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# ***Preliminary Positioning of Canada's Rule of Law Lawyer's Pledge Initiative as a Potential Component Part of a Global Coalition in Support of the Rule of Law***



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# **Underlying concept: the need for “sustainable governance”**

Sustainable governance starts from the proposition that the best likelihood of addressing the complex, fast evolving, multi-jurisdictional environmental, social and economic challenges we face in the 21<sup>st</sup> century will involve ***harnessing the unique energies and capabilities of all three of government, the private sector and civil society***, using a combination of rule instruments, processes, institutions and actors, sometimes operating collaboratively, and sometimes operating in more of a “check and balance”/rivalrous manner.

Webb (2005), “*Sustainable Governance in the Twenty-First Century - Moving beyond Instrument Choice*”

# Sustainable governance taxonomy

- **Institutions** – specialized entities performing public-interest oriented functions or processes (public, private, civil society): for example, legislatures are a public sector institution, ISO is an example of a non-state rule-making institution)
- **Rule instruments** – articulations of normatively acceptable and unacceptable conduct, typically consisting of criteria for objectively assessing conformity or non-conformity: for example, laws are public sector rule instruments, and ISO standards are an example of non-state rule instruments
- **Processes** – inter-active activities associated with rule making, rule application, rule implementation and penalty/reward decisions. For example, environmental agencies carry out government rule implementation processes and certification agencies carry out non-state conformity assessment processes
- **Actors** – interacting individuals and entities that play some role in the broader governance ecosystem: e.g., inspectors, judges, auditors, are all individual actors

# Basic message

- discussion in this TMU CSR Institute session looks at the Canadian rule of law lawyer's pledge, as a component piece in a broader global rule of law coalition
- the pledge, and the global coalition idea are responses to an emerging rule of law "[polycrisis](#)"
- both domestically and globally we appear to be at a critical "[inflection point](#)"
- actions of Trump 2.0 administration are undermining basic understandings of the rule of law (ROL) and the international rules-based order (IRBO), with domino effects in other countries
- this is somewhat ironic in the sense that it is the United States that has played the lead role over the past 80 years in shaping understandings of the ROL & the IRBO
- the institutional "checks and balances" at both the domestic and international level (e.g., courts and rule-making bodies) seem to be breaking down in the face of a "flood the zone" barrage of seeming ROL/IRBO-violative actions by the Trump administration.
- ***Coordinated action by concerned actors at the domestic and global level stands the best chance of preserving the integrity of the ROL/IRBO***

# Supporting ideas

- **airline cockpit metaphor**—*the carefully calibrated & guarded flight controls have been taken over by a reckless gambler who seems to enjoy jerking the controls up and down, hearing the screams of the passengers*
- Rule of law and associated international rules-based order (ROL/IRBO) *are largely unacknowledged and underappreciated “load-bearing beams” for the proper functioning of society and economy*
- **Basic proposition:** global multi-sectoral coalition in support of ROL/IRBO brings together currently distributed actors for more coordinated actions, drawing parallels to the broad, diverse worldwide coalition against apartheid in South Africa
- **Disclaimer:** global coalition should not be seen as a panacea, but rather as an important “countervailing force,” working to prevent erosion of ROL/IRBO

# ***A global multi-sectoral coalition in support of the rule of law will require arms to stretch across aisles***

**As one civil society organization has put it:**

*“.....We do not agree on all matters and, in fact, at times have been or are adverse to each other in court or other professional settings. **Despite our differences, we all share a commitment to** the United States Constitution, **the rule of law,** and the role of the legal system in protecting the rights of all people and ensuring all of us can have our day in court.....”*

Democracy Forward's [Civil Service Strong Initiative](#)

# Working definition of “coalition”

A structured or semi-structured alliance of diverse actors—such as organizations, institutions, communities, and individuals—who voluntarily unite around a shared goal, coordinating efforts, resources, and strategies while retaining their individual identities and autonomy.

## **Key Features of a Global Coalition:**

**Common Purpose:** There is a unifying objective, often global in scope (e.g. climate action, human rights, technological standards).

**Voluntary Association:** Members choose to collaborate, often across sectors (NGOs, businesses, governments, civil society).

**Diversity:** Members may have different capacities, ideologies, and methods, but align on a central goal.

**Coordination Mechanisms:** May include communication channels, shared platforms, leadership committees, or working groups to align actions.

**Autonomy of Members:** Unlike a merger or unified entity, each member maintains its independence while contributing to the coalition.

# Preliminary research: many organizations have expressed support for rule of law

- preliminary research posted at [ResilientGovernance.Org](https://ResilientGovernance.Org) website
  - *many thanks to TMU researchers Fetros Hakkak and Zaker Khan*
- so far, we have found 6000\* organizations have expressed support for rule of law and condemned erosions for rule of law (preliminary research)
- largely law-based organizations have so far made the commitment
- non-U.S. organizations from Australia, Asia, Belgium, Canada, England, France, Germany, Ireland, Scotland, Spain
- also international organizations (e.g., International Bar Association, Amnesty International, Transparency International, International Commission of Jurists, Canada, Business for Social Responsibility)
- work is very preliminary: more signees anticipated
- your suggestions and additions welcome: kernaghan.webb@torontomu.ca



# Working definition: “rule of law”

- a foundational socio-political-legal concept articulating the idea that all societal “organs” (individuals, businesses, civil society and government actors) are accountable to laws that are publicly promulgated and implemented pursuant to an agreed-upon, fair and transparent process, that the laws are equally enforced, the laws are independently adjudicated (“due process”), and are consistent with internationally agreed upon international rules-based order.
- **Key Characteristics (Domestic and Global):**
- **Equality before the law:** No one is above the law, including state officials.
- **Legal predictability:** Laws must be clear, stable, and applied consistently.
- **Access to justice:** Individuals must have effective legal remedies and due process. Judicial independence:
- **Courts** must be impartial and free from political interference.
- **Checks and balances:** Government power is limited and regulated by law.
- **Domestic and Global Context:**
- **Domestic:** Ensures legitimacy of governance, limits authoritarianism, and protects civil liberties within states.
- **Global:** Refers to the application of international legal norms (e.g., respect for national and individual sovereignty/autonomy, human rights, accountability, treaty obligations) and the idea that states are bound by international law.

# Working definition: “International rules-based order”

- Refers to an international framework in which states and other actors are expected to conduct their affairs according to agreed-upon norms, rules, and institutions upheld in an effort to preserve global stability, cooperation, and peace.
- **Key rule instruments and principles**: Includes legal agreements (e.g. the UN Charter, ratified international treaties) informed by recognized principles such as respect for sovereignty, duty to uphold agreements voluntarily entered into.
- **Institutions and processes**: Operates through global and regional institutions (e.g. UN, WTO, ICJ, ICC, NATO, OECD, ASEAN, etc.) which carry out rule-making, rule-implementation and rule adjudication functions.

# Basic forward plan

- Inventory of organizations expressing commitment to ROL/IRBO (ongoing)
- Development of draft basic “common” ROL/IRBO statement (such as that associated with the Rule of Law Lawyer’s Pledge)
- Take temperature of appetite for more coordination of disparate actors (coalition)
- Identify possible multi-sector US and non-US actors to lead development and implementation of coalition
- Identify possible actions that coalition could undertake

# *Basic “rule of law”/IRBO statement might look something like this (to be developed)*

We, the undersigned, recognizing that respect for the rule of law and the international rule-based order (ROL & IRBO) are foundational to the operation of fair, efficient and prosperous societies and economies, at both the domestic and international levels, and that efforts to erode from the rule of law, through attacks, threats or otherwise directed at the judicial, legislative, and/or executive arms of government, and the actors, instruments, and institutions associated with their proper operation are unacceptable and must not be tolerated, and associated rule of law-related attacks and threats or otherwise (erosions of due process) on the citizens, businesses and civil society organizations of those jurisdictions, are also unacceptable and must not be tolerated. Recognizing this, we the undersigned are committed to ensuring the continued integrity of the ROL & IRBO and its aforementioned constituent components that are essential to its integrity, and will in this regard continue our efforts, individually and collaboratively, to uphold the rule of law and counter efforts that have the effect of undermining it.

# Comments welcome!

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