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ENVIRONMENTAL RULE OF LAW IN LIGHT OF GLOBAL REPORTS ON THE ENVIRONMENTAL RULE OF LAW

Abstract

The concept of environmental rule of law is genetically placed in the context of broader rule-of-law principles. Similarly to the general concept of the rule of law, the environmental rule of law focuses on fair, clear and implementable environmental laws; public participation in decision-making; access to justice; access to information; accountability and integrity of institutions and decision-makers; clear and coordinated mandates and roles across and within institutions; accessible, fair and timely dispute resolution mechanisms; recognition of the mutually reinforcing relationship between human rights and environment. All of these elements of the environmental rule of law were in some way assessed in the First Global Report on Environmental Rule of Law (2019), (hereafter as the First Report) and in the second report – Environmental Rule of Law: Tracking Progress and Charting Future Directions (2023), (hereafter as the Second Report), which undoubtedly has contributed to the systemic approach to the environmental rule of law.

This paper discusses some systemic issues of the environmental rule of law in the light of these reports findings that give a global prospect on the implementation of the environmental rule of law. It follows from them that the environmental rule of law should be considered as a basis before adopting any document and acting on environmental policy and law provides framework standards for addressing the gap between theory

and practice of environmental law. As has been pointed out in the Second Report, the environmental rule of law is lately transforming due to such factors like technical innovation, the COVID-19 pandemic, and the rise of social justice movement inter alia, challenging standards of the environmental rule of law. The article comprises 4 parts. The first concerns the concept and context, the second one presents specific features and core elements of the environmental rule of law, the third – points to the benefits of compliance with the environmental rule of law. Some summarizing conclusions have been included in the fourth part.

KEYWORDS

rule of law, environmental rule of law, First Global Report on Environmental Rule of Law, sustainable development goals (2019), Second Report on Environmental Rule of Law: Tracking Progress and Charting Future Directions (2023), 2016 World Declaration on the Environmental Rule of Law (International Union for Conservation of Nature)

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praworządność, praworządność w dziedzinie środowiska, pierwszy (2019) i drugi (2023) raport globalny w sprawie praworządności w dziedzinie środowiska, Deklaracja Światowa z 2016 r. w sprawie praworządności w dziedzinie środowiska (Światowa Unia Ochrony Przyrody)

I. THE CONCEPT AND CONTEXT OF THE ENVIRONMENTAL RULE OF LAW

Although the concept of the environmental rule of law is relatively new in the doctrine of environmental law, it is nowadays one of the most significant terms operating in the sphere of environmental law. In spite of the topicality and importance of the issue, to date it has not been addressed in too many publications.¹ The notion of ‘environmental rule of law’ was introduced for the first time into the legal

¹ Legal writing on the environmental rule of law is more than modest consideration of the importance of the issue, not to mention the lack of reference to the UNEP reports on the environmental rule of law. The paper of David V Wright, ‘Environmental Rule of Law: In need of coherence in contested terrain’, *McGill International Journal of Sustainable Development Law and Policy*, Vol 15, No 1, 2020, 2ff, Arnold Kreilhuber, Angela Kariuki, ‘Environmental Rule of Law in the Context of Sustainable Development’, *The Georgetown Environmental Law Review*, Vol 32, 591ff, and in Polish legal literature the cited beneath paper by Karolina Karpus, Zbigniew

space in the context of sustainable development in 2013, by the Decision 27/9 of the Governing Body of the United Nations Environmental Programme (UNEP) on Advancing Justice and Law for Environmental Sustainability, which underlined the importance of environmental law for achieving sustainable development overall.² In a similar context, the environmental rule of law was defined in the World Declaration on Environmental Rule of Law of the International Union for Conservation of Nature (2016) which stressed in its preamble that strengthening the rule of law in the area of the environment was critical for achieving environmental sustainability and sustainable development.³ A similar context can be found in both the 2019 First Global Report on Environmental Rule of Law, and the second report – Environmental Rule of Law: Tracking Progress and Charting Future Directions (2023). Both of them emphasise the role of the environmental rule of law in building a platform underpinning the pillars of sustainable development and the fact that the environmental rule of law and sustainable development goals are mutually reinforcing.⁴ It follows from the cited documents that these two terms are interlinked in a systemic way – the environmental rule of law describes when environmental requirements are respected and enforced in the processes of achieving a balance between economic growth, people's welfare, and environmental protection.

The concept of the environmental rule of law has its deep substantive roots in attempts to find the causes of and remedies to the problems related to the implementation of the norms of environmental law and the norms applicable to socioeconomic development which have been approached through the practice and doctrine of environmental law.⁵ The concept which is genetically placed in the context of broader rule of law principles can be traced in several international documents which refer to, and underline, the growing significance of the environmental pillar in the context of sustainable development, only to mention the

Karpus, 'Environmental Rule of Law and Article 2 of the 1997 Polish Constitution', *Przegląd Prawa Konstytucyjnego*, 2023, No 3, 237ff.

² UNEP/GC.27/(2013) <<https://www.unep.org/delc/worldcongress/Portals/24151/Documents/Decisions27>> accessed 20 October 2024.

³ <https://www.iucn.org/sites/dev.files/contents/documents/english_world_declaration_on_the_environmental_rule_of_law_final> accessed 21 October 2024.

⁴ Texts of the reports <<https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>> (the first report accessed on 21 October 2024); <<https://www.unep.org/publication/environmental-rule-law-tracking-progress-and-charting-future-directions>> accessed 21 October 2024.

⁵ Generally speaking, the environmental rule of law means respect for and enforcement of environmental law. In addition, as it has been rightly pointed out by Maria S Manguiat, taking as an example climate crises, the environmental rule of law enables a more efficient legal response for environmental challenges. See Maria S Manguiat 'Environmental Rule of Law as a Key to Strengthening the Response to Climate Crisis: A Comment', UCL Research Paper Series, No 9|2022 <https://papers.ssrn.com/sol3/papers.afm?abstract_id=4184900> accessed 21 October 2024.

1972 Stockholm Declaration,⁶ the 1992 Rio de Janeiro Declaration,⁷ and the 2002 Johannesburg Declaration.⁸ Those documents were attempts to formulate the principles which could reconcile in practice the actions related to the processes of socioeconomic development with the requirements of the protection and preservation of the environment. Those efforts were summed up in the UNEP document cited above, on Advancing Justice, Governance and Law for Environmental Sustainability, which reads that the UNEP Executive Director is requested to lead the UN system and support national governments upon their request in the development and implementation of the environmental rule of law. In light of this, under the auspices of UNEP, several regional conferences and international symposia were held on environmental rule of law in the regions of Asia-Pacific, Africa and Latin America, crowned with the Global Symposium on Environmental Rule of Law.⁹ The conclusions arising from the findings of those conferences indicate a very wide range of tasks related to the substantive and procedural applications of environmental rule of law, as confirmed by the findings of the above-mentioned 2019 first and 2023 second report on the environmental rule of law.¹⁰

The importance of legal value of the systemic core of rule of law has not changed since the UN Secretary-General presented a general definition of the concept of the rule of law in his Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. When applying this definition to the area of protection and preservation of the environment, the environmental rule of law is the application of the general principle of the rule of law, under which it is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced

⁶ See the United Nations Conference on Human Environment, the Stockholm Declaration and Action Plan for the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1.

⁷ See the United Nations Conference on Environment and Development, the Rio Declaration on Environment and Development, U.N. Doc. A/Conf.151/26/Rev.1 (Vol 1).

⁸ See the United Nations Conference on Sustainable Development, The Future We Want, G. A. Resolution 66/288, 12, U.N. Doc. A/ Res.66/288.

⁹ For more on this subject, see David V Wright, 'Environmental Rule of Law: In need of coherence in contested terrain'...

¹⁰ In this context it is worth to mention the idea of the rule of law for nature, a kind of antecedent of the idea of environmental rule of law. The concept has been described in the book edited by Christina Voight *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, Cambridge 2013. The approach presented in the book defines the concept of the rule of law for nature as a legal framework that extends to the nature the procedural and substantive principles of environmental law, what may be considered as a base for the concept of environmental rule of law. More arguments to support such an assumption can be found in the paper by Louis J Kotze, and Duncan French, 'The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene', *Global Journal of Comparative Law* 7(1) 2018, 5ff, where one can read that respect for ecological limits is the only way to ensure sustainability in the Earth community. Environmental rule of law is therefore *conditio sine qua non* in human-being's approach to environmental protection.

and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of the supremacy of law, equality before the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹¹

An analysis of those conference proceedings and UNEP documents brings additional documents related to the environmental dimension of the rule of law which make it possible to give content to the standards of environmental rule of law, with particular consideration given to the principles of good governance and sustainable development. Their analysis also indicates that the environmental rule of law is a prerequisite for achieving the desirable effects of environmental protection and sustainable development at global and local levels.¹² Moreover, the general standards of the rule of law help societies experiencing the consequences of environmental degradation to overcome multifarious costs resulting from activities which do not meet the environmental requirements. Thus, environmental rule of law should be perceived as a new paradigm at all levels of environmental governance, decision-making, and justice, and assessed on the basis of features characteristic of environmental problems, such as, e.g., their physical and technological character, a wide margin of scientific uncertainties, interconnection, and the fact that they are basically caused by private behaviour.

The First Report on the environmental rule of law gives a global perspective on the implementation of the environmental rule of law, while the Second Report provides a comprehensive assessment of developments since the release of the First Report in 2019. Both of them were assembled under the auspices of UNEP on the basis of data gathered in many countries on the experiences and challenges related to the introduction and application of the environmental rule of law, with consideration given to the wide context of sustainable development goals. The Second Report responds to the need arising from the First Report, which is to undertake regular global assessment of the environmental rule of law. It was developed based on the responses to questions answered by an international team of experts. Building on that the Second Report expands the initial findings providing assessment of global trends related to the environmental rule of law. Responses to questions listed in the table of indicators show if a particular element of numbered standards of rule of law was present in each of the 193 reviewed countries.¹³ According to the general findings of both reports, the environmental rule of law provides framework standards for addressing the gap between theory

¹¹ UN SG Report S/2004/616.

¹² In the subject literature, it has been pointed out that the proposal of alternatives and differentiation of this notion for different areas of regulation can be counterproductive from the perspective of the development of the standards of democracy. For more on this subject, see David Wright, *op. cit.*, 10.

¹³ See the Second Report, Table 1.1 List of indicators, 25.

and practice of environmental law. As has been strongly emphasized by the environmental legal doctrine, the elimination of the gap between the inadequacies of democracy and the demands of efficient protection of environment requires a new legal approach, based on the conjoined application of two main constructs – the rule of law and the principle of sustainable development.¹⁴ In this respect, the First Report underlines the recognition of reinforcing the relationship between human rights and environmental rule of law.¹⁵

It is worth mentioning that the adopted form of both reports facilitates tracking progress in the access of obeying the environmental rule of law, which has been announced in the title of the Second Report. Both reports consist of four substantive chapters preceded by an Introduction and ending with Conclusions and Recommendations. The parts of both reports entitled ‘Institutions/laws’ address the role which institutions, government agencies and courts play in the implementation of the standards of the environmental rule of law. They indicate the systemic opportunities for strengthening the institutions dealing with the environment. These considerations lead to the conclusion that a proper combination of capacity, accountability, resources and respect for the integrity of institutions can contribute to narrowing the gap in the implementation of the provisions of environmental law.

Findings of the Second Report provide a summary of the global status of key indicators related to laws and institutions as far as the environmental rule of law is concerned. It is to underline that this report deals with the issue of impacts of COVID-19 on environmental laws and institutions. One of the chapters of both reports entitled ‘Civic Engagement’ explores the legal and practical tools for civic participation that underpin the environmental rule of law. It examines the practical use of legal instruments which can contribute to enhancing civic participation in promoting the principles of the environmental rule of law. The Second Report on the environmental rule of law also points to the trends emerging from new challenges related to the COVID-19 pandemic. Part 4 of both reports entitled ‘Rights’ indicates the relationships between environmental rule of law and the constitutional norms protecting the fundamental human rights. In this part of the analysis, in the context of the norms protecting the environment, issue of the global recognition of the right to a healthy environment has been discussed. Both reports point out that the constitutional human rights cannot be exercised without the human right to a healthy environment, while environmental rule of law cannot be implemented without respect for the constitutional principles and human rights. The following part 5 of the reports, entitled ‘Justice’, presents an analysis

¹⁴ Karolina Karpus, Zbigniew Karpus, ‘Environmental Rule of Law and Article 2 of the 1997 Polish Constitution’, *Przegląd Prawa Konstytucyjnego*, 238ff <<https://doi.org/10.15804/ppk.2023.03.17>> accessed 29 October 2024.

¹⁵ For more on that issue in the context of climate change, see Maria S Manguiat ‘Environmental Rule of Law as a Key to Strengthening the Response to Climate Crisis: A Comment’...

of the role and importance of the administration of justice in resolving environmental disputes from the perspective of the standards of the environmental rule of law. The conclusion of this chapter of the First Report indicates the social and political causes of environmental conflicts and confirms the principle of a peaceful resolution of environmental disputes. The relevant chapter in the Second Report assesses some significant trends such as judicial engagement in climate related cases or remedies for environmental harm. It also explores extraterritorial jurisdiction in cases of international or transnational damages. Although in different way, both reports provide a sort of conclusions and recommendations. In this context, the First Report ends with the implementation issues of the directions of the development of the environmental rule of law, while the second report underlines key findings pertaining to particular issues having significant impact on the environmental rule of law, both positive and negative, such as for example the Covid-19 pandemic, integration of environmental rights, environmental rule enforcement, technological revolution, climate change, etc.

As it stems from the reports, there is no inter-governmentally agreed definition of the environmental rule of law. Therefore, it is worth to underline that both reports provide some clarity to the meaning of the notion of the environmental rule of law arising from the above-mentioned definition of the UN Secretary-General. From this perspective, the environmental rule of law: (1) describes situations in which laws are widely understood, respected, and enforced; (2) provides an essential platform underpinning the four pillars (social, economic, environmental and peace-related); (3) holds all entities equally accountable to publicly promulgated, independently adjudicated laws that are consistent with international norms and standards for sustaining the planet; (4) integrates critical environmental needs with the elements of the rule of law, thus creating a foundation for environmental governance that protects rights and enforces fundamental obligations; and (5) is relevant at all levels of government. While the rule of law is generally considered as basic to good governance, the environmental rule of law is distinct from environmental governance because it focuses particularly on implementation, enforcement and compliance with environmental norms.

The reports underline that the benefits of the environmental rule of law extend far beyond the environmental sector in strengthening the general rule of law. One may say that the elements indicated in the reports as crucial for the environmental rule of law inscribe the requirements of environmental protection into the context of the general definition.¹⁶

¹⁶ Compare with the arguments presented by David Wright, 'Environmental Rule of Law: In need of coherence in contested terrain'..., 10.

II. SPECIFIC FEATURES AND CORE ELEMENTS OF THE ENVIRONMENTAL RULE OF LAW

According to the assumptions of the First Global Report on Environmental Rule of Law, the environmental rule of law is distinguished by some specific features, important for a proper understanding of the outcome from the Second Report pertaining to the future development of the environmental rule of law.¹⁷ These are: (1) *Environmental rule of law is critical to human health and welfare.* It ensures adherence to the standards, procedures, and approaches set forth in the laws to ensure clean air, clean water, and a healthy environment. It also ensures that people's rights such as access and use of land, water, forests, and other resources are respected and protected. (2) *Environmental rule of law cuts across many forms and norms* – from social and customary norms of villages to statutory law of nations, to voluntary standards adopted by companies. It also cuts across many levels of governance. In addition, it often resides in more than one agency or ministry across several levels of government. (3) *Environmental rule of law is shaped by, and responds to significant political, economic, and social dynamics that are specific to natural resources.* The limited natural resources and the tendency of common pool resources to be depleted, if not managed with care, highlight the role of the rule of law in preventing the tragedy of the commons. The experience of many countries rich in natural resources is that too often these resources prove a curse that can lead to political instability and armed conflicts. In the example given by the Report, to prevent this resource curse, countries have invoked key elements of the environmental rule of law, including transparency, participation in decision-making, accountability, and benefit sharing. (4) *Environmental rule of law in the field of environmental management implicates the duties humans owe non-humans' species and resources.* E.g., many species' survival rests upon the success of the environmental rule of law. In connection with that fact, some countries have extended legal rights or legal personhood to natural resources, such as rivers and protected areas, to reflect the customary importance they hold in their cultures. (5) *Environmental rule of law is crucial for public involvement in environmental decision-making;* Public involvement in environmental decision-making is of particular importance because so many communities depend on natural resources for their livelihoods. Thus, the growing recognition of the right to information, participation in decision-making and access to justice, and, if applicable, to obtain free, prior, and informed consent is particularly important

¹⁷ For the general issue of the distinct characteristics of the environmental rule of law see also Arnold Kreilhuber, Angela Kariuki, 'Environmental Rule of Law in the Context of Sustainable Development', The Georgetown Environmental Law Review, Vol 32, 591ff <<https://www.law.georgetown/environmental-law-review/wp-content/uploads/sites/18/2020/08/GT-GELR>> accessed 21 October 2024.

in the environmental rule of law. (6) *Environmental rule of law must also contend with uncommon time-scales*. Decisions about natural resources and the health of ecosystems can affect many future generations. Thus, the environmental rule of law implicates intra- and intergenerational equity. (7) *Environmental rule of law often depends on decision making in the face of significant uncertainty*. However, circumstances often demand government action in the face of uncertainty. One response to solve this problem has been the development of adaptive management which provides a framework for taking action in these circumstances. Another approach has been the creation of the precautionary principle. The effectiveness of this principle has been proved by the above-mentioned judgement in the *Eco Oro* case, demonstrating that the precautionary principle may be applicable as a rule of law.¹⁸

Considering the findings of the UNEP Governing Council as the basis,¹⁹ both reports analyse seven core elements of the environmental rule of law which interact in a very complex way, emphasising that the application of the standards of the environmental rule of law is the result of a dynamic and interactive process that relies on monitoring and evaluation, revision, and checking indicators to track progress. These elements have been subjected to a multifaceted analysis of the data which has been collected, in light of not only the theoretical assumptions of the rule of law but also the operating practice of the rule of law in the area of environmental law.²⁰

The first element of those analysed is fair, clear, and implementable environmental law. The law that is fair meets the principles of the rule of law which include the recognition of supremacy of law, equitability before the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, as well as procedural and legal transparency. The second core benchmark of the rule of law is the confirmation that the principles of access to information, public participation in decision-making and access to justice in environmental matters are complied with. Access to environmental information is the foundation for effective civic engagement in the issues of the protection and preservation of the environment. Public participation in environmental decision-making contributes to improving the quality of information available in the decision-making process. It can also contribute to strengthening the processes of implementing the environmental decisions which have been taken and contribute to preventing the escalation of related conflicts. Access to justice in environmental matters means that citizens always have full access to the judiciary which protects their rights. Environmental authorities and institutions should be characterised by accountability and integrity, given that they are the face of the State to the public, since they are responsible for the imple-

¹⁸ See the First Report, 10–13; the Second Report, Box 1.1, 17.

¹⁹ UNEP International Advisory Council for Environmental Justice 2015.

²⁰ See the Introduction to the First Report, 20–26.

mentation and enforcement of the norms of environmental law. They are also responsible for shaping public behaviour related to compliance with environmental law. In this context, the First Report addresses the phenomenon of corruption which affects countries, regardless of how developed their institutions are. In this context, it emphasises the importance of transparency and accountability as the primary tools for safeguarding the application of rule-of-law standards, especially in the area of decisions on natural resources. Another effective tool for combating this phenomenon are oversight bodies which are independent from the government. Their purposes include, among others, building respect for the institutions of the State and rule of law, since environmental rule of law takes root when the government demonstrates a clear political will to implement environmental norms, even when the political opposition has a different opinion.

Another significant elements of the environmental rule of law are clear mandates and roles across and within institutions.²¹ Since so many institutions at the national level are engaged in the protection and reservation of the environment, many countries experience both the overlap and underlap of mandates; this causes a delay in the processes of implementing the norms of environmental law. This is the case, in particular, with the situations where the norms of environmental law have emerged on an ad hoc basis, solely as the result of the quick fulfilment of the obligations of a country in order to meet its international commitments. There is no doubt that, from this perspective, accessible, fair, impartial, timely, and responsive dispute-resolution mechanisms are some of the primary tools ensuring compliance with the standards of the environmental rule of law. The First Report emphasises that the timely resolution of environmental disputes and the strengthening of mechanisms for compliance with environmental law ensure that cases of environmental law violations will be correctly considered and that the parties will be held accountable for their activities in breach of environmental law. Moreover, since environmental problems often affect health or life, or involve irreversible damage to the environment, they should be resolved in a timely manner so that justice and public interest are properly served and that public access to independent courts contributes to building confidence in the court rulings and rule of law in general.

The next element of the environmental rule of law analysed is the human rights nexus. The exercise of human rights and freedoms is inextricably connected to the environment and, as a result, these two protection systems mutually reinforce each other at both the procedural and substantive levels. Practice demonstrates that procedural rights often provide an important mechanism for

²¹ On the issue of ailing institutions of environmental institutions including environmental law from the ontological point of view, see Louis J Kotze, and Duncan French, 'The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene', *Global Journal of Comparative Law* 7(1) 2018, 5ff.

ensuring the effectiveness of substantive norms under both domestic and international law, contributing to strengthening the standards of the environmental rule of law. For example, the procedural right of access to a court allows a community harmed by illegal dumping to invoke environmental law thus protecting the substantive rights to life and a healthy environment. In this way, human rights law can be invoked by the public in the court as an important complementary basis for protecting vital interests related to the protection and preservation of the environment.²²

The last element analysed in the First Report is the issue of specific criteria for the interpretation of environmental law from the perspective of the environmental rule of law. The report emphasises the importance and significance of the requirement for public authorities to ensure unambiguity and clarity of the law which they adopt. In this context, it is proposed, e.g., that the competent authorities should publish guidance clarifying legal norms to enable stakeholders to understand what is required by law and what is expected from them. As a side note on the considerations concerning the requirement for ensuring unambiguity and clarity of norms, it is important to note that the norms of environmental law are often written in a manner enabling them to be fitted to changing scientific findings and environmental circumstances. Sometimes such a character of regulations turns out to be useful in terms of certainty of law, but it can also lead to its abuse and bending to meet political needs. Therefore, discerning the advantages and disadvantages of this situation, the First Report suggests a judicial review of the law interpretation processes.

III. COMPLIANCE WITH THE ENVIRONMENTAL RULE OF LAW

Both reports emphasise the benefits of compliance with the standards of the environmental rule of law not only for the protection and preservation of the environment but also for achieving the sustainable development goals and ensuring the protection of the fundamental human rights and freedoms. Its direct impact on the environmental sector can easily be seen in case of such elements of the sector as nature conservation, tackling of the adverse impacts of climate change, pollution control and natural resource management. It follows from the reports that these noticeable positive effects are the result of a systemic cooperation of States

²² In this context it is worth mentioning arguments presented in the paper by Elif Oral 'The Environmental rule of law and the protection of human rights defenders; law, society and markets'. *International Environmental Agreements: Politics, Law, and Economics* 2024, 393ff; He argues that States have the duty vis-à-vis the environmental human rights defenders while the private sector also has responsibilities when it comes to respecting human rights. <<https://link.springer.com/article/10.1007/s10784-02-09645-x>> accessed 21 October 2024.

and the activities of civic society related to compliance with the standards of the environmental rule of law, thus also contributing to reducing corruption and moving away from incorrect environmental management methods and procedures. Moreover, as the practice of the environmental rule of law has demonstrated, they strengthen the general rule of law by raising the level of trust in governments, among others, by ensuring that the public is active in the process of controlling decision-making, thus holding those who take these decisions accountable for them. In addition to a successful combat against corruption, the reports also point out another benefit of applying the standards of the environmental rule of law which is the correct natural resource management. Indeed, as practice shows, the application of the correct management methods contributes to maintaining peace and security.²³

The First Report points out the benefits of environmental protection in the process of socioeconomic development. It underlines that the rule of law supports the sustainable development process serving as a platform for balancing sustainable development pillars. The assumptions resulting from the report gives a prospect on the nature and type of legal actions to be undertaken in the processes of achieving sustainable development objectives. The conclusion is that all the decisions on legal measures for the implementation of sustainable development objectives and goals should be taken from the perspective of the environmental rule of law, considered as a *conditio sine qua non*.²⁴

Both the reports highlight the fact that environmental rule of law is particularly vital for the process of achieving the 17 UN Sustainable Development Goals and 169 targets.²⁵ It also underlines that the environmental rule of law and sustainable development are mutually reinforced, only to mention Goal 16 (Peace, Justice and Strong Institutions); Goal 14 (Life Below Water); and targets 9.c and 12.8 (Access to Information). As the reports emphasise, there are still many problems that must be solved to improve the effectiveness of the environmental rule of law according to reports expectations. Still, one of the fundamental challenges is how to measure effectively the aspects of the environmental rule of law, the quality of laws and the effectiveness of institution compliance rate, since the environmental standards often result from the decision-making processes undertaken in circumstances of scientific uncertainty.

Findings of both reports allow to stress that the environmental rule of law reflecting universal values of society provides the foundation for environmental

²³ An interesting case study in this context is presented by Andy Raine and Emeline Pluchon in their work 'UN Environment Advancing the Environmental rule of Law in the Asia-Pacific', Chinese Journal of Environmental Law 3(2019), 117ff.

²⁴ <<https://wedocs.unep.org/bitstream/handle/20.500.11822/Governing%20Council%20>> accessed 20 October 2024.

²⁵ For more on the goals and targets of sustainable development, see <<https://sdgs.un.org/goals>> accessed 20 October 2024.

rights and duties, and forms one of the most important pillars for achieving sustainable development goals. Therefore, the principle of environmental rule of law should be considered as a basis before adopting any document and acting on environmental policy and law. It describes the legal standards, which depend on decisions often made under conditions of significant scientific uncertainty, that are generally understood, implemented and enforced. In the multi-level governance of the global environment, particular attention should be paid to the principles of environmental law ensuring the effective implementation of environmental standards.

The First Report gives a global perspective on the implementation of the environmental rule of law and practical guidance on the assessments of progress in the implementation of the standards of the environmental rule of law.²⁶ It indicates that the task to be carried out in this respect should be the collection at the global level of empirical data against a set of indicators. In light of this, the First Report proposes a roadmap for tracking the implementation of the environmental rule of law on the global scale. Such an assessment is of essential importance for the development of the awareness of the global community of the need to apply the rule of law, among others, by comparison with the possible achievements of other countries in this respect. The conclusions from such a comparison can encourage the international community to share its ideas and innovations for the most effective methods for strengthening the standards of the environmental rule of law in the national legal regimes.

In the context of compliance issues, the reports strongly emphasise that the weak standards of the environmental rule of law and their poor implementation cause wide consequences, including, for example, those related to population displacements or different types of discriminatory treatment which can result in social unrest and tensions capable of undermining peace and security. In this context, it is necessary to stress the role which nongovernmental organisations are expected to play in the development and implementation of environmental rule of law. Both reports address the importance and different actors of environmental law in the processes of implementing the environmental rule of law, from citizens, through intergovernmental and non-governmental organisations, to national governments. They attribute a special role to those organisations that approach the resolution of environmental problems from a multi-sectoral perspective.

The aims of the Second Report were to support countries in the processes of promoting and strengthening the environmental rule of law in response to the needs identified in the First Report to undertake a regular assessment of the environmental rule of law. The Second Report underlines the fact that further research is required in the domain of the environmental rule of law and the role of gender and, in connection with the First Report recommendations, calls for standardizing

²⁶ See the First Report, 234ff.

and tracking rule of law indicators in order to allow subjects of environmental law including civil society to identify challenges.²⁷ It also calls for the development of guidance of the environmental rule of law in emergencies and disasters, and for the integration of social justice in environmental institutions, as well as establishing systemic collaboration between the technology sector and environmental policymakers.

As has been pointed out by the reports, enhancing the principle of the environmental rule of law provides a unique mechanism for the achievement of all the aims and objectives of sustainable development within all its pillars. The practice of international relations has proven that sustainable development can only be achieved through fair, effective and transparent institutions and rule of law. In this context, one of the fundamental challenges is how to measure the aspects of the environmental rule of law, the quality of laws and the effectiveness of institution compliance rate, since the environmental standards often result from the decision-making processes undertaken in the circumstances of scientific uncertainty.

IV. SUMMARIZING CONCLUSIONS

– Similarly to the general concept of the rule of law, the idea of an environmental rule of law focuses on fair, clear and implementable environmental laws; public participation in decision-making; access to justice; access to information; accountability and integrity of institutions and decision-makers; clear and coordinated mandates and roles across and within institutions; accessible, fair and timely dispute resolution mechanisms; recognition of the mutually reinforcing relationship between human rights and environment.

– Environmental rule of law is the result of a dynamic and interactive process that relies on monitoring and evaluation, revision, and indicators to track progress. Enhancing the principle of the environmental rule of law provides a unique mechanism for the realization of all the aims and objectives of sustainable development in all pillars. Therefore, acceptance of the environmental rule of law should be considered as a *conditio sine qua non* to attain sustainable development. The practice of international relations has proven that sustainable development

²⁷ Despite the fact that the deeper considerations of the general rule of law have been left on the margin of this paper, the issues of environmental protection discussed in a paper by Per G Fredriksson, Muthukumara Mani, 'The Rule of Law and the Pattern of Environmental Protection', IMF Working Paper, WP/02/49, March 2002, <<https://www.imf.org/external/pub/ft/wp/2002/wp0249.pdf>> accessed 21 October 2024, are worth mentioning here because the Authors developed and tested a theory of the rule of law in the context of environmental policy formation.

can only be achieved through fair, effective and transparent institutions and the rule of law.

– One of the fundamental challenges is how to measure the aspects of the environmental rule of law, the quality of laws, the effectiveness of institution compliance rate, since the environmental standards often result from the decision-making processes undertaken in circumstances of scientific uncertainty. In this context, some suggestions can be derived from the International Union of Conservation of Nature, the 2016 Declaration on the Environmental Rule of Law, which lists key elements of governance, general and emerging substantive principles pertaining to environmental justice, and means of implementation of the environmental rule of law. It stresses that legal and practical measures to increase transparency, strengthen access to information and enhance public participation in the environmental decision-making processes will allow equality in terms of environmental protection while achieving sustainable development objectives, goals and targets.

– The environmental rule of law is crucial in solving potential conflicts between contemporary beneficiaries of common good and fulfilling obligations to present and future generations.²⁸ The right example to be endowed here is the Supreme Court of the Philippines ruling in the *Oposa Minores* case that the plaintiffs had the *locus standi* to sue on behalf of future generations, based on the intergenerational responsibility of future generations' rights to a healthy environment.²⁹ The effectiveness of this approach had also been further proven by the judgment of the Hague District Court in the *Urgenda* case.³⁰

– As has been pointed out in the above-mentioned IUNC Declaration on the Environmental Rule of Law of 2016, without the environmental rule of law, environmental governance, conservation, and protection may be arbitrary subjective, and unpredictable. Therefore, the principle of the environmental rule of law should be considered as a basis before adopting any document and acting on environmental policy and law.

²⁸ In this context, it is worth pointing to the paper by Dan Tarlock A, 'The Future of Environmental Rule of Law Litigation', *Pace Environmental Law Review* 19(2002), Special Edition (2002 addendum) 611ff, who argues that the rule of law litigation is one of the most distinctive features of the environmental law because of its role in creating environmental rights and duties by courts <<https://digitalcommons.pace.edu/pelr/vol19/iss2/6>> accessed 21 October 2024.

²⁹ See <<https://legallibrary.crin.org/minors-oposa-v-secretary-of-department>> accessed 20 October 2024.

³⁰ See <<https://www.urgenda.nl/wp-content/uploads/ENG>> accessed 20 October 2024

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