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THE RULE OF INTERNATIONAL LAW: HIERARCHY OR FUNCTIONALITY?

The paper deals with the “rule of law” concept in different connotations from both national and international level point of view. The author analyses the rule of international law as a rule of law in international matters and identifies the international legal categories that shape its content.

It is indicated that the concept of primacy of international law is based rather on the hierarchy, than the functionality of the rule of law in international relations. Functionality concept of the rule of law at the international level is to apply to the rule of law in relations between subjects of international law and reflects the principle of the rule of international law within the international legal order.

A particular attention is paid to the analysis of the Report on the Rule of Law adopted by the Venice Commission at its 86th plenary session (Venice,

March 25-26, 2011). It is defined that the key elements of the “international rule of law” are essentially similar to “national rule of law” and include, in particular: the legal order and stability, the equality of law, the human rights, and the dispute resolution by an independent tribunal. They are particularly important for international peace and security, transparency, good governance, justice and responsibility within the international system.

The author concludes that the rule of international law exists in contemporary international law in two dimensions: as a rule of international law in hierarchical terms (the primacy of international law) and the rule of law in international law in functional terms (the international legitimacy). Thus the rule of law in international law forms the content of the rule of international law per se.