Comparative Aspects of the Rule of Law in Iran and International Law

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Abstract

This article examines the comparative aspects of the rule of law in Iran and International Law. The rule of law is a concept that first developed within domestic legal systems and subsequently entered the international sphere. The richness and prestige of the rule of law in domestic law—as one of the foundations of democracy—embody the notion of restricting and restraining the arbitrary power of the state while safeguarding citizens' fundamental rights and freedoms. In the international sphere, however, the rule of law has emerged as a concept distinct from its domestic counterpart, serving as an instrument to preserve international peace and security, promote and elevate human rights, and ensure that decision-making bodies comply with accepted norms. Accordingly, this study employs a library-based method and a descriptive-analytical approach to investigate the "aspects and consequences of the rule of law in Iran compared to International Law." Within this framework, it was found that, given the structure and realities governing the international community, the concept of the rule of law is applied differently in the international arena than in domestic law. One of the most significant findings is that the rule of law in international law is inseparably linked to human rights and international peace and security. International support for human rights, the establishment of institutions such as the United Nations Security Council to monitor international peace and security, the creation of international trade institutions, and efforts to combat impunity through the establishment of international criminal tribunals all reflect the implementation of the principle of the rule of law in international law. Nevertheless, fundamental differences exist between the principle of the rule of law in international law and in domestic law, including differences in structure, enforcement mechanisms, legal subjects, and the implementation of laws.

Keywords: Rule of Law, International Law, Domestic Law, Differences

Received: 11 June 2025
Revised: 25 September 2025
Accepted: 04 October 2025
Initial Publish: 06 October 2025
Final Publish: 06 December 2025

Citation: Mortazavi, A., Shakibi, Z., & Zamani, G. (2025). Comparative Aspects of the Rule of Law in Iran and International Law. *Legal Studies in Digital Age,* 4(4), 1-12.

1. Introduction

The "rule of law," as a peremptory norm, is regarded as one of the most significant principles recognized and accepted in the constitutions of all countries worldwide. The essence of this principle is the supremacy of existing laws within a country, which consequently ensures that all individuals are equal before the law. Four fundamental outcomes are exclusively derived from this principle: the equality of citizens before the rule of law, the rule of law over crimes, the rule of law in the detection of crimes and in the processes of their prosecution and investigation, and the presumption of innocence for all citizens. The rule of law is one of the issues of modern constitutional law, according to which all authorities and political institutions are bound by legal rules and regulations, and have no right to restrict the rights and fundamental freedoms of citizens except within the framework of the specific and complex procedures stipulated in the law (Hashemi, 2013; Tabataba'i Mo'tameni, 2018).

The rule of law is a concept that, in most sources, has not yet been given a precise definition; rather, efforts have been made merely to explain its elements and characteristics. The principle of the rule of law can refer both to formal and procedural conditions as well as to the substance of laws, policies, and strategies (Altman, 1999; Dicey. Albert, 1972). Therefore, the rule of law is the outcome of democracy, meaning that the governance of society is manifested through the regulations reflecting the majority's viewpoint. The rule of law is one of the concepts profoundly influenced by the ideology governing the political system. According to this principle, all political authorities and institutions—including the parliament, which itself enacts the law—must be subject to legal rules, especially fundamental rights rules, and none of them have the right to restrict fundamental rights and freedoms except within the framework of special and complex procedures stipulated in the laws (Hashemi, 2011; Tabataba'i Mo'tameni, 2008).

Safeguarding individual rights and freedoms and ensuring judicial independence depend on observing the rule of law. The realization of the elements and components of the rule of law in a society guarantees fundamental rights, including individual, political, and legal freedoms. In general, the establishment of democracy, as a cornerstone of democratic governance, is contingent upon the establishment of the rule of law, which becomes the firm framework ensuring the survival of a state and a nation. Thus, the existence of the rule of law is of exceptional importance in societies and states. Essentially, sovereignty belongs to the people, and its exercise through recourse to law is among the most self-evident mechanisms of democracy. Laws enacted by their representatives embody the people's inherent rights, and the enforcement of those enacted regulations—together with guaranteeing their continuity—is entrusted conditionally to public officials within the framework of the law, coupled with their duty to remain accountable to the people. The right to protest against any violation or disregard of the law always belongs to the people. The outcome of exercising this right and enforcing the rule of law is the establishment of social, political, economic, and cultural justice (Mousavi, 2018; Neumann, 2018).

In fact, the rule of law defines the duties of governments toward nations, obliging them to ensure justice and guarantee the realization of freedoms and prescribed rights for citizens. This also leads to continuous public oversight through direct and indirect elections. The rule of law brings about the authority of the system, the establishment of individual and social security, the limitation of officials' power, their obligation to be accountable for their actions, and respect for public opinion. In reality, the rule of law obliges the state to act according to law in adopting any decision or measure. The result of this is the institutionalization of the principle of protecting the security, rights, and freedoms of the people and the state's duty to ensure their realization. Under such conditions, the abuse of power, arbitrary violation of law, and subjective and individualistic interpretations would not occur.

Since maintaining international peace and security, settling disputes based on justice and international law, and promoting and respecting human rights are among the primary missions of the United Nations, there is no doubt that the establishment and enhancement of the rule of law in the international arena are of paramount importance (Bassiouni, 2001; Boed, 2001). In this regard, the member states of the United Nations General Assembly recognized the need for global adherence to and implementation of the rule of law at the national and international levels in the 2005 World Summit Outcome Document and reaffirmed their commitment to an international order based on the rule of law and International Law, which is essential for the coexistence and cooperation of states.

The United Nations General Assembly has placed the issue of the rule of law on its agenda since 1992 and has adopted at least three resolutions on this matter since 2006. The United Nations Security Council has also emphasized the importance of

the rule of law, especially during armed conflicts, in its Resolutions 1325, 1612, 1674, and 1820. Finally, the International Law Commission affirmed the obligation to respect the international rule of law in Article 14 of the 1949 Declaration on the Rights and Duties of States, stating that every state is obligated to conduct its relations with other states in accordance with international law and to recognize that the sovereignty of each state is subject to international law (Aqaei & Maghsoudlou, 2011; Naghibi Mofrad, 2016).

The Constitution of the Islamic Republic of Iran, in its preamble, explicitly declares that the government is not derived from class domination or Western or group-based hegemony. This Constitution, which is the covenant between the nation and the government and the result of the martyrs' sacrifices, explicitly recognizes the principle of entrusting the people with determining their own destiny. It emphasizes the necessity of enabling public participation in all political decision-making processes that shape the destiny of society. These matters are clearly emphasized in the preamble, in section (c) of Article 1, in Article 3 (paragraphs 1–9), Article 6, and Articles 19–62 of the Constitution, and the government is obliged to implement them (Amid Zanjani, 2008; Hashemi, 2011).

Unfortunately, despite having this covenant between the nation and the government—as well as international obligations and, fundamentally, the religious duty and ethical obligation of trusteeship entrusted to the government—some mismanagement, inefficiencies, and negligence have created conditions that have led to both visible and hidden dissatisfaction within parts of society. These include: the improper implementation of laws, the lack of oversight in enforcing laws, the absence of appropriate measures against law-evading elites, the prioritization of personal relations over legal criteria, the disregard for respecting the law by some managers, the violation of electoral promises, the failure to create conditions for peaceful protest and expression of demands, reactive rather than proactive approaches to addressing public grievances, and punitive actions against individuals who have used public platforms to demand reforms—all of which have contributed to public discontent (Najafi Tavana, 2020; Nobahar, 2013).

The people of Iran have demonstrated that they will never be influenced by the tricks of foreign powers and have learned from experience that imperialist powers, whether from the East or the West, have always attempted to exploit the nation's interests and undermine its independence and territorial integrity whenever possible. The rule of law is one of the important concepts of public law that has deep historical roots and, in recent decades, has gained increasing attention in legal, political, and even social circles. Although this term has its specific meaning in legal literature, due to its frequent use in political and social discourse and the media, it has also acquired a kind of moral and social value (Carother, 2006; Neumann, 1994).

Naturally, the use of common words and concepts across different sciences, disciplines, and languages can lead to differing interpretations and expanded meanings. In fact, the rule of law is one of the fundamental political and legal principles that humankind has long sought to achieve. Since ancient Greece, discussions have been held—and continue to be held—about the meanings, values, and characteristics of this principle. Sometimes it has been interpreted as equality before the law, sometimes as government by law as opposed to dictatorial, absolutist, and monarchical regimes, and sometimes as the generality, continuity, and clarity of laws. However, the common thread among all these interpretations is that arbitrary and despotic use of power in governmental decision-making is unacceptable. Accordingly, rulers and politicians are recognized as custodians and servants of the law, and they are themselves subject to it; the legitimacy of their rule depends on the extent to which they adhere to legal, impersonal, and rational standards (Montesquieu, 1970; Thompson, 1975).

Therefore, this article examines the subject exclusively from a legal perspective, irrespective of its broader or expanded meanings. Even within this legal perspective, there exists a diversity of opinions and views, which is why different criteria have been proposed to define the concept and conditions of the rule of law. Moreover, given that the scope of discussion is the legal system of Iran, the various views and doctrines from other legal systems will not be considered here. Considering the exalted position of the sovereignty of Sharia and the effective presence of Islam in all the pillars and dimensions of Iran's legal system—and the emphasis of the Constitution on the rule of law in all executive, legislative, and judicial affairs—examining the relationship between the rule of law and the sovereignty of Sharia has always been a significant issue in the legal system of the Islamic Republic of Iran.

The importance of this issue is heightened in the judiciary, as the origin and foundation of laws, the organization and structure of the judiciary, the duties of judges, and, in short, the legal system are rooted in Islamic rules and principles. Without

adherence to the rule of law, chaos and disorder would prevail in handling grievances, restoring public rights, and promoting justice and legitimate freedoms (Hashemi Shahroudi, 2008; Javadi Amoli, 1988).

The World Justice Project Rule of Law Index monitors and evaluates the "rule of law" worldwide. All the data on its website are available in downloadable PDF files, and it also works to educate and promote concepts related to the rule of law. This index is now the world's primary source for independent data on the rule of law. It covers 128 countries and jurisdictions and relies on national surveys of over 13,000 households and 4,000 legal experts and practitioners to measure how the rule of law is experienced and perceived globally.

In this index, Denmark, Norway, and Finland ranked highest in 2020, while Democratic Republic of the Congo, Cambodia, and Venezuela scored the lowest overall rule of law ratings, which have remained unchanged since 2019. According to this ranking, the Islamic Republic of Iran ranks 109th out of the 128 countries evaluated and 7th out of 8 countries in the Middle East and North Africa region. This project uses civil institutions and both natural and legal persons to assess the rule of law in countries based on 8 main factors and a total of 44 sub-factors (Pistor, 1999; Yousefi Jouybari & Khorshidi, 2018).

2. The Transfer of the Rule of Law from Domestic Law to the International Arena

With respect to the transfer of the rule of law to the international arena, attention to the following assumptions is of particular importance:

a) The concept of the state–nation (nation-state) is essentially a legal concept and a creation of international law. The conditions for the emergence of a state–nation in the international arena are determined by the rules of international law. International law delineates the scope of government and the jurisdiction of states. In fact, international law not only limits the governance and will of states but actually governs the will and conduct of states. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018)

b) According to ethical philosophy, the state is not an end in itself but a means to secure human interests; the same holds true in the international arena. The ultimate aim of the international rule of law is to secure the interests of human beings, and states are merely agents who realize this aim. The purpose of international law is human welfare rather than the freedom of states. The allocation of a substantial portion of international legal rules to human-rights standards—many of which are peremptory and erga omnes—attests to this claim. (Montesquieu, 1970; Neumann, 1994)

c) Accountability and responsibility before the law are among the principal hallmarks of the rule of law. One can speak of the establishment of the rule of law only where there is adherence to it; otherwise, the mere existence of law does not mean it is established, nor that it rules. In the international arena, states' commitment to observe international legal rules and their responsibility in relation thereto are among the consequences of establishing the international rule of law. (Altman, 1999; Carother, 2006)

d) Transferring the concept of the rule of law to the international arena faces certain obstacles due to structural differences between the international and domestic systems. The international system is a horizontal order based on the governance of states, and there is no executive authority above states that can coercively compel them to honor their commitments. Enforcement mechanisms in international law are far more limited than in domestic law, and in most cases states perform their international obligations voluntarily. Moreover, given the state-centric basis of international law, practical politics plays a major role in this system and, in many instances, states' political interests lead to breaches of their international commitments. In addition, in the international system, the default is consensual jurisdiction for international judicial bodies; save in exceptional circumstances, international courts lack compulsory jurisdiction to adjudicate disputes among subjects of international law and to guarantee compliance with international rules. (Aqaei & Maghsoudlou, 2011; Bassiouni, 2001; Boed, 2001)

3. Differences in Positive Law between Domestic and International Orders

In the international sphere, some scholars defend a narrow concept of the rule of law and construe it as "government by law" rather than by individuals. (Pistor, 1999; Tomanoha, 2004)

Government by law—not by persons—at the international level means that subjects of international law, especially states, must obey the law; states must regard the law as governing them and allow it to direct and limit their actions. At a minimum, the rule of law requires that certain fundamental legal matters in a society be systematized; matters that, without doubt, the international community possesses. (Dicey. Albert, 1972; Tomanoha, 2004)

In international law, "law" does not exist in the same sense as domestic law—namely, as norms permanently enacted by an organ of competent state authorities. Nevertheless, international positive law has formal sources—those outward elements by which legal rules are created, proclaimed, or confirmed and rendered binding. Today, the principal sources of international law are reflected in Article 38 of the Statute of the International Court of Justice. Even though the Article does not label them "sources," it can be understood as indicating the rules upon which the Court bases the settlement of disputes submitted to it. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018)

4. Certainty, Predictability, and Stability in Domestic Law versus International Law

The rule of law requires that legality achieve a degree of development sufficient to ensure certainty, predictability, and stability. However, there is a fundamental distinction between domestic and international legal systems that justifies some adjustment in the level of certainty that is realistically attainable in international law. There is no centralized legislature in international law, nor is there a law-making process in the ordinary domestic sense; the process is essentially decentralized, and because international conferences or meetings within international organizations generate quasi-legislative texts, the law emerges through negotiation and agreement—a process not always conducive to legal certainty and clarity. (Bassiouni, 2001; Krygier, 2001; Pistor, 1999)

5. Restricting Arbitrary Power

Restricting arbitrary power means limiting the unchecked power of individuals who hold authority within society. When this matter is raised at the international level, it pertains to *external sovereignty*. External sovereignty was defined by Judge Max Huber in the Island of Palmas Case as:

"Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state."

In the international legal system, external sovereignty means that states possess absolute and unlimited power vis-à-vis the outside world. However, this sovereignty is constrained by the international rule of law. Judge Dionisio Anzilotti, in his separate opinion in the Austro-German Customs Union Case, explained that no authority exists above states except International Law itself. Thus, the governmental independence of states—which seemingly grants them unlimited power—must be balanced through the international rule of law (Boed, 2001; Naghibi Mofrad, 2016).

Arthur Watts also affirms that when states violate or disregard the law, the rule of law obliges them to conduct their international relations essentially within a legal framework. Arbitrary and irresponsible conduct with respect to international regulations is incompatible with the international rule of law. Indeed, a vast body of international legal rules has emerged across various branches of international law that restrict or eliminate the arbitrary exercise of power by states in their relations with one another. Notable examples include the rules of international human rights law and International humanitarian law, as well as the laws of armed conflict. For instance, although states have the right to wage war, they face significant restrictions on the methods and means of warfare (Bassiouni, 2001; Mirmohammad Sadeghi, 2013).

6. Positive Law in Domestic Law and Treaties in International Law

In domestic legal systems, the most important source of codified legal rules is *statutory law*, while its counterpart in international law is *treaties*. Treaties, which constitute codified legal rules at the international level, are listed in Article 38(1) of the Statute of the International Court of Justice as one of the three main sources of international law, alongside customary international law, which is the primary source of unwritten rules (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018).

The mechanism for the formulation of codified legal rules (treaties) at the international level is set out in the Vienna Convention on the Law of Treaties (1969), which explains all fundamental aspects of the conclusion and formation of international treaties, including their adoption, ratification, reservations, interpretation, validity, termination, and more.

Regarding the publication of international rules, transparency has been recognized as a principle of the international system since 1945 with the adoption of the Charter of the United Nations. Under Article 102 of the Charter, only treaties registered with the Secretariat may be invoked before the organs of the United Nations. This essential requirement also appears in Article 80(1) of the Vienna Convention on the Law of Treaties (1969). Moreover, with the advent of mass communication technologies such as the internet, access to these documents has become much easier.

According to Thomas M. Franck, adherence to formal procedures in the enactment of legal norms is one of the key factors underpinning the legitimacy of international rules. Therefore, signing, exchanging the constitutive documents of a treaty, ratification, accession, exchanging or depositing instruments of ratification or accession, the lapse of a specified period after the deposit of such instruments, and ultimately the registration and publication of the treaty are among the necessary conditions for the legitimacy and enforceability of international instruments (Bassiouni, 2001; Carother, 2006).

7. States as Subjects of International Law and Citizens as Subjects of Domestic Law

In 1945, the principle of the sovereign equality of states was codified in Article 2(1) of the Charter of the United Nations as one of its seven foundational principles. According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970), sovereign equality is considered one of the fundamental principles of International Law. This declaration affirms that all states enjoy sovereign equality and, despite their economic, social, and political differences, possess equal rights and duties and are equal members of the international community.

In this regard, Arthur Watts explains that all states subject to a particular international legal rule must be treated equally in its application. In other words, there must be uniformity in the application of international law, and no discrimination should exist among states in observing legal rules applicable to them (Krygier, 2001; Pistor, 1999).

However, in practice, there are instances in the international arena where states do not enjoy the same status vis-à-vis international legal rules. For example, in 2003 the United States of America, in violation of the prohibition on the use of force, unlawfully invaded and militarily occupied Iraq without being seriously held accountable by international bodies. Similarly, in domestic systems—especially in non-democratic societies—citizens are not practically equal before the law, as factors such as power, wealth, and social status often grant some individuals privileges over others.

Nevertheless, from a theoretical perspective, under international law all states are legally equal and are equal before the law. Another dimension of sovereign equality is that states are not only equal in applying international rules but also in participating in the formation of those rules. Article 6 of the Vienna Convention on the Law of Treaties (1969) stipulates that every state possesses the capacity to conclude treaties. Under customary international law, a similar status exists based on the principle of sovereign equality: the practice of states (as the material element of custom) and their legal conviction (as the psychological element) are both essential in the formation of customary international law.

This equal role in shaping international rules reinforces the assertion that equality before the law also applies in the international arena. The International Court of Justice held in the North Sea Continental Shelf Cases (1969) that general international rules, by their very nature, must be applied equally to all members of the international community.

Moreover, coherence is considered one of the elements of the legitimacy of legal rules, meaning the consistent and precise application of rules to their subjects. According to Ronald Dworkin, coherence is an essential element of compliance with a rule: a rule is coherent if it is applied uniformly in similar cases and is principled in its relationship to other rules within the same system. Therefore, the equal application of international rules to the subjects of international law also enhances the legitimacy of those rules (Farajiha, 2017; Neumann, 2018).

8. Differences in the Enforcement (Sanctions) of Violations of the Rule of Law in the Iranian Judicial System and in International Law

From the perspective of international law, states' duties to observe human rights principles arise from contractual obligations, peremptory norms (jus cogens), and custom. Numerous international instruments expressly articulate states' human-rights responsibilities and the enforcement mechanisms attached to those duties. The main sensitivity is to violations of fundamental human rights; payment of compensation and securing satisfaction for the injured party are among the most important remedies under human-rights rules (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). In Islamic jurisprudence, one can likewise recognize the possibility of attributing criminal or quasi-criminal responsibility to the state as a public legal person: where a state accepts international human-rights commitments, the pacta sunt servanda principle binds it to implement human-rights standards; the breach of human-rights norms entails state responsibility and an obligation to compensate the victim's loss (Mirmohammad Sadeghi, 2013; Mohammadikang Sofla, 2015).

Unlike domestic law—where the *individual offender* is the immediate addressee of penal sanctions—international-law enforcement is of a *public* character and is imputed to the *collective entity*. For example, acts contrary to international law by a state's foreign minister or by the secretary-general of an international organization give rise to responsibility for the state or the organization rather than the individual officeholder. Moreover, whereas domestic enforcement typically appears in the form of criminal statutes, international enforcement—save in exceptional situations and under special treaties—often consists of measures undertaken by the injured party to vindicate its rights. The reason is the absence of any supranational judicial or executive power above states; accordingly, states themselves, acting as the organs that judge conduct, determine one another's lawful or unlawful behavior and, if a right is violated, may take necessary steps to secure reparation and preserve their rights (Bassiouni, 2001; Boed, 2001; Carother, 2006).

The international community is uniquely situated in lacking integrated legislative, executive, and judicial organs. This institutional deficit and the limited availability of compulsory legal procedures have historically hampered international law's ability to keep pace with global change—an oft-cited weakness of the system (Krygier, 2001; Pistor, 1999). On this basis, the nineteenth-century claim by some philosophers that international law was not "law" owed much to the absence of a legislature; although that objection carries less force today, contemporary skeptics still point to gaps in *enforcement*, such as the scarcity of binding, compulsory adjudication and the lack of a centralized executive capable of implementing judgments (Pistor, 1999; Tomanoha, 2004).

By contrast, Iran's domestic system provides explicit statutory guarantees for the rule of law in adjudication. Article 597 of the Islamic Penal Code (Ta'zirat), enacted in 1996, stipulates that any judicial official who refuses to accept a complaint or petition for redress—despite legal competence and duty—or who delays judgment contrary to law, or acts contrary to the explicit law, shall, for the first offense, be sentenced to six months to one year of dismissal from judicial office; in case of repetition, removal from the judiciary; and in all cases, liability for damages suffered by the complainant. This provision operates as an enforcement guarantee for Article 167 of the Constitution and, more broadly, for the application of the rule of law in adjudication: the judge is *obliged* to hear cases; statutory silence does not lift that obligation. In the first instance the judgment must rest on statutory provisions; failing that, Article 167 mandates recourse to recognized Islamic sources. Scholars have cautioned that reference by *non-mujtahid* judges to complex sources to derive criminal rulings may create difficulties; consequently, judges must possess sufficient mastery of such sources and fatwas (Hashemi Shahroudi, 2008; Hashemi, 2013; Tahmasbi, 2017).

Article 597 effectively criminalizes three omissions by judicial officers: refusal to hear a case, unlawful delay in issuing a judgment, and adjudicating contrary to explicit law—classic instances of *offenses by omission*, where the judicial officer fails to perform a legal duty and thus abstains from applying the rule of law. A criminal judge, under this Article, may not invoke statutory silence as a pretext to reject complaints or abstain from hearing a case. The legislative philosophy here refutes views denying the application of Article 167 to criminal matters and, by repeatedly emphasizing the word "law," commands legalism and faithful execution of the law by judicial officers (Ardebili, 2013; Hashemi, 2011; Tahmasbi, 2017).

These offenses presuppose that the matter falls within the official's jurisdiction; "excuse" refers only to *lawful* excuse. Thus, if the judge is legally excused and the excuse is accepted by the legislator, no crime occurs. Because we are addressing conduct

that violates the rule of law, proof of the constituent elements of the offense—including the mental element (general intent)—is required: the phrase "contrary to the explicit law" captures the case where the judge deliberately violates procedural rules or intentionally renders a decision contrary to explicit statute. Conversely, unlawful conduct stemming from ignorance or mistake constitutes a *disciplinary* breach rather than a crime (Hashemi, 2013; Tahmasbi, 2017).

Civil-liability guarantees for violations of the rule of law in adjudication are set out in Article 171 of the Constitution: where, owing to a judge's *fault* or *error* in fact, law, or the application of law to a particular case, material or moral damage is inflicted upon a person, the wrongdoer (if at fault) is personally liable under Islamic criteria; otherwise, the state compensates the damage, and in any event the accused is to be rehabilitated. Article 58 of the Islamic Penal Code reiterates this rule: material loss caused by a judge's fault or error is compensated personally in case of fault, otherwise by the state; and if the error results in an affront to dignity, rehabilitation must ensue. Thus, material or moral harm must be remedied in all events—whether the case involves intent or mere error. Where the material loss stems from *faultless error* (قصور), compensation is paid from the public treasury as a protective measure for the judiciary and its stature (Amid Zanjani, 2008; Hashemi, 2011).

Debate persists over the theoretical basis of such liability. Some commentators read these provisions as adopting "fault" or "risk" theories; others, noting the distinct legal meanings of *error* and *fault*, argue that Article 58 speaks in terms of *civil* fault and addresses *civil* liability only. Read by the plain-meaning canon, however, the text supports a *dual* regime: where there is fault and intent, penal consequences for the judge may follow under Article 58; where there is error or non-culpable shortcoming that nonetheless causes loss, the state compensates under Article 171. In both scenarios, the deeper foundation is an objective theory of liability anchored in the *no-harm* principle (lā ḍarar wa lā ḍirār): any proven loss must be repaired regardless of the actor's culpability. Hence even harm caused without intent may still ground liability and reparation (Alem, 2016; Ardebili, 2013; Mirmohammad Sadeghi, 1998).

A practical question arises: if a judge's *non-culpable error* causes harm, why should the public treasury bear the loss rather than the individual judge? The answer is that, as a matter of institutional policy, the state undertakes compensation in cases of non-culpable error to protect judicial independence and to sustain confidence in the administration of justice; by contrast, where *fault* is established in the competent disciplinary forum, the injured party may pursue recovery personally against the judge in the court of the judge's domicile. In all instances, the architecture of Iranian law thus couples *penal* and *civil* guarantees to secure the rule of law in adjudication, while international law—lacking centralized legislative, executive, and compulsory judicial organs—relies more heavily on state responsibility, reparations, and decentralized enforcement measures to respond to violations (Carother, 2006; Hashemi, 2011; Tahmasbi, 2017).

9. Structural Differences in the Rule of Law between Domestic Law and International Law

Since the domestic and international systems have structural differences, any articulation of the rule of law in the international arena must account for those differences and be adjusted to fit the structure and realities governing that arena. In general, the transposition of a concept to the international sphere is a process whereby a concept or institution that exists in a domestic system is introduced internationally, provided it accords with the nature, structure, and realities of that sphere. Regarding the rule of law, the aim is that, in light of the distinctive features and conditions of the international system, the essential structures of the concept be transferred to the international level.

In transferring the rule of law to the international arena, the following assumptions are particularly important:

a. The nation–state is essentially a legal concept generated by international law. The conditions for the emergence of a nation–state in the international arena are determined by the rules of international law. International law delineates the scope of governance and the jurisdiction of states. In fact, international law not only restricts the governance and will of states but also governs their will and conduct. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018)

b. In moral philosophy, the state is not an end but a means to secure human interests; the same holds true at the international level. The ultimate goal of the international rule of law is to secure the interests of human beings, and states are merely agents to realize that goal. The telos of international law is the welfare and well-being of humankind, not the unfettered freedom of states. The extensive allocation of international legal rules to human-rights standards—many of which constitute peremptory norms and obligations erga omnes—confirms this claim. (Neumann, 1994, 2018)

c. Accountability and responsibility before the law are core features of the rule of law. In explaining accountability and the supremacy of law, a common distinction is drawn between the *rule of law* and *rule by law*. In the latter, law is merely an instrument for the state to pursue its aims; law exists, but those in power stand above it. By contrast, the rule of law requires that everyone—including state officials—be answerable under the law. Accountability means that both officials and citizens are responsible for their conduct and are sanctioned when they violate legal norms. How is accountability implemented in practice? Two kinds of mechanisms exist: (1) **horizontal accountability**, which consists of legal and judicial institutions before which public actors and citizens must answer for their acts—institutions that check and balance the actions of state officials and sanction unlawful conduct; and (2) **vertical accountability**, which concerns the role of citizens—through media, civil society, advocacy, oversight, and reporting—in holding officials to account, especially when horizontal controls falter. Vertical accountability can be termed "soft," because citizens lack formal sanctioning power, yet it yields significant political consequences (e.g., electoral outcomes) and can reinforce horizontal controls via advocacy. In dictatorships, neither horizontal nor vertical accountability meaningfully exists. Ultimately, one can speak of the establishment of the rule of law only where there is fidelity to it; otherwise, the mere existence of law does not mean it is established or rules. At the international level, states' commitment to observe international legal rules—and their responsibility in relation thereto—is one of the consequences of establishing the international rule of law. (Carother, 2006; Krygier, 2001)

d. Transferring the concept of the rule of law to the international arena encounters obstacles arising from structural differences between the international and domestic systems. The international order is horizontal, grounded in the governance of states; there is no executive authority above states with coercive power to compel performance of obligations. Enforcement mechanisms are far more limited than in domestic law, and, in most cases, states comply with international obligations voluntarily. Moreover, because international law is state-centric, practical politics plays a major role, and states' political interests often lead to violations of their international commitments. In addition, the default in the international system is consensual jurisdiction for international courts and tribunals; except in limited cases, they lack compulsory jurisdiction to adjudicate disputes among subjects of international law and to guarantee compliance with international rules. Taking these premises into account, several points are necessary for transferring the rule of law internationally. Unlike domestic law—where "law" is permanently enacted by a competent state organ—international law lacks a centralized legislator. Nevertheless, positive international law possesses *formal sources*—the outward elements by which legal rules are created, declared, or confirmed and rendered binding. Today, the principal sources of international law are set out in Article 38 of the Statute of the International Court of Justice, which indicates the rules the Court applies to decide disputes submitted to it. Accordingly, in international law, the "rule of law" is best understood as the rule of *international rules*—including treaties, custom, peremptory norms, and the general principles of law recognized by civilized nations. Few serious observers now doubt that there exists, at the international level, a body of rules with the characteristics and pedigree of "law"; international law is a genuine legal system capable of bringing international situations under juridical order. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018; Pistor, 1999; Tomanoha, 2004)

10. Equality of Citizens before Domestic Law and Equality of States before International Law

Article 7 of the Universal Declaration of Human Rights declares that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." In the Constitution of the Islamic Republic of Iran, Article 19 provides: "The people of Iran, regardless of ethnic group or tribe, enjoy equal rights; and color, race, language, and the like shall not be grounds for privilege." This principle affirms the equality of everyone before the law. Consequently, racism and ethnic or tribal supremacy, in any form, are invalid, and no one may claim superiority over others when facing the law. Equality before the law is emphasized across the Constitution—including Articles 19 and 20—so that treatment of individuals must not be based on rank, position, ethnicity, language, or skin color; all must be equal before the law. (Hashemi, 2011, 2013)

Implementing equality before the law is another facet of the rule of law. One aspect of equality concerns *generality*: some scholars contend that, because international law was born in Europe, it inevitably reflects Western interests and ideology; yet this view does not, in itself, negate the *universality* of international law or call into question the uniform application of international legality to all members of the international community. Another aspect is that *all legal subjects are equal before*

the law. In 1945, the sovereign equality of states was codified as one of the seven foundational principles of the United Nations in Article 2(1) of the Charter. The 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States affirms sovereign equality as a fundamental principle of international law, providing that all states—despite economic, social, and political differences—have equal rights and duties and are equal members of the international community. From the legal standpoint, all members are equal before the law. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018)

As explains, all states subject to a particular international legal rule must be treated equally in its application; international law should be applied uniformly, without discrimination among states bound by a given rule. (Krygier, 2001; Pistor, 1999)

Nonetheless, in practice there are instances where states do not enjoy the same treatment under international legal rules. For example, in 2003 the United States of America, in violation of the prohibition on the use of force, unlawfully invaded and militarily occupied Iraq without being seriously called to account by international bodies. Likewise, in domestic systems—especially non-democratic ones—citizens are not in practice equal before the law, as power, wealth, and social status can afford some individuals advantages over others. Even so, *theoretically*, international law regards all states as legally equal and equal before the law. Another dimension of sovereign equality is that states are equal not only in the application of international rules but also in *participating in their formation*: Article 6 of the 1969 Vienna Convention on the Law of Treaties provides that every state has the capacity to conclude treaties; under customary international law, both state practice (the material element) and opinio juris (the psychological element) are necessary to form custom—an equality of role that further supports equality before the law in the international sphere. The International Court of Justice, in the 1969 *North Sea Continental Shelf* cases, emphasized that general international rules, by their very nature, must be applied equally to all members of the international community. (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018)

11. Conclusion

One of the fundamental principles in criminal law is the principle of the rule of law. Crimes, punishments, and their modalities must be predetermined under this principle. Various legal systems have enshrined this principle either within their criminal codes, their constitutions, or—as in the case of Iran—in both. Islamic law endorses this principle through the doctrine of *Qabḥ al-ʿiqāb bilā bayān* (the prohibition of punishment without prior legal notice). The principle appeared in its general and determinative form in Europe during the French Revolution, and internationally it is reflected in Articles 7 and 8 of the Declaration of the Rights of Man and of the Citizen (1789) and Articles 10 and 51 of the Universal Declaration of Human Rights (1948). In Iranian law, it is explicitly articulated in Article 36 of the Constitution of the Islamic Republic of Iran and Article 2 of the Islamic Penal Code of Iran (2013), which states that any act or omission punishable by law constitutes a crime.

The rule of law is a relative doctrine that applies to all societies. Its strength or weakness depends on an interlocking set of factors that either bolster or undermine legal enforcement. A legal system comprises regulations, bylaws, and norms whose enforcement sustains social order and ensures social justice. The greater the public's adherence to law, the easier it becomes to consolidate the rule of law and its functions. Law-abidingness entails the conscious, voluntary, and deliberate compliance of the vast majority of the population with existing laws and regulations. The rule of law, at both national and international levels, is a prerequisite for achieving inclusive development. It rests on values and principles such as equality and non-discrimination, participation, empowerment and freedom of expression, transparency, trust, and corruption reduction through openness and collaboration—all essential for inclusive development. The existence of the rule of law is undeniably a marker of a developed society; however, for developing countries, the pressing question is whether the realization of the rule of law can act as a catalyst for inclusive growth and development.

The findings of this study indicate that, above all, the rule of law creates legal order, which is a key element of social order and political development. Its most important purpose and outcome is to frame and limit political power. By fostering adherence to justice in adjudication and the protection of citizens' rights and liberties, the rule of law provides a secure and predictable sphere for individuals to plan their lives and rely on others' compliance with obligations. If laws are framed or applied discriminatorily, the entire domain of rights and freedoms is undermined.

While international law lacks a centralized administrative and institutional structure comparable to that of domestic systems, state conduct is nonetheless constrained by the principles of International law and International human rights law. In domestic

systems, adherence to legislation produces the rule of law; in international law, adherence to international legal principles and treaty norms by states and international organizations constitutes the rule of law. Member states of the United Nations United Nations General Assembly, in the outcome document of the 2005 World Summit (Resolution 60/1), recognized the need for global observance and implementation of the rule of law at national and international levels and affirmed their commitment to an international order based on the rule of law as essential for peaceful coexistence and cooperation among states. Since 1999, the General Assembly has placed the rule of law on its agenda, and since 2006 it has adopted at least three resolutions on the subject. The United Nations Security Council has also underscored the importance of the rule of law—both domestically and internationally—in Resolutions 1325, 1674, 1612, and 1820.

States have thus moved beyond notions of absolute sovereignty to a stage where they must implement rules and principles—including those on International human rights law—that they themselves may not have fully participated in formulating. Human rights function as a shared goal that harmonizes the competing interests of states in international life, shifting the focus from individual national interests to collective ones. The international human rights regime, as a global public good, has led states to set aside some national interests in favor of peaceful coexistence despite conflicting aims. Consequently, instead of absolute sovereignty and despotism, the principles and norms of international law and human rights now prevail over the international community.

Particularly in the past half-century, human rights have curtailed unrestrained national sovereignty and rallied states around themselves as a universal value and common good, thereby structuring the international order. This supremacy has emerged through state consent. Although the lack of full coherence and stability in international law and human rights can affect the establishment of the rule of law, human rights possess the capacity to meet this challenge. Some human rights norms have attained the status of peremptory norms (*jus cogens*) in international law and are rooted in customary law. Their elevated standing—shaping domestic and international state policies—derives from their intrinsic importance and has imposed non-derogable obligations on states, which now place human rights at the forefront of their practice.

In other words, human rights today hold an objective status in international law and can no longer be regarded as purely internal matters of state jurisdiction. States have themselves created human rights norms that now constrain their behavior, and compliance with these norms is enforced by international judicial bodies and domestic and international public opinion—this is the embodiment of the rule of law.

Therefore, when we speak of the rule of law in international law, we refer to the *rule of international norms*—including treaties, custom, peremptory norms, and the general principles of law recognized by civilized nations. This stands in marked contrast to domestic law, and this article has examined their comparative aspects accordingly.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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