

## **International Rule of Law and Professional Ethics**

**Vesselin Popovski (Editor)**

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The rule of law dictates that ‘citizens and those who govern them should obey the law’.<sup>1</sup> Everyone comes before the law as equals in order to uphold an accountable system of governance. Vesselin Popovski’s *International Rule of Law and Professional Ethics* argues that the rule of law is less established at the international level in comparison to national level governance. The text’s main hypothesis is that the rule of law can be applied internationally but has to be further developed ethically and institutionally by relying on the ‘professions beyond borders’.<sup>2</sup>

The text critically analyses the need to have ethical considerations to incorporate an international rule of law by utilising the two primary conceptions of the rule of law: the formalist conception (‘thin’ definition) and a substantive conception (‘thick’ definition). By tracing the development of the rule of law in this manner, Popovski explores how the rule of law has changed over the course of history and evaluates the most effective way to implement it in the 21<sup>st</sup> century. The text concludes by asserting that an international rule of law can take off successfully and outlines opportunities to develop ethical behaviour and institutional conduct to support an international rule of law.

This text is inspired by a collaboration between Popovski and Ramesh Thakur, then Senior Vice Rector of the United Nations University (‘UNU’) on how to promote the international rule of law. They worked with the Center for International Governance Innovation (‘CIGI’) in Waterloo, Canada, as well as the Australian Research Council (‘ARC’) to examine ethical supports for the rule of law in the ‘professional and institutional ethics of key players’. Popovski’s in depth theoretical research reinforces the text’s relevance to the ongoing discourse in establishing an international rule of law.

From a macro perspective, Popovski argues the rule of law is not directly expressed in the United Nations Charter but it can be found in the Preamble of the Universal Declaration of Human Rights (1948), which

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<sup>1</sup> *Rule of Law: A Guide for Politicians* (Raoul Wallenberg Institute, 2012) 10.

<sup>2</sup> Charles Sampford, ‘Professions without Borders: Global Ethics and the International Rule of Law’ in Vesselin Popovski (ed), *International Rule of Law and Professional Ethics* (Ashgate Publishing, 2014) 161.

states that ‘human rights should be protected by the rule of law’.<sup>3</sup> Subsequently the text examines the rule of law from a micro perspective, through the ethical behaviour of individual professionals in order to ascertain how such conduct can contribute to the international rule of law. The text asserts that there are double standards when it comes to obeying the rule of law and Popovski presents this argument by compiling materials from several established academics. This provides the reader with a rigorous insight into the future of an international rule of law.

Another strength of this text is that it also offers a practical perspective to the rule of law. John Barker, a Fellow of the Lauterpacht Centre for International Law at the University of Cambridge contributed a chapter to the text based on his professional experience in Southern and West Africa. Barker defines the rule of law with respect to its relationships with other legal notion such as justice, law and order. He argues that the origins of political and economic problems stems from a weak foundation of the international rule of law. Barker further argues that differences of opinion in the international rule of law should be set aside in order to work towards ‘good global governance’ by establishing a common, international rule of law. The practical relevance of Barker’s contributions is a refreshing inclusion to a text that is generally academically-oriented.

From a micro perspective, the text focuses on the notion of ‘impartiality’ amongst the ‘professions beyond borders’.<sup>4</sup> It looks at various professionals such as judges in international tribunals and international civil servants to assess whether establishing a sound system grounded in impartial ethics contributes positively to the international rule of law. Impartiality involves non-discrimination between innocents and aggressors of a conflict whereby all individuals are entitled to equal humanitarian treatment.<sup>5</sup> The text acknowledges the difficulty of establishing an impartial system of ethics because to do so, international authorities must ‘denationalise’ individuals from their respective countries so that their ‘impartiality’ is at its purest. This may appear as an extreme notion, but the text asserts it is not an impossible task.

Critics of ‘impartiality’ argue that under certain circumstances relief helpers inadvertently assist perpetrators in their agenda.<sup>6</sup> This was evident in the 1994 Rwandan genocide where refugee camps offered aid to

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<sup>3</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948).

<sup>4</sup> Frédéric Mégret, ‘What is ‘International Impartiality’?’ in Vesselin Popovski (ed), *International Rule of Law and Professional Ethics* (Ashgate Publishing, 2014) 129.

<sup>5</sup> Richard Shapcott, ‘International Ethics: A Critical Introduction’ (Polity Press, 2010) 128.

<sup>6</sup> *Ibid.*

victims and perpetrators. Furthermore, the definition of impartiality is constantly changing and this doctrine is not accepted as 'a form of global democracy' just yet.<sup>7</sup> However, Popovski argues that international organisations such as the United Nations already have reconciliation missions taking place worldwide and these missions can be a stepping stone to forming a pure 'impartiality' system of ethics to make a positive contribution to the international rule of law.

The text excels in providing readers an understanding of the problems faced in attempts to incorporate an international rule of law. The text constantly compares the international rule of law with the domestic rule of law in order to make readers aware of the stark contrast between the two concepts. This comparison also enlightens readers to the possibility of a whole new level of global governance if the international rule of law is firmly established in the 21<sup>st</sup> century.

The overly descriptive solutions to incorporate an established international rule of law are a drawback of the text. Various authors often present their solutions as a list and readers are sometimes given too many solutions to a specific problem. Rather, it would have been better to present a set number of solutions and discuss them in-depth instead. However, given the broad scope of the topic discussed in the text, it is justifiable that the authors take a 'big picture' approach in exploring the rule of law, which is a very theoretical concept.

Overall, the text is an engaging presentation of the evolution of the international rule of law and how professional ethics can help supplement it. The text concludes that the international rule of law is a work in progress, but still arguably pales in significance to domestic rule of law in terms of establishment. Surprisingly, the text provides a glimpse of the future of the international rule of law in an accessible manner despite the intellectual nature of the subject. The text is ideal material for leaders in international organisations looking to improve their institutional framework in relation to 'rule of law', as well as for professionals working in an era where the international rule of law is set to take greater prominence.

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<sup>7</sup> Mégret above n 4, 153.

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