment on “the rule of law and the peaceful settlement of international disputes”.

5. Non-State Actors and the Resolution²⁶ on the Rule of Law

Although the General Debate session of the UNGA remains to be the exclusive prerogative of the nation-state actors where only the heads of the states and governments are entitled to delineate their views on pressing issues of international importance, other sideline meetings give non-state actors adequate space to maneuver. The UNGA high level meetings on a number of thematic issues were such opportunities to posit and put forward their agenda. In the 67th session of UNGA, some civil society and non-governmental organisations were invited to speak

²³ For a complete list of resolutions adopted at the 67th UNGA visit the official website of UN General Assembly Resolutions, available at <https://www.un.org/en/ga/67/resolutions.shtml>, accessed on 24 March 2013.

²⁴ Resolution No. A/RES/67/97.

²⁵ See the Resolution No. A/RES/67/97 adopted by the General Assembly, available at <http://www.unrol.org/files/A-Res-67-97.pdf>, accessed on 22 March 2013.

²⁶ Resolution No. A/RES/67/1.

in the high level meeting on the rule of law. Their active participation facilitated the inclusion of non-state actors actively in concerned domain. Not only several non-governmental organisations, including one entity of the UN itself, were invited to the high level meeting on the rule of law, representatives from respective non-state actor entities contributed to the discussion by outlining their positions on the issues concerned. The list includes the United Nations Commission on International Trade Law (UNCITRAL), International Crisis Group (ICG), International Development Law Organization (IDLO) and International Institute of Higher Studies in Criminal Sciences.

As the case of the high level meeting indicates, non-state actors are becoming increasingly influential in the global governance. Rather than positing positions on global issues through their respective governments or states where they originate from, non-state actors are being transformed into the new stakeholders in the global governance architecture, directly exerting their influence often bypassing their national governments. However, it should be noted here that there are accommodative mechanisms for civil society and non-governmental organisations within the UN. Many of the large non-governmental organisations are given right to convey their opinions to the UN through the ECOSOC. Although non-governmental organisations are not entitled to be members of the UN, they can apply for 'consultative status' within the ECOSOC of the UN. There is a separate committee on non-governmental organisations that vets applications and provides NGOs with consultative status with the UN. The ECOSOC grants consultative status of different types to such organisations depending on the size and level of activity of the NGOs. Once given the status, NGOs assume the privilege to participate in some meetings of the UN, give their opinions and deliver their views on matters related to their work areas. Following that trend, in recent years diverse non-state actors e.g. civil society and non-governmental organisations, in addition to states, actively take part in the meetings of the UN including high level meetings on specific issues.

There are several reasons for involving non-state agents in the high level meeting on the rule of law at the national and international levels. Apart from diverged and professional expertise in the issues concerned, these non-governmental organisations have often more experience than those of many nation-states with regard to upholding the rule of law especially at the international level. Some of them are so influential in the respective domains that any international attempt to address those matters must accommodate the views of these non-state actors. This is a leverage civil society organisations enjoy to create pressures on state actors and influence policy outcomes. The following section discusses the concrete proposals given by the non-state actors²⁷ at the high level meeting on the rule of law.

²⁷ Here non-state actors include non-governmental organisations, intergovernmental organisations and civil society organisations, among others.

5.1 *Positions held by the non-state actors*

The UNCITRAL is not a distinct organisation; instead, it is a core legal entity within the United Nations system active in the domain of international trade law. Its activities primarily concern commercial law and to develop frameworks aimed at harmonising and modernising international law of trade.²⁸ The association of UNCITRAL in the promotion of legislative and non-legislative instruments in a number of key areas of commercial law for the last five decades justifies the prerogative it was given to put forward its agenda at the high level meeting. Therefore, its views to promote the rule of law was from commercial and trade law perspectives. Globalisation has translated into increased commerce and trade between and among states and other actors in the world. UNCITRAL's position was that, to facilitate and sustain that trend, there should be universally applicable norms and standards in place to guide trade that occurs among various actors across the globe. To this end, it proposed several recommendations before the participating states to include in the resolution of the high level meeting. It demanded the recognition and enforcement of property rights and contracts, providing guarantee of the legal security to promote entrepreneurship and recognition of its activities relating to the rule of law promotion in any outcome document. States ought to modernise commercial law in order to establish environments that support and enable trade and commerce.²⁹ It also insisted that the promotion of the rule of law in commercial relations ought to be an integral part of the UN's broader agenda to promote the rule of law at the national and international levels.

The ICG is involved in policy prescriptions and advocacy in the field of conflict prevention and resolution. As far as the rule of law is concerned, ICG distinguished between institutional, procedural and substantive nature of the rule of law.³⁰ The institutional rule of law, termed as "law and order", focuses on law enforcement e.g. the UN Department for Peacekeeping Operations, which also draws on the idea of security and security institutions. The procedural understanding of the rule of law, called "Rule by Law", entails preference for rules over human arbitrariness. In this sense, laws must be public and properly enacted before enforcement. However, the ICG argues that these meanings of the rule of law inadequately address the actual purpose of the rule of law: that is the substantive underpinnings of the matter. The argument follows that the rule of law also needs to be substantive to encompass human rights aspects—that

²⁸ For details of the activities and mandate of the United Nations Commission on International Trade Law (UNCITRAL), see "A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law", available at http://www.uncitral.org/pdf/english/texts/general/12-57491_Guide_to_UNCITRAL_rev.pdf, accessed on 27 November 2012.

²⁹ Statement by Hrvoje Sikirić, the UNCITRAL Chair at its 45th session, on the occasion of the High-level Meeting of the 67th Session of the UNGA on the Rule of Law, available at http://unrol.org/files/Statement_UNCITRAL.pdf, accessed on 27 November 2012.

³⁰ Statement by Louise Arbour, President and CEO of the International Crisis Group, on the occasion of the High-level Meeting of the 67th Session of the UNGA on the Rule of Law, available at http://unrol.org/files/Statement_President_CEO-and-ICG.pdf, accessed on 17 November 2012.

is the robust enforcement of law can in no way violate fundamental human rights and “not just that no one is above the law, but that everyone is equal before and under the law and is entitled to its equal protection and equal benefit.”³¹ This would prohibit enactment of law that discriminates against women or disregards other inalienable human rights. In short, the fundamental proposal by the ICG was that in addition to endorsing “law and order” or “rule by law” models, states should champion the substantive ‘rule of law’ at the national and international levels.

IDLO, considered to be the main inter-governmental entity exclusively devoted to advancing the rule of law, works with governments, non-governmental organisations and civil society stakeholders to strengthen the rule of law and good governance in developing countries as well as countries in economic and democratic transition. IDLO’s specific recommendations were engaging with civil society and empowering local communities who are the ‘end users’ of justice. The legal and institutional reforms should be aimed at meeting local demands and needs, in accordance with international norms and values of the rule of law. As for post-2015 international agenda following the end of Millennium Development Goals, IDLO proposed embedding of the rule of law with sustainable development and shifting towards rights-based approach to development away from need or charity-based approach.³² In this new approach, people will be empowered to claim their rights from their respective duty bearers i.e. governments.

International Institute of Higher Studies in Criminal Sciences (ISISC), a non-governmental organisation, has been working in the field of effective criminal justice systems worldwide and strengthening of respect for the rule of law. Its proposals included increasing the effectiveness of the rule of law, rather than making the concept broader to include “every value and goal of international and national societies”³³ It advocated against the diffusions of the task of the rule of law promotion among the UN bodies and agencies. Rather, it suggested the creation of a special council or committee within the Secretary-General’s office to coordinate all activities of UN’s bodies related to the rule of law. To make the best use of expertise at the disposal of all actors concerned, that committee may include representative from non-governmental organisations, along with inter-governmental and governmental ones. It gave especial emphasis on the promotion of the rule of law at the national level in particular.

Following these discussions, nation-states were asked by the Secretary-General to voluntarily pledge how far individual states were willing to comply with

³¹ *Ibid.*

³² Statement by Irene Khan, the Director-General of the International Development Law Organization (IDLO), on the occasion of the High-level Meeting of the 67th Session of the UNGA on the Rule of Law, available at <http://www.unrol.org/files/Statement%20by%20IDLO.pdf>, accessed on 18 November 2012.

³³ Statement of the International Institute of Higher Studies in Criminal Sciences (ISISC) on the occasion of the High-level Meeting of the 67th Session of the UNGA on the Rule of Law, available at <http://unrol.org/files/Statement%20by%20ISISC.pdf>, accessed on 18 November 2012.

the international law. Despite not being full members of the UN, non-state entities to a large extent shaped the setting of international norms and values in general and resolution in particular. To see how much of these demands were finally accepted, following discussion of the paper examines the resolution.

5.2 Non-state actors and the outcome resolution

A scrutiny of the resolution³⁴ shows that several points raised by the non-state actors were reflected in the outcome resolution at the 67th UNGA.

The recommendations put forward by UNCITRAL included, *inter alia*, the enforcement of property rights and recognition of its activities. At least, some of these suggestions made it to the resolution. The resolution praised the role played by UNCITRAL in modernising and harmonising trade law. Following globalisation, the nations of the world are increasingly interconnected through the web of international trade and other transactions that occur between and among the states. This calls for urgent necessity of predictable international customs and norms to guide trade business relations between states. For generating sustainable and equitable development as well as facilitating entrepreneurship, the role of fair, stable and predictable legal frameworks that govern international commerce were recognised by the resolution. However, other recommendations by the UNCITRAL regarding international trade law could not be accommodated as developed and developing countries do not see eye to eye on several aspects of such laws.

The demands raised by IDLO were to empower end-users of justice, a shift from need-based to right-based approach and to integrate the rule of law into the post-MDG agenda. There is little disagreement that making the rule of law a part of measurable international mechanism such as MDG will strengthen its implementation. Therefore, the resolution acknowledged that “the rule of law and development are strongly interrelated and mutually reinforcing”. The notion of the rule of law will draw more international attention in the coming decades as some analysts have argued that the rule of law will be an integral part of international development agenda following the MDG.³⁵ The resolution also notes that mutual relation between the rule of law and sustainable development will be considered in the post-2015 era. Therefore, it is likely that whatever international agenda the UN takes up in the wake of the MDG, the notion of the rule of law will dominate the development vernacular. Nevertheless, a move away from charity-based approach will also impose more responsibility on the governments as “duty-bearers” to meet the demands of their people i.e. the “right

³⁴ See the UNGA Resolution No. A/RES/67/1 entitled 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, available at http://unrol.org/files/Declaration%20HLM_A%20RES%2067%201.pdf, accessed on 15 November 2012.

³⁵ Terra Lawson-Remer, “Global Goals for Human Rights and Governance After 2015: Part VI”, Council on Foreign Relations, 12 February 2013, available at <http://blogs.cfr.org/development-channel/2013/02/12/global-goals-for-human-rights-and-governance-after-2015-part-vi/>, accessed on 25 March 2013.

holders". However, some of the developing countries with poor human rights record might resist such move by the UN to endorse their responsibility as the duty-bearers.

ISISC's proposal included capacity-building of the UN with regard to the rule of law related matters, national ownership of the rule of law concept, enhancing the efficacy of the rule of law rather than broadening its range to incorporate every value of international society. Instead of diffusing the responsibility among other UN agencies and bodies to coordinate the various tasks of the rule of law, it urged the establishment of a special council or committee, incorporating both governmental and non-governmental organisations, within the UN Secretary-General's office. It is understandable that further broadening the scope of the rule of law will make it too difficult to implement and execute its prime objective. With respect to the promotion of the rule of law at the national level as raised by ISISC, national ownership of the rule of law concept and full implementation of the International Humanitarian Law at national level were emphasised by the resolution. To achieve this end, the resolution asked individual states to make voluntary pledges based on national priorities. This move was actually aimed at creating national ownership of the rule of law.

Despite accommodating many recommendations of the non-state actors, the suggestions made by the ICG were not directly reflected in the resolution. A number of reasons can be identified for this. First, notwithstanding the universality of values of the rule of law, in practice, its applicability differs across nation-states. Western and non-western positions on "law and order" and "Rule by Law", as pointed out by the ICG, are not the same. At the current phase of codification of international law, the notion of "Rule by Law" will be difficult to be agreed upon. It is one of the reasons why the UNGA resolution did not directly address the issues flagged by the ICG.

6. Conclusion

The 67th UNGA's thematic focus on promoting the rule of law in universal application for global governance has significance for the international politics in the coming years. The success of the rule of law remains debatable given the vast differences among nations on how to define and enforce it. The United Nations' project for a universal application of the rule of law is an ambitious scheme and, its tangible output is debated. Multilateral efforts to reach a consensus on a definition of the rule of law agreed by all member states have led to bickering among the member states. Despite the fact that the UN attempt to produce an agreeable definition of rule of law has produced at least eight documents since 2000, the UN member states continue to wrangle over how to define the rule of law.³⁶ Although developing countries and the weaker states fully endorse the idea of codification and enforcement of international

³⁶ Stewart M. Patrick, "How to Advance the Rule of Law (Hint: Outside the UN)", Council on Foreign Relations, 2 October 2012, available at <http://blogs.cfr.org/patrick/2012/10/02/how-to-advance-the-rule-of-law-hint-outside-the-un/>, accessed on 18 October 2012.

law and a more powerful International Court of Justice, however, the excitement over the issue subsides as difficulty abounds over how to reach a consensus. The agenda of the rule of law promoted by the United Nations speaks of implementing the rule of law both at national and international levels. To the western countries, the phrase implies independent judiciary and ensuring human rights at the national level, on the other hand, the developing countries see the term as adherence to the international law which is often breached by the developed countries under the pretext of humanitarian intervention.³⁷ Similarly, while the developed countries are more interested in ensuring good governance and the rule of law at the national level, the developing countries are of the view that it is the developed countries of the West who often break the international law.

Indeed, states remain the dominant actors of international politics, but the rise of other actors as newer sources of authority challenges the core foundations of traditional understanding of state like sovereignty. The rise of these inalienable global values in tandem with globalisation is causing the gradual weakening of the notion of state sovereignty to some extent. In this emerging system, states are more accountable for their actions to the international community.

On the other hand, the non-state actors are playing important role as far as the global governance is concerned. NGOs and other non-state entities are excluded from the UN membership, barring them from taking part in the UNGA. Although these non-territorial and non-state entities lack sovereignty, their role as newer sources of authority cannot be ignored in a globalised and increasingly interconnected world. International organisations like the UN ought to provide increased opportunity of participation by the non-state entities like international NGOs to bolster and recognise their efforts in global governance.

³⁷ Neil MacFarquhar, "At United Nations, Renewed Focus on Syria, if Not New Ideas", *The New York Times*, 23 September 2012, available at <http://www.nytimes.com/2012/09/24/world/middleeast/at-united-nations-renewed-focus-on-syria-if-not-new-ideas.html>, accessed on 12 October 2012.