

Research Article

UNDERSTANDING THE RELATIONSHIP BETWEEN THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT

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ABSTRACT

Background: *The aim of this paper is to investigate the relationship between the rule of law and sustainable development. The rule of law, frequently referred to as ‘the empire of laws and not of men,’ underscores the significance of constraining capricious authority and ensuring that public servants adhere to legal structures in their conduct. The rule of law, being a legal principle, is of paramount significance for society’s overall advancement and well-being; therefore, its importance should not be undervalued. Its worth should not be diminished. In contrast, sustainable development endeavours to reconcile the interests of current and future generations through the integration of economic, social, and environmental considerations.*

Methods: *This study primarily focuses on theoretical observations and employs a qualitative methodology. Its objective is to explore the relationship between the rule of law and sustainable development by analysing their attributes, viewpoints, and interpretations. By integrating the idea of the rule of law with sustainable development, it aims to consolidate information that is often scattered or semi-structured. Data is gathered through methods including desk research, descriptive analysis, and theoretical observations.*

Results and Conclusions: *The significance of upholding the rule of law in the pursuit of sustainable development is underscored in this article. Furthermore, the present study investigates the correlation between the advancement of sustainable development and the notion of the rule of law. This encompasses a comprehensive examination of multiple facets, including formal, procedural, substantive, constitutional, and good governance elements. The rule of law is recognised by the international development community as a foundational element that facilitates the achievement of additional development goals. This scholarly article enhances the existing understanding of the reciprocal support between sustainable development and the rule of law by analysing this intricate interplay.).*

1 INTRODUCTION

Social fragmentation, economic inequality, and the erosion of democratic standards and human rights are among the complex and interconnected issues of the present day. The wealth gap has contributed to an increase in homelessness, hunger, and poverty, whereas intolerance and extremism fuel political and social divisions. Those trends are placing pressure on the social fabric and rendering it progressively more difficult to identify shared interests and collaborate in pursuit of common objectives. Significant challenges and expectations confront the international community of sovereign countries. In this regard, several initiatives have already been implemented to promote the general welfare. One such initiative is adopting the 2030 Agenda for Sustainable Development, which aims to achieve 17 development goals by 2030.¹ The 2030 agenda presents both opportunities and challenges. This comprehensive agenda has the potential to start the transformation of international development.

For the first time, the three pillars of sustainability – social, economic development, and environmental protection – are being considered together to balance the ambitions of current generations with the interests of future ones. The fundamental concept of sustainability pertains to the capacity of a given entity to persist, with a reasonable degree of continuity, over an extended period. Sustainability is a defining attribute of a process or condition that can be upheld at a specific level indefinitely without being subject to temporal limitations. The concept of sustainable development primarily seeks to enhance the well-being of individuals and utilise the natural environment as a reflection of the prevailing adverse phenomena within society. The agenda includes goals related to economic growth, protection of natural resources, education, health, and responsible consumption. Addressing gender, societal, and international disparities is a fundamental aim of the agenda. This is demonstrated through the document's repetitive statement 'Leave no one behind' (LNOB)² and its transformative pledge. To attain sustainable development, the LNOB principle guarantees that the most marginalised and vulnerable individuals are not abandoned. This entails prioritising their requirements and ensuring they have the necessary resources and opportunities to flourish. The high-level political forum of the United Nations mandates that all nations furnish progress reports in light of the agenda's universal applicability. This statement recognises that the development process is not confined to particular geographical areas and that poverty is not exclusively found in developing nations. Finally, the agenda recognises access to justice and the rule of law as important goals, a significant shift in development policy. The inclusion of the rule of law in the Agenda for Sustainable Development has brought an interesting new dimension to the notion of development to the theory and policy of international development. In recent years, sustainable development has emerged as the prevailing global framework

1 'The Sustainable Development Agenda' (*Sustainable Development Goals*, 2023) <<https://www.un.org/sustainabledevelopment/development-agenda>> accessed 10 July 2023.

2 'Universal Values Principle Two: Leave No One Behind' (*United Nations Sustainable Development Group*, 2023) <<https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>> accessed 10 July 2023.

influencing the ongoing restructuring of international and domestic law. Since its inception, legal scholars worldwide have been conscientiously striving to understand the legal implications associated with the concept of sustainable development.³ Today, the concept of sustainable development finds expression in legally enforceable international, regional (European), and national documents.

1.1. Research Methodology

The research methodology employs a qualitative approach. Qualitative research, enhanced by theoretical foundations, aims to investigate the connections between the rule of law and sustainable development by examining the characteristics, perspectives, and interpretations of both. It combines the concept of the rule of law with sustainable growth, gathering usually disorganised or partially organised information. The data is collected using desk research, descriptive analysis, and theoretical observations.

To comprehend the relationship between the SDGs and the rule of law, one must possess a comprehensive understanding of the concept of the rule of law. Consequently, the preliminary segment of the paper examines the historical development of the rule of law, with a specific emphasis on the ancient and modern epochs. The principal aim is to illustrate that the rule of law is firmly rooted in historical principles as opposed to theoretical constructs. The objective is to demonstrate that the notion can be modified to fit current institutional developments and maintain its conceptual viability within legal theory. In the second section of this paper, we emphasised that the rule of law is a highly contentious concept, not only on account of divergent interpretations and compliance levels but also on account of differing perspectives on its fundamental principles. To effectively confront this challenge, the cultivation of a global community is of dire importance. This community comprises legal professionals actively involved in advocacy, law reform, legislation drafting, legal education, and the provision of legal support and representation. The third section of this paper delves into examining the United Nations' endeavours to advance the rule of law and the significance of such efforts in relation to the Sustainable Development Goals (SDGs). The definition of the rule of law and its three fundamental components, which are essential for attaining the SDGs, are scrutinised. In the fourth section, central to this research, we examine various aspects of the interaction between the rule of law and sustainable development. This includes exploring global advocacy for the rule of law, examining SDGs related to the rule of law, and investigating how different dimensions of the rule of law can intersect with the SDGs. The concept of the rule of law is fundamental to national regulations within the boundaries of sovereign states. Through inter-state interaction, international regulations are established, and international organisations are founded, as discussed in the conclusion of this paper. Without establishing an international concept of the rule of law, today's international relations between distinct subjects of international law would be unimaginable. These international relations are integral to the achievement of sustainable development objectives.

3 Klaus Bosselmann, 'Losing the Forest for the Trees: Environmental Reductionism in the Law' (2010) 2(8) *Sustainability* 2424, doi:10.3390/su2082424.

1.2. Literature Review

The literature review has shown that, despite the fact that the topic addressing the relationship between the rule of law and sustainable development is very current and significant, the contribution is still timid. Several articles jointly emphasise the correlation between the rule of law and sustainable development.⁴ Some authors examine the rule of law as both a goal and a method for achieving sustainable development, presenting a framework for understanding and evaluating the rule of law.⁵ Available literature demonstrates that the principle of the rule of law is widely acknowledged as a crucial element of sustainable development.⁶ The literature study emphasises that the rule of law is applicable to the economic, social, and environmental components of sustainable development.⁷ Several authors analyse the necessity for enterprises to incorporate international legal norms pertaining to social, environmental, and human rights issues.⁸ Some researchers have discovered a direct correlation between the rule of law and both economic growth and environmental protection in high-income countries.⁹ Furthermore, proponents assert that the rule of law is essential in attaining sustainable development and alleviating poverty, underscoring its function in establishing a legal structure and implementing sustainable development programs.¹⁰

2 COMPREHENDING THE RULE OF LAW ACROSS TIME

2.1. Ancient Era

The concept of the rule of law has its roots in ancient civilisations such as the Greeks, Chinese, and Romans.¹¹ The Code of Hammurabi, dating back to 1760 BC, is one of the earliest examples of a legal system that governed society based on essential legal principles.¹² Although the term 'rule of law' gained popularity in classical liberalism, its origins

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- 4 Danielle Watson and others, 'Problematising the Rule of Law Agenda in the SDG Context' in J Blaustein and others (eds), *The Emerald Handbook of Crime, Justice and Sustainable Development* (2020) 131, doi:10.1108/978-1-78769-355-520201010.
 - 5 Steven Malby, 'The Rule of Law and Sustainable Development' (2017) 43(3-4) *Commonwealth Law Bulletin* 521, doi:10.1080/03050718.2017.1436229.
 - 6 Jonas Ebbesson and Ellen Hey, *The Cambridge Handbook of the Sustainable Development Goals and International Law* (CUP 2022) doi:10.1017/9781108769631.
 - 7 Arnold Kreilhuber and Angela Kariuki, 'Environmental Rule of Law in the Context of Sustainable Development' (2020) 32 *The Georgetown Environmental Law Review* 591.
 - 8 Lelia Mooney, 'Promoting the Rule of Law in the Intersection of Business, Human Rights, and Sustainability' (2015) 46 *Georgetown Journal of International Law* 1135.
 - 9 Concetta Castiglione, Davide Infante and Janna Smirnova, 'Environment and Economic Growth: Is the Rule of Law the Go-Between? The Case of High-Income Countries' (2015) 5 *Energy, Sustainability and Society* 26, doi:10.1186/s13705-015-0054-8.
 - 10 Gopala Anjinappa, 'Rule of Law: A Fundamental Pillar Enabling Sustainable Development and Reduction of Poverty in India' (2015) 6(1) *International Journal of Asian Business and Information Management* 38, doi:10.4018/IJABIM.2015010103.
 - 11 Edric Selous, 'The Rule of Law and the Debate on it in the United Nations' in CA Feinäugle (ed), *The Rule of Law and Its Application to the United Nations* (Routledge 2016) 13, doi:10.5771/9783845275017-13.
 - 12 *ibid.*

can be traced back to Plato. In his dialogue ‘The Laws’ Plato proposed that the government should be subordinate to the law.¹³ His student Aristotle further developed this idea in ‘The Politics’, where he distinguished between the rule of law, based on reason, and the rule of man, driven by passion.¹⁴ According to Aristotle, the rule of law was attractive because it aimed for justice, which required treating equals equally and punishing those who committed the same crimes equally.¹⁵ This way, law steadily maintained the administration of justice, and for Aristotle, the rule of law was meaningless without justice. Justice was considered a virtue in ancient Greece. Aristotle believed it was better to be ruled by law than by another human being because very few people are wise and concerned about the well-being of others. In a republic or polity, where many rule together, wisdom and good intentions can prevail, and laws can be made to handle most cases. However, Aristotle's influential work on the rule of law recognised the importance of considering the type of law and regime when determining whether governance is best left to the best man or the best laws. Despite some cases requiring the specific insight of judges, Aristotle maintained that laws provide advantages such as being laid down in general terms and made after long consideration, which helps to satisfy claims of justice. His emphasis on the desirability of rules and the use of equity continue to shape modern jurisprudence.¹⁶ These concepts revolve around themes such as ‘the rule of law, not man,’ ‘a government of laws, not men,’ and ‘law is reason, man is passion.’¹⁷ However, its adherence to the other two components, namely legal supremacy and legal certainty, was compromised by social practices and cultural values. These Greek philosophical works had a significant impact on Roman legal thinking, particularly on Cicero, who emphasised in his work ‘De Legibus’ (circa 54-51 BC) that the law should serve the greater good of the community, thus subjecting it to ideals of justice.¹⁸ It is important to note that this discussion holds relevance beyond their historical context, as it relates to the contemporary understanding of the principle that no individual or entity is above the law – the modern-day understanding of the rule of law.

2.2. Modern Time

In *Summa Theologicae*, Thomas Aquinas formulated a natural law theory built upon Aristotle's perspective.¹⁹ Aquinas reaffirmed Aristotle's assertion that the foundation of law is human reason and emphasised the imperative nature of establishing laws for the collective benefit. Aquinas's contributions further developed the notion that legal systems ought to be in accordance with the intrinsic and universal principles of natural law, which govern human

13 Thomas L Pangle, *The Laws of Plato* (University of Chicago Press 1988).

14 Jill Frank, ‘Aristotle on Constitutionalism and the Rule of Law’ (2006) 8(1) *Theoretical Inquiries in Law* 37, doi:10.2202/1565-3404.1142.

15 Karen Margrethe Nielsen, ‘Aristotle on Justice’ in M Sellers and S Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer 2022) 1, doi:10.1007/978-94-007-6730-0_923-1.

16 Lawrence B Solum, ‘Equity and the Rule of Law’ (1994) 36 *Nomos* 120.

17 Aleardo Zanghellini, ‘The Foundations of the Rule of Law’ (2016) 28(2) *Yale Journal of Law & Humanities* 213.

18 Catherine Steel (ed), *The Cambridge Companion to Cicero* (CUP 2013).

19 SuperSummary, *Study Guide: Summa Theologica by Thomas Aquinas* (Independently pub 2020).

behaviour in a manner that advances justice and the welfare of society.²⁰ During the Enlightenment period in Europe, thinkers emphasised the importance of laws limiting the state's power and protecting individual rights. John Locke, a prominent philosopher in the development of liberalism, viewed liberty as freedom from restraint and violence, with the law acting as a safeguard and enabler of this freedom. Locke introduced the concept of the social contract, wherein individuals consented to be governed in exchange for protecting their personal freedoms and property.²¹ This agreement established the government's legitimacy through popular consent, empowering it to create and enforce laws for the common good. Although Locke did not explicitly address a separate judiciary, he focused on upholding individual rights and preserving property, setting the stage for developing the rule of law. In 'The Spirit of the Laws' (1748), Montesquieu expanded on Locke's ideas by proposing separating powers to prevent governmental abuse and safeguard liberty. Montesquieu advocated for separating powers or dividing legislative, executive, and judicial functions among distinct entities, emphasising the need for checks and balances. The term 'rule of law' gained widespread usage in the nineteenth century, primarily due to the contributions of British constitutionalist Albert V. Dicey. In his influential work, 'Introduction to the Study of the Laws of the Constitution' (1885), Dicey presented the first comprehensive elucidation of the rule of law within the context of liberal democracy. Dicey places significant emphasis on a formal interpretation of the concept, characterised by three fundamental components.²² These components are as follows: (1) being governed by the law instead of arbitrary authority, (2) equal subjection to the law for both government officials and private individuals, and (3) submission to the ordinary courts' overall jurisdiction, which provide the most dependable legal protection. Friedrich Hayek, an Austrian economist and political theorist who won the Nobel Prize, discussed the historical background and significance of the concept of the rule of law in his work, *The Constitution of Liberty*. Hayek examined the concept and progression of the rule of law, starting from its inception in the works of ancient Greek and Roman philosophers and culminating in its advancement in English constitutional history.²³

The concept of the rule of law applies to both democratic and non-democratic systems of government. Today, almost every nation asserts its compliance with the rule of law, which comes with the entitlement to govern based on ethical principles and legitimising norms.²⁴ Scholars hold divergent views on the definition and usefulness of the rule of law.²⁵ The concept is universally acknowledged to be challenging to define in a manner that encompasses

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- 20 Paul J Cornish, 'Marriage, Slavery, and Natural Rights in the Political Thought of Aquinas' (1998) 60(3) *The Review of Politics* 545, doi:10.1017/S0034670500027467.
 - 21 Jeremy Waldron, 'John Locke: Social Contract Versus Political Anthropology' (1989) 51(1) *The Review of Politics* 3, doi:10.1017/S0034670500015837.
 - 22 Stephane Beaulac, 'An Inquiry into the International Rule of Law' (2007) 14 *EUI Working Paper MWP* <<https://hdl.handle.net/1814/6957>> accessed 10 July 2023.
 - 23 FA Hayek, *The Constitution of Liberty* (University of Chicago Press 1960).
 - 24 Mortimer NS Sellers, 'What is the Rule of Law and Why is It so Important?' in J Silkenat, J Hickey and P Barenboim (eds), *The Legal Doctrines of the Rule of Law and the Legal State* (Springer 2014) 3.
 - 25 Tom Bingham, *The Rule of Law* (Allen Lane 2010); AV Dicey, *Introduction to the Study of the Law of the Constitution* (7th edn, Macmillan and co limited 1908); Robert Stein, 'Rule of Law: What Does It Mean?' (2009) 18 *Minnesota Journal of International Law* 293.

its entire significance.²⁶ Some claim that because it is so widely used and in many diverse contexts, it is essentially meaningless, while others offer long lists of necessary components. However, legal supremacy, legal equality, and legal certainty are a succinct list of essential elements for clarity. Although the first two elements are unambiguous, there are disagreements in contemporary legal study on the third. There are doubts about the predictability and clarity of laws, particularly the degree to which general laws can be applied consistently and with full certainty in particular circumstances. Moreover, the question of whether the law can consistently provide justice in certain instances is raised in relation to the stringent adherence to its apparent meaning.

Some authors argue about the division of the history of law and politics into a battle between two factions: those supporting the rule of law (government 'de jure') and those supporting the rule of specific individuals (government 'de facto').²⁷ This transfer of authority across countries exemplifies the milestones of the modern rule of law tradition. It seeks to implement the principles of the rule of law practically. The conflict between the 'de facto' theory of law as a tool of power and the 'de jure' conception of law as a result of reason and justice has been the driving force behind legal modernity and the global advancement of constitutional government.²⁸

Overall, the rule of law concept is rooted in historical principles rather than abstract ones. It is flexible enough to be applied to modern institutional changes and is conceptually sustainable on a legal theoretical level.

3 UNDERSTANDING THE AMBIGUITY AND COMPLEXITY OF THE RULE OF LAW CONCEPT

Although the expression 'rule of law' is commonly used in international instruments and acknowledged as a constitutional principle, its meaning remains unclear.²⁹ Legal theorists even call it an 'essentially contested concept'.³⁰ Maybe that is why it is universally appealing - like the idea of 'the good', where everyone has ideas about what it means. An English judge, Lord Bingham, suggests it did not require a statutory legal definition. He acknowledges that judges routinely apply the rule of law in their judgments.³¹ Fukuyama illustrates the rule of law, suggesting that its fundamental essence lies in a societal agreement that the laws are

26 Bingham (n 25) 5-7.

27 Sellers (n 24).

28 MNS Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law* (Palgrave Macmillan 1998) doi:10.1057/9780230371811.

29 Adriaan Bedner, 'An Elementary Approach to the Rule of Law' (2010) 2(1) *Hague Journal on the Rule of Law* 48, doi:10.1017/S1876404510100037.

30 Jeremy Waldron, 'Is the Rule of Law an Essentially Contested Concept (in Florida)?' (2002) 21(2) *Law and Philosophy* 137, doi:10.1023/A:1014513930336.

31 Lord Bingham, 'The Rule of Law' (2007) 66(1) *The Cambridge Law Journal* 67, doi:10.1017/S0008197307000037.

and exist independently of those in power, constraining their behaviour.³² According to Fukuyama, the ruler does not hold ultimate authority; instead, the law is sovereign. Legitimacy for the ruler is derived solely from the just powers the law grants.³³

The World Justice Project defines the rule of law as a resilient framework consisting of laws, institutions, norms, and community dedication that upholds four fundamental principles: accountability, just laws, open government, and accessible and impartial dispute resolution.³⁴ The Rule of Law Index evaluates over 190 nations worldwide, as well as within their specific regional and income categories, based on these four principles.³⁵ It assesses their performance in relation to eight parameters. The factors encompassed in this list are limitations on governmental authority, lack of corruption, transparent governance, basic rights, maintenance of law and order, effective regulation, fair civil legal proceedings, and just criminal legal proceedings. Today, the interpretation of the rule of law differs across countries. In certain countries, it prioritises legality and predictability to drive economic growth. However, in other countries, the emphasis is on the cost and efficiency of justice rather than the quality of justice. To clarify the conceptual ambiguity surrounding the rule of law, some authors delve into the diverse notions of this concept, which occasionally conflict with one another and underlie distinct aggregate measures.³⁶ In the common law tradition, Dicey's work is particularly significant.³⁷ In contrast, the civil law tradition places less emphasis on the judicial process and more on the nature of the state, as evidenced by concepts like *état de droit*, *stato di diritto*, and *Rechtsstaat*, which all refer to the notion of a state based on the rule of law.³⁸

The rule of law is a contentious concept contested not only on account of divergent viewpoints regarding its foundational principles but also on account of modifications in its application and interpretation. Although certain principles are universally applicable, others are subject to interpretation and permit differing levels of adherence. The required level of compliance is not specified by the rule of law, and it may be impossible to adhere to all principles; therefore, the executive, administrative, and judicial branches must exercise discretion. Discretion is essential because it enables the law to adapt sufficiently to changes in the world and extraordinary circumstances. However, taking these principles to their extreme would hinder any legislation or modification to the law, which is impractical. Some authors distinguish between the rule of law in a narrow sense, which includes legality and due process (referred to as the rule of law I), and the rule of law in a broader sense, which

32 Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (Farrar, Straus and Giroux 2011).

33 *ibid.*

34 'What is the Rule of Law?' (*World Justice Project*, 2023) <<https://worldjusticeproject.org/about-us/overview/what-rule-law>> accessed 10 July 2023.

35 'Rule of law - Country rankings' (*The Global Economy: Business and economic data for 200 countries*, 2022) <https://www.theglobaleconomy.com/rankings/wb_ruleoflaw> accessed 10 July 2023.

36 Jørgen Møller and Svend-Erik Skaaning, *The Rule of Law: Definitions, Measures, Patterns, and Causes* (Palgrave Macmillan 2014).

37 Dicey (n 25).

38 Robert McCorquodale, 'Defining the International Rule of Law: Defying Gravity?' (2016) 65(2) *International and Comparative Law Quarterly* 277, doi:10.1017/S0020589316000026.

includes constitutional democracy (referred to as the rule of law II).³⁹ It is noted that some countries adhere only to the rule of law I, while others implement both mechanisms. China, the largest country in the world, has a poor score on the rule of law II and a score of 0 on the rule of law I. In contrast, Singapore, a small city-state, has a high ranking on the rule of law I and a medium ranking on the rule of law II.⁴⁰ However, None of the countries can assert flawless compliance with the rule of law. The rule of law serves as a reliable and constant point of reference that can provide us with guidance both presently and in the times to come.

4 THE UN'S ROLE IN PROMOTING THE RULE OF LAW

The notion of the rule of law is firmly entrenched inside the United Nations. The rule of law serves as the means by which human rights are put into effect. The 1948 Universal Declaration of Human Rights underscores the crucial significance of safeguarding human rights through the application of legal principles, asserting in its preamble that it is imperative to avert individuals from being compelled to engage in rebellion against despotic authority and suppression.⁴¹ The rule of law has been described as the fourth pillar of the UN Charter and is considered the foundation for achieving peace and security, human rights, and development.⁴² Without the rule of law, achieving these objectives fairly and justly is difficult. However, the UN's ability to promote the rule of law depends on Member States' willingness to cooperate and adhere to established norms and practices. Therefore, the UN acknowledged that the rule of law applies to all states and international organisations (including the UN and its principal organs) and that upholding and promoting the rule of law and justice should serve as guiding principles for all their activities.

In some cases, Member States may resist UN efforts to promote the rule of law. Hence, the effectiveness of UN efforts in promoting the rule of law may vary depending on the political and social context of Member States. In some countries, there may be deep-rooted corruption, weak institutions, and a lack of political will to reform. In such cases, UN efforts may face significant challenges. To tackle such cases at the national level, the UN has improved its approach to supporting the rule of law by assisting in constitution-making, enhancing the national legal framework, strengthening justice, governance, security, and human rights institutions, facilitating transitional justice processes, and empowering civil society. The UN has developed the SDG Impact Standards.⁴³ These guidelines are highly beneficial for various stakeholders seeking to integrate sustainability and the Sustainable

39 Jan-Erik Lane, 'Political Modernisation: The Rule of Law Perspective on Good Governance' (2015) 5(1) *The Open Journal of Political Science* 13, doi:10.4236/ojps.2015.51002.

40 *ibid.*

41 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) <<https://digitallibrary.un.org/record/666853?ln=en>> accessed 10 July 2023.

42 UN Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General' (23 August 2004) UN Doc S/2004/616, note 1, para 9 <<https://digitallibrary.un.org/record/527647?ln=en>> accessed 10 July 2023.

43 *SDG Impact UNDP* <<https://sdgimpact.undp.org>> accessed 10 July 2023.

Development Goals (SDGs) into their decision-making processes. These systems are constructed based on core concepts and offer a structure for effortlessly incorporating various tools and frameworks into the decision-making process. By embracing these criteria, organisations may guarantee a thorough and methodical method of incorporating sustainability and the SDGs into their strategy and daily activities. It is advisable to establish a mandate to perform SDG impact assessments for any new legislation, programs, and development initiatives, regardless of their scope, whether local, national, or worldwide. Ensuring that legal decisions align with sustainable development goals is crucial. By performing these assessments, the United Nations may enforce accountability on decision-makers for their choices and actions.

At the international level, several declarations and statements have emphasised the significance of the rule of law. One such example is the 1970 Declaration on Principles of International Law Friendly Relations and Cooperation among States under the Charter of the United Nations, which is viewed as a clarification of the UN Charter and highlights the crucial role of the UN Charter in advancing the rule of law among nations.⁴⁴ In 1992, the United Nations Conference on Environment and Development adopted the Rio Declaration on Environment and Development.⁴⁵ Principle 27 of the Rio Declaration emphasises the need for cooperation and partnership among states and people to fulfil the principles outlined in the Declaration and further develop international law in sustainable development. While Principle 27 acknowledges the existence of international law in this field, it does not specify its content, whether procedural, substantive, or both, or where it can be found. Independent legal experts reviewed legal and policy instruments and the international practice of states to determine the content of sustainable development law.⁴⁶ They concluded that 'sustainable development' is a legal term encompassing processes, principles, objectives, and a substantial body of international agreements related to environmental, economic, civil and political rights. The UNCED process is significant because it supports an integrated strategy that jointly addresses existing concepts, regulations, and institutional arrangements rather than inventing new ones. The United Nations Millennium Declaration of 2000 laid down fundamental principles that should serve as the foundation for international relations in the 21st century.⁴⁷ These principles encompass freedom, equality, solidarity, tolerance, environmental preservation, and shared responsibility. The derivation of the Millennium Development Goals can be traced back to this declaration. The Millennium Declaration identified strengthening the rule of law as the top priority. At the same time, the World Summit 2005 reiterated the significance of good

44 Declaration on Principles of International Law Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations (adopted 24 October 1970 UNGA Res 2625 (XXV)) <<https://digitallibrary.un.org/record/202170>> accessed 10 July 2023.

45 United Nations, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol 1, Resolutions adopted by the Conference (UN 1993) 3-8.

46 'Report of the Consultation on Sustainable Development: the Challenge to International Law' (1994) 3 Review of European Community and International Environmental Law 1 et seq.

47 United Nations Millennium Declaration (adopted 08 September 2000 UNGA Res 55/2) <<https://digitallibrary.un.org/record/422015?ln=en>> accessed 10 July 2023.

governance and the rule of law as critical to sustaining economic growth.⁴⁸ The Sustainable Development Goals 2015 also include a target to promote the rule of law at national and international levels and ensure equitable access to justice for all.⁴⁹ The rule of law is increasingly viewed as both a developmental objective and a mechanism for achieving development in all nations.

As defined by the International Bar Association Council, the rule of law includes vital principles like an independent judiciary, presumption of innocence, fair trials, proportional punishment, a robust legal profession, confidentiality of lawyer-client communications, and legal equality.⁵⁰ Practices such as arbitrary arrests, secret trials, indefinite detention without trial, cruel treatment, degrading punishment, and electoral corruption are considered unacceptable. The rule of law forms the basis of a civilised society, ensuring a transparent and fair system that empowers and protects individuals. However, the United Nations Secretary-General's 2004 report on the rule of law and transitional justice provides the most widely accepted understanding of the rule of law.⁵¹ It explains the rule of law as a principle of governance where all persons, institutions, and entities, including the state itself, are accountable to publicly promulgated laws that are equally enforced, independently adjudicated and aligned with international human rights norms and standards. The principle requires measures to ensure the supremacy of the law, equality before the law, accountability to the law, fairness in its application, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. The Secretary-General has avoided elaborating on the issue and kept the interpretation of his 2004 report open. He did not imply that the 'concept' meant to define the rule of law for use within the United Nations could apply beyond the Secretariat. In his following report to the Security Council, the Secretary-General emphasised the importance of the rule of law to the organisation's work. He downplayed his terminology as simply an effort to create a 'common language of justice' that includes the concept of the rule of law, among other things.

Based on the UN interpretation, one can understand the rule of law as consisting of three core elements: legal frameworks, institutional capacity, and legal empowerment.⁵² Legal frameworks encompass laws at different levels, while institutional capacity includes the justice system, encompassing formal and informal institutions responsible for implementing and enforcing laws. Legal empowerment refers to individuals' ability to access and effectively use the justice system to protect their rights. These elements correspond to

48 2005 World Summit Outcome (adopted 24 October 2005 UNGA Res 60/1) para 11 <<https://digitallibrary.un.org/record/556636?ln=en>> accessed 10 July 2023.

49 Draft outcome document of the United Nations summit for the adoption of the post-2015 development agenda, Annex: Transforming Our World: the 2030 Agenda for Sustainable Development (adopted 1 September 2015 UNGA Res 69/315) <<https://digitallibrary.un.org/record/803344?ln=en>> accessed 10 July 2023.

50 The Rule of Law: A Commentary on the IBA Council's Resolution of September 2005 (IBA Council's Resolution of 8 October 2009) <<https://www.ibanet.org/Document/Default.aspx?DocumentUid=9925C6FD-5804-407F-9D39-ECB9D6A8B9D4>> accessed 10 July 2023.

51 UN Secretary-General (n 42).

52 Steven Malby, *The Rule of Law and Sustainable Development: A Report of the CSIS Program on Prosperity and Development* (CSIS 2020).

the different components of the UN definition of the rule of law. The notion of 'access to justice,' part of Sustainable Development Goals - SDG Target 16.3, also involves several elements.⁵³ The SDG target stresses promoting the rule of law and access to justice, requiring a focus on all three elements and their corresponding components. Countries must consider these elements to evaluate progress towards achieving these goals.

5 THE INTERPLAY BETWEEN THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT

When discussing the relationship between the rule of law and the SDGs, it is evident that they complement and reinforce each other. In other words, a clear correlation exists between a society's commitment to the rule of law and its progress in sustainable development. The World Summit in September 2005 marked the first recognition of such a correlation.⁵⁴ Paragraph 119 emphasised the interplay and mutual reinforcement of human rights, the rule of law, and democracy.⁵⁵ Moreover, paragraph 134 reaffirmed the commitment to universally adhere to and implement the rule of law at national and international levels, underscoring its importance for peaceful coexistence and cooperation among states.⁵⁶ It is noted that adhering to the rule of law fosters fairness, justice, and accountability, providing a solid foundation for social, economic, and environmental advancement. It facilitates the effective implementation of sustainable development policies and regulations. As a result, societies emphasising the rule of law are more likely to achieve long-term, balanced progress in sustainable development. This is acknowledged by the 2030 Agenda for Sustainable Development, specifically SDG 16, which recognises that access to justice and adherence to the rule of law are vital for promoting sustainable development.⁵⁷

5.1. Global Advocacy for the Rule of Law: The Importance of a Culture of Lawfulness

Advocacy for the rule of law has become global. People, governments, and organisations worldwide are committed to this ideal. The Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Qatar in 2015, saw Member States in which they were pledging to cultivate a culture of lawfulness grounded in the safeguarding of human rights and the rule of law.⁵⁸ However, the precise meaning of a 'culture of lawfulness' remains subject to varying interpretations and misunderstandings. While some view it as a culture

53 'The 17 Goals' (*Sustainable Development Goals*, 2023) <<https://www.un.org/sustainabledevelopment/development-agenda>> accessed 10 July 2023.

54 Elyse Wakelin, 'Rule of Law and the UN Sustainable Development Goals' in W Leal Filho and others (eds), *Peace, Justice and Strong Institutions: Encyclopedia of the UN Sustainable Development Goals* (Springer 2019) 822, doi:10.1007/978-3-319-95960-3_36.

55 2005 World Summit Outcome (n 48).

56 *ibid.*

57 'Goal 16: Promote just, peaceful and inclusive societies' (*Sustainable Development Goals*, 2023) <<https://www.un.org/sustainabledevelopment/peace-justice>> accessed 10 July 2023.

58 Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Annex: Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation (adopted 17 December 2015 UNGA Res 70/174) <<https://digitallibrary.un.org/record/816763?ln=en>> accessed 10 July 2023.

founded on trust and respect for the justice system, law enforcement, and the law, others equate it to mere obedience to the law driven by habit, fear, or self-interest. As with the rule of law, this concept has no definitive definition.⁵⁹ The potential usefulness of the 'culture of lawfulness' lies in its ability to provide a new shared narrative that can underpin a wide range of justice reforms rooted in human rights and democratic principles. This concept encompasses various vague yet significant ideas, including access to justice, accountability and transparency of criminal justice institutions, security, public safety, and fairness in the administration and delivery of justice.⁶⁰ Each of these notions could serve as a fundamental component of a culture of lawfulness.

A 'culture of lawfulness' implies that a society's predominant or mainstream culture, values, and beliefs support the rule of law.⁶¹ In such a culture, the average person acknowledges that legal norms are integral to justice and provide a path to achieve justice, thereby enhancing the quality of life for individuals and society.⁶² The argument underlying this concept is that relying solely on regulatory measures and strong institutions is inadequate for establishing or sustaining lawful and orderly societies. To this end, Godson recommends cultivating a culture of lawfulness through civic and school-based education, centres of moral authority, and positive media messaging that reinforce 'the values that promote law-abiding, values-oriented citizenship'.⁶³ Building a culture of lawfulness is essential for a society to enjoy peace, security, and effective response to emerging threats, such as crime and terrorism.

The Doha Declaration commits Member States to fostering a culture that upholds the rule of law and human rights while respecting cultural identities, specifically focusing on children and youth.⁶⁴ This dual focus on supporting human rights and honouring cultural identities reflects the political and ideological tensions that have given rise to debates over the definition of the rule of law.

5.2. The Rule of Law in the SDGs Agenda

The concept of the rule of law is now a central element of Sustainable Development Goal 16, which urges Member States to establish 'peaceful and inclusive societies for sustainable development,' ensure access to justice for everyone, and construct effective, accountable, and inclusive institutions at all levels.⁶⁵ SDG 16 stands out as it incorporates the lessons learned from the previous Millennium Development Goals (MDGs). This SDG is focused on establishing governance institutions and a judicial system that ensures a stable environment devoid of corruption and violence. These institutions aim to enable citizens to exercise their human rights without hindrance. Recognising the rule of law as the bedrock of sustainable

59 Yvon Dandurand and Jessica Jahn, 'The Fragility of a Culture of Lawfulness' (2018) 23(3) *Białostockie Studia Prawnicze* 13, doi:10.15290/bsp.2018.23.03.01.

60 *ibid.*

61 Roy Godson, 'Guide to Developing a Culture of lawfulness' (2000) 5(3) *Trends in Organised Crime* 91, doi:10.1007/s12117-000-1038-3.

62 *ibid.*

63 *ibid.*

64 Thirteenth United Nations Congress (n 58).

65 *Transforming Our World: The 2030 Agenda for Sustainable Development* (adopted 25 September 2015 UNGA Res 70/1) <<https://digitallibrary.un.org/record/3923923?ln=en>> accessed 10 July 2023.

development, SDG 16 outlines crucial objectives for achieving all other goals. In the beginning, there was an expectation that SDG 16 would face the most opposition or disagreement compared to the other SDGs. This could be because the rule of law and access to justice are complex issues requiring significant reforms and resources. Target 16.3 requires states to promote the rule of law at the national and international levels and ensure equal access to justice. However, the Agenda does not precisely define the specific interplay between the rule of law and sustainable development and the content and responsibilities of states under Target 16.3. The Agenda acknowledges that each country may have different approaches, visions, models, and tools to achieve these goals based on national circumstances and priorities.

Moreover, governments may set their own national targets, guided by the global level of ambition but considering their unique circumstances.⁶⁶ The idea of interaction between the rule of law and sustainable development was previously recognised by the Johannesburg Principles adopted at the Global Judges Symposium held in Johannesburg, South Africa, on 18–20 August 2002. The Johannesburg Principles aim to uphold sustainable development and the rule of law, affirming that the framework of international and national law that has evolved since the Stockholm Conference on Human Environment in 1972 provides a sound basis for addressing environmental threats.⁶⁷ The principles emphasise the importance of an independent judiciary and the peaceful resolution of conflicts, recognising the close connection between human rights, sustainable development, and the rule of law. The judiciary is viewed as a crucial partner in promoting compliance with environmental law, and judges, prosecutors, legislators, and other critical persons should have sufficient knowledge, skills, and information to enforce environmental law effectively. Furthermore, environmental law and sustainable development should feature prominently in academic curricula and legal studies at all levels. The principles also recognise the importance of strengthening the capacity of the poor to defend environmental rights and of powerful nations to protect the global environment.

Including the rule of law in the Agenda for Sustainable Development has brought a fascinating new dimension to the theory and policy of International Development. Although the rule of law principle is acknowledged explicitly in SDG 16.3, its tenets extend throughout the agenda, underscoring the significance of equitable access rights, robust legal frameworks, and inclusive institutions. This marks a significant shift in the concept of the rule of law, which is no longer seen as a backup process but as a critical factor in improving people's lives. The rule of law not only stands as a goal in itself but also provides an enabling environment for other areas of development. It is too important to be left solely in the hands of lawyers, and it requires the participation of all members of society. The Sixth Committee (Legal) has also affirmed that the rule of law can be utilised to achieve various other SDGs. These SDGs include but are not restricted to eradicating poverty and hunger (SDGs 1 and 2), enhancing access to clean water and sanitation (SDG 6), guaranteeing

66 *ibid*, para 55.

67 'The Johannesburg Principles on the Role of Law and Sustainable Development' (2002) 32(5) *Environmental Policy and Law* 236.

access to affordable and clean energy (SDG 7), addressing climate change (SDG 13), and conserving aquatic and terrestrial biodiversity (SDGs 14 and 15).⁶⁸

Therefore, sustainable development is not just about preserving the environment or promoting economic growth but also about maintaining a stable and predictable legal and social framework that allows for the creative and sustainable use of resources. National legal frameworks have a wide-reaching impact on sustainable development across all three dimensions.⁶⁹ They touch upon a range of areas such as commerce, finance, competition, trade, investment, legal entities, criminal law, public and administrative law, education, health, and the environment. For instance, laws that regulate economic transactions, contracts, ownership, property, and access to financial resources and markets promote economic growth, aligning with SDG 8. Similarly, laws that regulate social behaviour, legal identity, access to justice, medical services, and social rights align with SDGs 3, 4, and 16. Lastly, regulatory, criminal, and procedural laws significantly impact environmental protection, access to natural resources such as water, minerals, and forests, and climate change adaptation and mitigation, impacting the realisation of SDGs 13, 14, and 15.⁷⁰ The rule of law is crucial in enabling sustainable development in several ways. Firstly, it ensures that all individuals, including marginalised groups, receive equal treatment, protection, and fair opportunities. This focus on equality and equity helps to address social and economic disparities. Secondly, the rule of law provides predictability, clarity, and legality in everyday affairs. It guarantees that laws and regulations are transparently applied and upheld, ensuring that individuals and businesses can operate within a stable and reliable legal framework. This fosters trust, encourages investment, and promotes economic growth. Thirdly, the rule of law establishes processes and mechanisms that aim to balance sustainable development's economic, social, and environmental dimensions. This encourages sustainable practices, responsible resource management, and environmental protection. Lastly, the rule of law promotes peaceful resolution of disputes. Access to fair and impartial judicial systems helps prevent conflicts and promotes political stability. This stability, in turn, creates a favourable environment for social progress and economic prosperity.

5.3. Exploring the Formal, Procedural, and Substantive Dimensions

An effective approach to comprehending the relationship between the rule of law and sustainable development is to examine the distinct aspects of the rule of law, namely its formal, procedural, and substantive components. The formal aspect of the rule of law offers a stable and predictable legal structure for enterprises and individuals, which is crucial for achieving sustainable economic growth. An effective legal system can have a beneficial influence on the economy by offering transparency, assurance, and reliability in commercial dealings.⁷¹ It can also ensure secure land titles and balance investment incentives, increasing confidence in investment and business. For the rule of law to be effective, the laws must be

68 The 17 Goals (n 53).

69 Malby (n 52).

70 *ibid.*

71 Joseph Raz, 'The Rule of Law and its Virtue' (1977) 93(Aprl) *Law Quarterly Review* 195, doi:10.3316/agispt.19771103.

easily accessible, predictable, and generalised, commonly referred to as legality.⁷² Some authors illustrate this perspective by stating that the rule of law entails 'the rule by laws,' meaning that individuals should comply with and be governed by the law.⁷³ This interpretation emphasises the fundamental nature of the rule of law.

In addition to the formal approach, the procedural approach to the rule of law mandates the inclusion of dispute-resolution mechanisms that independent and unbiased judges oversee.⁷⁴ This requirement supplements the previous emphasis on accessibility, predictability, publicity, and generality of laws. Additionally, people must have access to legal representation, be present during their hearing, cross-examine witnesses, and receive an explanation of the tribunal's decision.⁷⁵ These principles are essential for ensuring that no one should have any penalty, stigma, or severe loss imposed upon them by the government without proper procedures.⁷⁶ In a society where the procedural dimension of the rule of law is upheld, everyone is entitled to a fair and impartial hearing, regardless of their social status, political affiliation, or economic power. By ensuring that disputes are resolved efficiently and effectively, the rule of law can create a favourable environment for sustainable development.

While some jurists follow Raz's view that the rule of law is purely procedural, as the rule of law principles primarily focus on the processes and methods by which the law is created and implemented,⁷⁷ others argue for a substantive dimension. The procedural aspects of the Rule of Law can generate momentum towards substantive ideals such as justice and liberty.⁷⁸ One primary differentiation between formal and substantive conceptions of the rule of law relates to the impact that adherence to the rule of law has on the substance or content of legal rules. Put differently, the substantive aspect of the rule of law broadens the definition to encompass more extensive objectives, such as human rights, liberty, and justice. In South Africa, for instance, the rule of law has both procedural and substantive elements that must be understood in the context of the country's post-apartheid constitutional system. The new constitution emphasises the protection of human rights and the advancement of freedom and democracy, in contrast to the past apartheid legal order, which implemented a racist ideology through law. The key difference is that the new constitution guarantees rights and liberties and rejects the discriminatory ideology of the past.⁷⁹ However, it is essential to note that the formal and procedural aspects of the rule of law are critical for ensuring that the legal system operates effectively, fairly, and transparently. Without these basic prerequisites, the growth and development of societies can be stunted. Pursuing the seventeen Sustainable

72 Lon L Fuller, *The Morality of Law* (Yale UP 1964).

73 Raz (n 71).

74 Stephane Beaulac, 'The Rule of Law in International Law Today' in G Palombella and N Walker (eds), *Relocating the Rule of Law* (Hart Publishing 2009) 197.

75 Raz (n 71).

76 A Wallace Tashima, 'The War on Terror and the Rule of Law' (2008) 15(1) *Asian American Law Journal* 245, doi:10.15779/Z38MK2H.

77 Joseph Raz, 'The Law's Own Virtue' (2019) 39(1) *Oxford Journal of Legal Studies* 1, doi:10.1093/ojls/gqy041.

78 Bingham (n 25).

79 Louis J Kotzé, 'Sustainable Development and Rule of Law for Nature: : A Constitutional Reading' in C Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (CUP 2013) 130.

Development Goals will bring fresh aspects to conventional legal formalism. These goals prioritise a rule of law that effectively upholds human rights, territorial community integrity, social inclusion, specific public goods, and public values. Notably, Goal 16 holds great significance in development as it aims to foster peaceful and inclusive societies, ensure universal access to justice, and establish accountable and efficient institutions at all levels. In other words, to achieve sustainable development comprehensively, it is important to tackle the substantive aspect of the rule of law.⁸⁰ The substantive dimension of the rule of law can ensure that laws are designed to promote sustainable development and are enforced consistently and fairly. This expansion towards more substantive theories has rendered the notion more ambiguous and contested, but it can be seen as a positive development from a human rights and environmental perspective. Within this framework, the crucial importance of access to water, food, and energy is emphasised, as these basic needs must be addressed to ensure the law's adherence.⁸¹

5.4. Constitutional Implications

Laws should maintain stability over time. Excessive amendments or frequent changes can undermine legal certainty. Consequently, the rule of law necessitates that states possess a constitution, whether it is codified or uncoded, that clearly outlines the organisational structure of a country and the division of power. Therefore, the rule of law is commonly recognised as a constitutional value that establishes a standard for measuring other laws and behaviours. It provides an interpretive framework for constitutional provisions directly and indirectly for all other laws. Including both procedural and substantive elements can strengthen commitments to legality. From a Constitutional Law standpoint, the rule of law can be understood by examining the concept of 'constitutionality,' which refers to the adherence of state entities, including state organs, and individuals to objective legal principles as outlined in the highest legal document of a state, namely the Constitution. The Constitution, serving as the paramount legal instrument, delineates the demarcation between the conduct of the state and its organs and the safeguarded human and civil liberties and rights. The concept of constitutionality plays a significant role within the framework of the Constitution. Constitutions typically do not explicitly mention sustainable development in their founding provisions. While the SDGs are not legally binding, they are a policy instrument and a document rather than a treaty.

Constitutions imply sustainable development indirectly through their contextual and value-based framework, including human dignity, equality, and freedom. Social benefits, economic opportunities, and environmental resources must be equally accessible to everyone to lead a dignified life and enjoy these rights. Sustainable development is essential to improving people's quality of life and encompasses social, economic, and ecological conditions. In other words, sustainable development is necessary to achieve the broader constitutional ideals and specific objectives of human dignity, equality, and human rights protection. The wording in this segment suggests that sustainable development is an explicit constitutional objective as it is inherent to social, economic, and environmental rights.

80 *ibid.*

81 *ibid.*

Therefore, the government must achieve, promote, safeguard, respect, and advance sustainable development objectives through these rights. The right incorporates inter-generational and intra-generational characteristics associated with sustainable development, expressing the constitutional goal of balancing ecological, social, and economic considerations. However, some examples of domestic legal systems have constitutionally embedded sustainable development. South Africa included an environmental right in its 1996 Constitution⁸² and implemented a comprehensive set of environmental laws to give effect to its broader policies and constitutional objectives. Through this constitutional entrenchment, sustainable development has become a focal point in the country's legal system.

5.5. The Rule of Law and Good Governance

The international community recognises the rule of law as a fundamental principle and safeguard of good governance, closely tied to sustainable development. The UN Secretary-General has confirmed this.⁸³ In his famous statement, Kofi Annan stated that 'good governance may be the most significant factor in eliminating poverty and advancing development.'⁸⁴ The rule of law is widely recognised as a fundamental aspect of promoting good governance. Various global declarations, such as those adopted at the World Summit in 2005, the High-level Meeting of the General Assembly on the Rule of Law in 2012, and the Sustainable Development Summit in 2015, have endorsed the interrelationship between good governance, the rule of law, and sustainable development.⁸⁵ These declarations are not merely aspirational; they are backed by compelling research demonstrating a strong correlation between adherence to the rule of law and sustainable progress in economic, political, social, and environmental dimensions.⁸⁶ At the same time, the rule of law refers to a system of governance based on non-arbitrary principles, in contrast to a system that relies on the authority and arbitrary actions of a single absolute ruler. While effective decision-making processes, efficient implementation of policies and programs, transparency, accountability, participation, and inclusivity are all vital components of good governance, they must also be carried out following the principles of the rule of law. Without upholding the rule of law, the principles of good governance may be easily undermined by corruption, bias, or abuse of power. However, due to the complex and inherently political nature of the rule of law, there is no single understanding of it accepted by all member states of the UN, which makes it controversial. To quote Waldron, a sceptic might argue that the term 'rule of law' has a grandiose ring, but ultimately, many may perceive it as nothing more than an expression of loyalty or enthusiasm for a particular side or viewpoint.⁸⁷

82 Constitution of the Republic of South Africa (1996) <<https://www.gov.za/documents/constitution-republic-south-africa-1996>> accessed 10 July 2023.

83 UN Secretary-General (n 42) para 6.

84 Rachel M Gisselquist, 'What Does Good Governance Mean?' (*UNU-WIDER Blog*, January 2012) <<https://www.wider.unu.edu/publication/what-does-good-governance-mean>> accessed 10 July 2023.

85 2005 World Summit Outcome (n 48) para 11.

86 Thomas Higdon and Durwood Zaelke, 'The Role of Compliance in the Rule of Law, Good Governance, and Sustainable Development' (2006) 3(5) *Journal for European Environmental & Planning Law* 376, doi:10.1163/187601006X00425.

87 Waldron (n 30).

6 INTERNATIONAL RULE OF LAW

The rule of law was developed at the state level and is traditionally not a standard or widely used term in international law. History would tell us that from the 17th century onwards, the rule of law has become a dominant legal principle within modern nation-states. At the same time, sovereignty has taken centre stage as the leading legal principle between states. This juxtaposition illustrates how the rule of law represents the domestic power structure of the state over its society. At the same time, sovereignty institutionalises the absence of hierarchy and order in international relations. Bingham's eighth principle asserts that the state must comply with its international responsibilities in the same manner as it complies with national law, as a requirement of the rule of law.⁸⁸ This principle raises the issue of establishing an international rule of law. Although his essay primarily addresses the rule of law inside nations and the obligations of governments towards their populations, Bingham urges us to contemplate the presence and implementation of the rule of law at a global level.⁸⁹ He queries the obligation of nation states to adhere to international accords established among themselves. Bingham's perspective is relevant, as well as the belief that we are currently observing the progression of a global system of legal principles, which we expect to advance further. Hence, while initially developed in the context of domestic legal systems, the concept of the rule of law extends beyond these frameworks and can be applied to supranational legal systems.⁹⁰ It is possible to view the rule of law as a set of characteristics that should exist in all legal orders. However, it has become widely accepted in recent decades that the international legal and political system must also respect the rule of law. In other words, the concept of the rule of law within a country was applied by analogy to the global stage to close the divide between the two parties.⁹¹ The presence of the rule of law in the realm of international law is exemplified by the established protocols for formulating regulations within international organisations, including but not limited to the United Nations, the Council of Europe, and the European Union (EU). Enshrined in Article 2 of the Treaty of the European Union, the rule of law is a fundamental principle of the EU. Furthermore, it has evolved into a guiding principle for the Union's conduct in the international arena, as articulated in Article 21 of the Treaty. Nevertheless, the EU has encountered obstacles in maintaining the rule of law in every member state.⁹² These protocols encompass enacting, implementing, and safeguarding these regulations, ensuring the protection of both states and individuals from infringing upon them. The legal community has experienced significant growth in the international rule of law (IROL)

88 Bingham (n 25) 110.

89 *ibid* 110-2.

90 NW Barber, 'The Rechtsstaat and the Rule of Law' (2003) 53(4) *University of Toronto Law Journal* 443, doi:10.2307/3650895.

91 SB Chimni, 'Legitimizing the Rule of Law' in J Crawford and M Koskeniemi (eds), *The Cambridge Companion to International Law* (CUP 2012) 290.

92 Adnan Mahmutovic, 'Erosion of the Rule of Law in the European Union' (2021) 24(S3) *Journal of Legal, Ethical and Regulatory Issues* 1.

literature, reflected by academic conferences, research projects, and journals.⁹³ However, there is little exploration of theoretical issues regarding the feasibility and desirability of IROL despite the increasing interest in the subject. Scholarly contributions to IROL mainly concentrate on legal doctrine, particularly analysing case law, but frequently assume the concept's value and justification.⁹⁴

The essential meaning of the rule of law is the same at both the state and international levels. Unlike the vertical relationship between subjects and the state in domestic legal systems, the actors in the international legal order, namely states, stand on a horizontal footing. Therefore, the definition of the rule of law for the international legal order must be appropriate to its distinct nature, separate from that of national legal systems. Considering this structural difference, some authors identify three interpretations of the international rule of law: the application of the rule of law principles to states and other actors in international law, the supremacy of international law over national law, and the emergence of a global rule of law with normative regimes.⁹⁵ International organisations have also advocated for the principles of the international rule of law to promote their mandates. For example, the UN defines the rule of law as the adherence to existing international laws and its fundamental principles enshrined in the UN Charter.

While consensus on the matter is lacking, it is widely acknowledged that sustainable development has emerged as a prominent topic in discussions within the realm of international law. Incorporating sustainable development into a range of international treaties, specifically those pertaining to the environment, constitutes the most extensive legal acknowledgement of this principle within the domain of international law. Consequently, sustainable development assumes a legally binding status within the parameters established by these treaties. However, it is imperative to emphasise that the binding nature of treaties exclusively applies to the parties involved, namely states or international organisations. Private actors, such as industries and individual citizens, are typically not subject to treaty obligations unless specific circumstances arise, such as situations involving individual criminal responsibility before the International Criminal Court.⁹⁶ However, the primary remaining obstacle to achieving SDGs is ensuring compliance with international law and the rule of law at the global level, not just within individual states. While various institutions and organisations, such as the United Nations,

93 Anne-Marie Slaughter, Andrew S Tulumello and Stepan Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship' (1998) 92(3) *American Journal of International Law* 367, doi:10.2307/2997914; Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2012) doi:10.1017/CBO9781139107310.

94 Denise Wohlwend, *The International Rule of Law: Scope, Subjects, Requirements* (Edward Elgar Pub Ltd 2021) doi:10.4337/9781789907421.

95 Simon Chesterman, 'Rule of Law' in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (OUP 2007) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1676?prd=EPIL>> accessed 10 July 2023.

96 Marjan Peeters and Thomas Schomerus, 'Sustainable Development and Law' in H Heinrichs and others (eds), *Sustainability Science* (Springer 2016) 110, doi:10.1007/978-94-017-7242-6_9.

monitor their treaties, no central legislative body is responsible for making international law accessible, clear, and specific.

Furthermore, to achieve better compliance with international law and ensure that breaches of international law are treated equally, idealists believe that the judicialisation of adjudication procedures is necessary.⁹⁷ They argue that developing an international rule of law depends mainly on establishing sound judicial institutions for adjudication procedures rather than relying on diplomatic efforts. On the other hand, realists hold a different perspective, rejecting the idea that the design of adjudication procedures significantly impacts state compliance with international law or ensures that comparable breaches of international law are treated similarly. Given the anarchical nature of international relations, they believe powerful states will act as they please in both judicial and traditional diplomatic procedures. In contrast, weaker states will be left to suffer.⁹⁸ Adopting judicialised adjudication procedures is a fundamental prerequisite for establishing an international rule of law. Unlike traditional diplomatic adjudication, judicialised procedures allow breaches of international law to be treated comparably, which is crucial for the emergence of an international rule of law.⁹⁹

The role of courts in promoting sustainable development is a topic of discussion. Some argue that courts should focus on procedural aspects.¹⁰⁰ This approach aims to uphold fairness, transparency, and inclusivity in decision-making, thereby enhancing the legitimacy and accountability of environmental governance. On the other hand, there are proponents of courts intervening in substantive decision-making.¹⁰¹ They believe courts possess the expertise and authority to assess whether decisions align with sustainability objectives and consider their broader societal and environmental impacts. By actively participating in substantive matters, courts can influence the development of policies and practices that support sustainable development goals. The appropriate extent of court intervention depends on factors such as the legal framework, the specific issue, and the balance between judicial and executive functions. Some legal systems empower courts to review and enforce environmental laws, while others grant administrative bodies more discretionary power. The level of judicial intervention may vary based on factors such as the severity of environmental harm, clear legal standards, and the availability of scientific evidence.

As we can see, the rule of law applies within national borders and between nations, yet its use in this context is not fully understood. The international rule of law is often discussed

97 Bernhard Zangl, 'Is there an Emerging International Rule of Law?' (2005) 13(S1) *European Review* 73, doi:10.1017/S1062798705000207.

98 *ibid.*

99 Cesare PR Romano, 'The Proliferation of International Judicial Bodies: The Pieces of a Puzzle' (1999) 31(4) *New York University Journal of International Law and Politics* 709.

100 Lu Liao, Mildred E Warner and George C Homsy, 'Sustainability's Forgotten Third E: What Influences Local Government Actions on Social Equity?' (2019) 24(12) *Local Environment* 1197, doi:10.1080/13549839.2019.1683725.

101 Carine Nadal, 'Pursuing Substantive Environmental Justice: The Aarhus Convention as a 'Pillar' of Empowerment' (2008) 10(1) *Environmental Law Review* 28, doi:10.1350/ENLR.2008.10.1.003.

regarding determinacy, clarity, and predictability.¹⁰² On the international stage, adherence to the rule of law entails fulfilling obligations under international law by those bound by it. Most of these obligations are outlined in treaties formulated by international organisations, which cover various legal issues. However, these international treaties are frequently crafted using ambiguous language, leaving room for interpretation. For instance, Article 18 of the 1969 Vienna Convention on the Law of Treaties states that a State that has signed or ratified a treaty must refrain from actions that would undermine its purpose before it comes into effect.¹⁰³ The lack of clarity in this provision regarding its interpretation and obligations has been recognised as one of the significant drawbacks of the Convention. Environmental treaties often exhibit a common characteristic of employing vague language. For instance, the United Nations Framework Convention on Climate Change (UNFCCC) of 1992 lacks significant binding obligations for treaty participants.¹⁰⁴ Still, it establishes an institutional framework for subsequent decision-making conducted by the Conferences of the Parties (COP). Within this decision-making process, the UNFCCC outlines principles that include recognising the right to sustainable development. However, the wording of the UNFCCC allows for considerable interpretation and does not provide a clear substantive rule regarding sustainable development.¹⁰⁵ Therefore, the treaty parties are responsible for facilitating interpretation and policy development to establish binding commitments, as demonstrated in the Kyoto Protocol 1997.¹⁰⁶

States are better informed of their legal obligations than individuals since they are parties to treaties and practices that establish international law. Additionally, protecting the liberty of national states is not as crucial as protecting the liberty of individuals. Therefore, invoking the Rule of Law in the international realm must not undermine the values it secures within national borders. Whether international institutions, such as the UN, should be bound by the Rule of Law remains controversial, as officials worry about diplomatic immunity and the potential unravelling of international action.

7 CONCLUSION

The rule of law is widely acknowledged as a timeless principle and a standard of legal conduct that has exhibited remarkable durability over time. Adhering to the rule of law principle is crucial for safeguarding and promoting both democracy and sustainable development. Moreover, breaches of the principle have far-reaching consequences for economic, social, and environmental endeavours, recognised as the primary foundations of the United Nations Sustainable Development Goals (SDGs) Agenda. Disregarding the rule

102 Simon Chesterman, 'An International Rule of Law?' (2008) 56(2) *The American Journal of Comparative Law* 331, doi:10.5131/ajcl.2007.0009.

103 Vienna Convention on the Law of Treaties (23 May 1969) <<https://www.refworld.org/docid/3ae6b3a10.html>> accessed 10 July 2023.

104 United Nations Framework Convention on Climate Change (1992) <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> accessed 10 July 2023.

105 *ibid*, art 3, para 4.

106 Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997) <<https://unfccc.int/resource/docs/convkp/kpeng.pdf>> accessed 10 July 2023.

of law significantly erodes confidence in the long-term progress of development. This comprehensive examination of the various dimensions of the correlation between sustainable development and the rule of law, encompassing domestic and global contexts, has substantiated the notion that these two principles pursue certain shared goals. One aspect to consider is that the rule of law functions as a fundamental criterion for determining constitutionality, guiding all legal statutes and processes. The rule of law provides a comprehensive analysis of legality through its emphasis on formal, procedural, and substantive elements. It prevents the abuse of authority and arbitrary decision-making by mandating that the government protect the fundamental rights of individuals and that all laws and government actions be logically connected to legitimate government objectives. The rule of law upholds the authority and stipulations of constitutional law by ensuring that all individuals and actions are governed by it.

Furthermore, it reinforces institutions by establishing principles that govern the interpretation of the constitution and laws; thus, it elevates the judiciary to the highest regard as a defender of the rule of law. In addition to assuring environmental rights and protection in general, the rule of law is crucial for supporting consumers, encouraging investments, establishing a stable business environment, and guaranteeing and protecting human rights. These are fundamental dimensions of the UN SDG Agenda. Sustainable development, on the other hand, not only explicitly emphasises the significance of the rule of law (UN SDG 16.3) but can also play an important role in upholding and strengthening the rule of law. Sustainable development incorporates the procedural aspects of the rule of law, establishing a benchmark for the creation and implementation of reasonable legislative and administrative measures aimed at achieving social, economic, and environmental well-being for present and future generations. This is accomplished by utilising the content and goals of the right to social, economic, and environmental well-being as the prevalent standard for the rule of law. In this regard, institutions must enact legislative and administrative measures that contribute to achieving these objectives. Failure to do so could be construed as violating the rule of law.

However, SDG 16 faces its greatest obstacle in the form of international compliance with the rule of law and international law. Although a number of institutions, including the United Nations, supervise their treaties, there is no centralised legislative body tasked with ensuring the clarity, accessibility, and certainty of international law. Notwithstanding these challenges, it is generally recognised that maintaining compliance with international law is critical for safeguarding the rule of law. While international law violations occur, they are generally considered exceptional circumstances rather than the norm. It is the duty of legal academicians and practitioners to analyse the integration of sustainability principles into legal frameworks and formulate practical implementation strategies for particular legal proceedings. Hence, it is critical to advocate for the progress and evolution of sustainability law in the wider field of sustainability sciences.

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