Original Scientific Article
DOI: 10.5937/gakv96-55487
UDC 502:34(4)

Vlad Bărbat, Ph.D.[*]
"Bogdan-Voda" University, Romania
ORCid: 0009-0008-9597-6765

THE GOLDEN STANDARD
The Epitome of State Responsibility in International Environmental Law[**]

"We think too much and feel to little,
machine men with machine minds"

Charlie Chaplin in "The Great Dictator" (1940)

ABSTRACT: This article examines how the right to a healthy environment became a human right and how it was internationalized in response to the idea that transboundary damage existed. First, we discuss how this evolution of the study and regulation of environmental rights led to the creation and growth of international law concerning the environment. In the second part, the article deals with the key features of this institute (the right to a healthy environment) and its academic place within the environmental field and focuses on the international responsibility of the state when violating a regulation and damaging the right of another sovereign state or territorial area outside its national jurisdiction. Third, we highlight

[*] e-mail: vlad.vasile.barbat@gmail.com, Vice-Chairman of The Center for Interdisciplinary and European Studies.

[**] The paper was received on December 12, 2024, and the paper was accepted for publication on January 20, 2025.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina.*

the diverse but similar state responsibilities by investigating this type of state accountability as a foundational idea of international environmental law and illustrate how support for a number of international standards helps nations come together on a worldwide scale to work toward sustainable development and the recovery of the terrestrial environment. Lastly, we seek and addresses how these two categories of state duty enable global environmental conservation.

***Keywords**:* state responsibility, climate hegemony, international rule of law, *ex delicto, sine delicto principle*, common concern, climate change, golden standard

INTRODUCTION

We aim to offer a broad view on what we refer to as the golden standard in state responsibility; the current research is justified by the need to examine how states are held responsible for violating international environmental law, causing damage across borders, and failing to protect the environment. The article also looks into how countries with different economic systems are compelled to fulfil their environmental protection responsibilities.

In order to conceptualize sustainable development, our research technique entails placing history and norms in perspective (pragmatic approach). This introduces concepts regarding the development of international environmental law and some of its most important criteria. The international duty of states for environmental harm perpetrated in another state or in territories outside of their national jurisdiction will thereafter be dominated by the states' shared but separate international responsibilities.[1]

The methodological approach focuses on interdisciplinary theoretical research with consultations on themes of public international law, human rights, and international environmental law through research on, among other things, doctrines, articles, standards, advisory opinions, and decisions of bodies that are part of international organizations. The historical and inductive methods will make it possible to establish the conceptual foundations, the historical evolution of international environmental law, the international responsibility of states, the practices employed in sustainable development, and the environmental protection and restoration by states[2].

[1] For a broader analysis, see Fromageau, J. (2023). *International Union For Conservation of Nature and Natural Resources Report*, 10–11. Retrieved on 12. 10. 2024. from https://portals.iucn.org/library/sites/library/files/documents/EPLP-091-En.pdf.

[2] *Ibid.*, 15–20.

We notice that, within the course of history, international law has not always been suitable for addressing environmental degradation due to its intrinsic bilateral nature and the resulting obligation on the side of states. Some concepts, such as the "common concern of humanity", which relate to climate change and biodiversity, presume that all countries in the international community are interested in them. Both *erga omnes* and *erga omnes partes* responsibilities are effectively coincident with this. The conditions described above lead to a variety of approaches, and it is not always clear what they mean for international environmental law.

An additional question that further muddies the waters regarding accountability and responsibility for environmental destruction is the difference between liability *sine delicto* (deleterious acts deriving from authorized activity) and culpability *ex delicto* (based on wrongful conduct). This distinction also presented challenges for the International Law Commission (ILC), particularly with regard to liability arising from risky operations like nuclear power plants. With the 1978 Articles on Liability for Injurious Consequences of Acts Not Prohibited by International Law[3], the ILC was founded in response to these concerns. However, this strategy was criticized almost universally for being fundamentally flawed. The critics' main grievance was that under state responsibility law, the question is not whether the relevant behaviour is illegal in and of itself, but rather whether the liable state has done its due diligence to avoid causing transboundary harm.

[3] The International Law Commission (ILC) adopted the 1978 ILC Articles on State Responsibility, also known as the Articles on Liability for Injurious Consequences of Acts Not Prohibited by International Law (1978). These articles address states' liability for harm resulting from transboundary harm caused by actions that are not expressly forbidden by international law. These articles were supposed to serve as a model for state practice and the evolution of international law, not as a legally enforceable agreement. Even if the articles are not legally binding as of right now, they have had a big impact on international legal theory and practice, especially when it comes to environmental law and transboundary injury. In debates of state duty and obligation for actions that injure other states, the concepts outlined in the 1978 articles remain pertinent, particularly in situations where no previous treaty or particular regulation specifically forbids the damaging behavior.

Specifically, some of the concepts outlined in the 1978 articles may have been incorporated into Customary International Law over time. Examples of treaties that incorporate the notion that a state can be held accountable for transboundary environmental harm (such pollution) are the Convention on the Law of the Non-Navigational Uses of International Watercourses (1997) and the 1992 Convention on Biological Diversity. We believe that, even though the 1978 articles themselves are no longer regarded as legally binding, the concepts and guidelines they established have had a substantial impact on the evolution of international law and are still pertinent when debating state accountability and obligation.

What is the Foundation of State Liability?

- Article 1: "Every internationally wrongful act of a State entails the international responsibility of that State"
- Article 2: "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State[4]."

Ab Initio: Accountability for environmental damage. This is not a novel idea. Its philosophy is based on the Roman saying *sic utere tuo ut alienum non laedas*[5], which translates to: "Use your own property in such a way that you do not injure other people's." Common law and domestic civil law regulations pertaining to nuisances and disturbances in the area are closely linked to this concept[6]. In this sense, no State may use or allow the use of its territory in a way that harms another's territory, its properties, or its inhabitants in accordance with the principle of international law, unless the situation is grave and the harm is proven by irrefutable evidence.

Ab Secundo: The difference between liability *sine delicto* (deleterious acts deriving from allowed behaviour) and accountability *ex delicto* (based on wrongdoing). This divide has presented challenges for the International Law Commission (ILC)[7], particularly with regard to accountability for risky operations like nuclear power plants. The ILC was created in 1978 with the Articles on Liability for Injurious Consequences of Acts Not Prohibited by International Law in order to solve these problems. But this strategy received a lot of critique for its fundamental shortcomings. Critics mainly contended that the test under state responsibility law is not whether the relevant action is unlawful in and of itself, but rather whether the home state has taken reasonable measures to prevent transboundary injury. Last, but not least: the precautionary

[4] In accordance with: UN Commission. (2001). *Report on State Responsibility on Wrongful Acts (Responsibility of States for Internationally Wrongful Acts)*. Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

[5] For a more complex analysis, please consult Rosencrantz, A. (2003). The Origin and Emergence of International Environmental Norms. *UC Law SF International Review*, 3/2003, 3–4. Retrieved on 12. 11. 2024 from https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1580&context=hastings_international_comparative_law_review.

[6] Subramanya, T. R. (2017). *Emergence of Principle of Sic Utere Tuo Ut Alienum Non-Laedes in Environmental Law and Its Endorsement by International and National Courts: An Assessment*. SSN Scientic Article Database, 2–3. Retrieved on 12. 10. 2024. from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4691409.

[7] Schmalenbach, K. (2023). States Responsibility and Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective.* Springer International Publication, 44–48.

principle[8]. The legal processing of environmental risks characterised by high uncertainty is one of the central objectives of environmental law. Prominently, according to the precautionary principle, appropriate measures to prevent environmental degradation need to be taken, even if there is a lack of full scientific certainty that serious or irreversible damage will occur. It may justify protective measures notwithstanding a lack of evidence of harm or straightforward causal relationships.

What we would like to express is that, although the Articles on State Responsibility have not been formally ratified as a treaty, they were adopted by the International Law Commission (ILC) in 2001. Nevertheless, they are a significant source of international law. The Articles on State Responsibility for Internationally Wrongful Acts (IWA) contain various important sections, such as:

Part 1: A State's Internationally Wrongful Act

This section outlines the definition of a globally wrongful act, which includes a state's violation of an international responsibility.

According to Article 1, a state's violation of an international responsibility constitutes an internationally wrongful act;

According to Article 2, a state's violation of an international responsibility is internationally unlawful conduct.

Part 2: A State's Liability for an Internationally Wrong Act

The circumstances that give rise to state accountability are covered in this section.

Article 4: Indicates that a state bears responsibility for its actions, whether they are carried out by its agents or other individuals;

Article 5–10: Talk about situations like consent, self-defence, or force majeure that may exclude a state from accountability.

Part 3: Outlining a State's International Responsibilities

The repercussions that occur when a state is held accountable for an internationally unjust act are covered in this section.

Article 30: This article addresses the duty of the state in question to put an end to the wrongdoing and provide guarantees that it won't happen again;

Article 31: Talks about the responsible party's obligation.

[8] For a more complex analysis, see: Kerbrat, Y., Maljean-Dubois, S. (2019). *The Role of International Law in the Promotion of the Precautionary Principle*. The Hal Open Science Platform, 3–5. Retrieved on 12. 11. 2024. from https://shs.hal.science/halshs-02342746/file/PrecautionaryPrinciple_Carina.pdf.

Part 4: Execution of a State's International Responsibilities

The processes for enforcing and carrying out state responsibility are described in this section.

Article 55: Talks about foreign nations' or international organizations' rights to claim state responsibility in certain situations.

In cases of violations of international responsibilities, including human rights legislation, humanitarian law, and international treaties, the Articles on State liability – which delineate both the substantive and procedural components of state liability under international law, are extremely pertinent.

Ab Tertio: International law has not always been suitable for addressing environmental degradation due to its intrinsic bilateral nature and the resulting obligation on the side of states. Some concepts, such as the "common concern of humanity"[9], which relate to climate change and biodiversity, presume that all countries in the international community are interested in them. Both *erga omnes* and *erga omnes partes* responsibilities are effectively coincident with this. The requirements outlined above give birth to a variety of approaches, and it is not always clear what they mean for international environmental law;

Remembering the Landmarks in International State Responsibility

We will start our argumentative journey by evoking a few landmarks relevant to our research. Firstly, The UN Framework Convention on Climate Change (UNFCC), which was adopted at the Rio de Janeiro Earth Summit in June 1992, reiterated the no-harm principle and noted that "the largest share of historical and current global GHG emissions has originated in developed countries"[10]. However, the recognition of a new and somewhat enigmatic principle of "common but differentiated responsibilities", which states that "the developed country Parties should take the lead in combating climate change and the adverse effects thereof," obscured this preambular reference to the no-harm principle.

[9] Gailhofer, (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication, 10–11.

[10] Fitzmaurice, M. (2015). The Rio Declaration On Environment and Development: A Commentary. *Oxford Scholarly Authorities on International Law [OSAIL]*. Oxford Public International Law, Oxford University Press, 2021, 3. Retrieved on 13. 10. 2024. from https://styluscuriarum.wordpress.com/wp-content/uploads/2021/04/texto-7-complementar-fitzmaurice-principle-13-rio-declaration-2015.pdf.

While developed states have argued that the principle of common but differentiated responsibilities only "highlights the special leadership role of developed countries, based on [their] wealth, technical expertise and capabilities", it is unclear what the nature of the principle actually is. It may seem to hint at the causal responsibility of industrialised states (as an application of the no-harm principle).

Secondly and following Rio, environmental protection was incorporated into all significant economic agreements. The Marrakech Agreement, the first economic agreement to acknowledge the objectives of environmental preservation and sustainable development, is a prime example. It established the World Trade Organization in 1994[11].

Since its signatories have gathered annually at the, so-called, Conference of the Parties (COP), the 1995 Convention on Climate Change merits special attention. In this context, the Kyoto Protocol was introduced in 1997[12]. It was the first global agreement to create legally binding responsibilities for wealthy nations, even if it was unsuccessful in reducing greenhouse gas emissions. The Millennium Declaration[13], which was adopted by 189 nations in New York in 2000, emphasized the significance of sustainable development by acknowledging the necessity of economic growth and sustainable energy means.

In order to fulfil the promises, delegates from 190 nations gathered in Johannesburg for the United Nations World Summit on Sustainable Development two years later, in 2002[14]. The signatory nations pledged in this agreement to do everything within their power to keep the planet's average temperature from increasing by 2°C over pre-industrial levels, and ideally to keep it below a 1.5°C increase. Its preamble acknowledged the connection between climate change and human rights. With nearly every nation in the world having ratified it, it has enormous potential as a tool for international law. In practice, England recently issued the first decision to block a project (the development of an airport), stating that by moving forward, there would be a lack of accordance

[11] Otto, H. (2002). Climate Policy after The Marrakesh Accords: From Legislation to Implementation. *Yearbook of International Environmental Law,* Vol. 12/2001, 3–4. Oxford University Press.

[12] *Ibid.*, 4–5.

[13] In accordance with: United Nations. *The Official Report of the United Nations on Achieving the Internationally Agreed Development Goals, Dialogues at the Economic and Social Council*, 7–8. Retrieved on 12. 10. 2024. from https://www.un.org/en/ecosoc/docs/pdfs/achieving_the_internationally_agreed_millenium_development_goals.pdf.

[14] In accordance with: United Nations. (2002). *Report of The World Summit on Sutainable Development*, 136–138. Retrieved on 12. 10. 2024,10,11. from file:///C:/Users/vladv/Downloads/A_CONF.199_20-EN.pdf.

with the Paris Agreement[15]. The Inter-American Court of Human Rights' Advisory Opinion (2017) on environment and human rights is a recent landmark that is particularly important for Latin America. In it, the Court acknowledged, for the first time, the importance of a healthy environment to human life and the effects of climate change and environmental degradation on human rights[16].

THE MATRIX OF ENVIRONMENTAL STATE RESPONSIBILITY

Brief Principles

When assessing climate change reparations, the interests of the states affected by the phenomenon, the responsible governments, and the effective administration of justice should all be taken into consideration[17]. Second, because it is impossible to measure and value the harm caused by excessive GHG emissions, climate change reparations could only be made *ex aequo et bono* through some kind of lump-sum arrangement[18] rather than on the basis of a thorough assessment of the injury. Third, one may argue for a reduction in the reparations owed in the context of past emissions, based on the limited "culpability" of polluting governments during a period when there was no evidence of the detrimental impacts of high GHG emissions[19]. Fourth, people shouldn't be subjected to undue consequences because of the myth that the state is responsible for the actions of its government. This is particularly true when it comes to requiring a people to pay long-term instalment payments in full to make up for past wrongs that caused widespread harm.

Exemptions from International Law

The way reparations are viewed in general international law should also be questioned in light of the prior considerations. The International Law Commission has found exceptions to the general rule, which states that

[15] For a broader analysis, see: Norton Rose Fulbright. (2020). *Heathrow ruling endangers projects globally.* Link: https://www.nortonrosefulbright.com/en/knowledge/publications/adf426aa/heathrow-ruling-endangers-projects-globally.

[16] In accordance with: The Inter-American Court of Human Rights. (2017). *Official Advisory Opinion OC-23/17 od 14. 11. 2017, requested by The Republic of Columbia*, 21–22. The draft ruling and motivation of the Court can be consulted online at https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf . Retrieved on 12. 10. 2024.

[17] Meyer, B. (2017). Climate Change Reparations and the Law and Practice of State Responsibility. *Asian Journal of International Law*, No. 7/2017,187–188.

[18] *Ibid.,* 186.

[19] *Ibid.*, 209.

> "...[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."[20]

These exceptions are generic in character, applying to comparable circumstances in a variety of international law domains, rather than being limited to *leges speciales* relevant to specific subjects. The ILC itself noted in its initial reading of the Draft Articles on State Responsibility that one of these exceptions is the "legal principle of broad application"[21], which states that reparation measures shouldn't be "depriving the population of a State of its own means of subsistence[22]". However, a reduction in reparations beyond the responsible state's financial means may also be warranted for reasons like the indirect nature of the harm, the stark disparity between the harm and the wrongfulness of the act, or the restriction of collective responsibility as a kind of "rough" justice in cases of severe harm.

Types of State Liability

Strict vs. Fault-Generated Liability

The contrast between two basic models that can be used is the first essential aspect of liability regimes that is crucial to comprehending their purpose: The first model, known as strict liability[23], states that an entity may be held liable if it causes harm as a result of actions that are not illegal in and of themselves. The party creating the damage cannot use an excuse or reason to avoid responsibility under strict liability. Therefore, strict liability is frequently applied to damages originating from extremely dangerous activities and does not imply negligent or unlawful behaviour. The second broad concept, fault-based responsibility, on the other hand, holds that liability is contingent upon a

[20] Article 31, UN Commission. (2001). *Report on Responsibility of States for Internationally Wrongful Acts*. Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

[21] Voulgaris, N. (2022). The International Law Commission and Politics: Taking the Science Out of International Law's Progressive Development. *The European Journal of International Law,* Vol. 33, No. 3/2022, 775–776.

[22] Paparinskis , M. (2021). Crippling Compensation in the Law of State Responsibility. *The Blog of the European Journal of International Law*, online edition. Retrieved on the 2.11.2024 from https://www.ejiltalk.org/crippling-compensation-in-the-law-of-state-responsibility/

[23] Gailhofer, (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication, 24–25.

violation of norms[24]. Therefore, liability rules establish the legal ramifications of deliberate or careless violation of fundamental standards, such as environmental due diligence. Therefore, it is possible to classify standards that create fault-based responsibility as secondary legal standards that prevent an irrational risk[25] of breaking a basic legal standard.

With respect to fault-based liability, the norms and standards which regulate prohibitions, requirements or permissions in relevant normative orders must be taken into account. In cases concerning environmental liability, the breach of a duty or standard of care often plays a decisive role[26]. Article 4:103 of the Principles of European Tort Law holds that such a duty to act "may exist if law so provides, or if the actor creates or controls a dangerous situation, or when there is a special relationship between parties or when the seriousness of the harm on the one side and the ease of avoiding the damage on the other side point towards such a duty."

Straightforward Approaches of Liability

Liability law is usually understood to handle horizontal interactions between the party inflicting the damage and the person who is being harmed. While civil liability usually allows for reimbursement or restitution of damages between private individuals, state liability under public international law governs the restitution or compensation of damages between states[27]. In opposition to this horizontal notion, attorneys occasionally also distinguish vertical or "top-down" approaches of liability. For instance, in international environmental liability regimes, so-called "administrative"[28] liability allows public authorities to take direct action against polluters who engage in environmentally hazardous activities.

---

[24] Gailhofer, (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication, 26;

[25] *Ibid.*, 27.

[26] Sucharitkul, S. (1996). Responsibility and Liability for Environmental Damage Under International Law. *Publications, Paper* 664/1996. Golden Gate University School of Law Digital Commons, 4–5. Retrieved on 13. 10. 2024. from https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1669&context=pubs.

[27] For a broader analysis, see: Chinen, M. (2012). Complexity Theory and the Horizontal and Vertical Dimensions of State Responsibility. *The European Journal of International Law*, Vol. 25, No. 3 /2012, 705–706.

[28] Gailhofer, (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication, 24.

The polluter may be asked by this public authority to give information about impending environmental dangers, take preventive measures, or, in the event that damage has already been done, take corrective action. It is crucial to remember that many of the functions traditionally attributed to liability refer to a horizontal understanding and, in fact, explain these functions, as opposed to "top-down"[29] accounts of regulation. Regardless, we will not exclude such top-down instruments from our analysis in the upcoming chapters. In the upcoming chapters, we distinguish between administrative or state-centred, "top-down" approaches to regulation and (horizontal) liability regimes in order to provide a clear understanding of liability and its specific purposes[30].

THE ECONOMIC FUNCTIONALITY OF LIABILITY LAW

Ab Initio: This internalization is seen to have a deterrent effect on the risky behaviour of self-interested "rational" agents; regulations that specify damages are thought to discourage unwarranted harmful behaviour[31]. Companies may be more inclined to make environmentally friendly expenditures if they expect to be sued for possible liability.

Ab Secundo: It goes without saying that different actors have different levels of access to information about harm risks and suitable preventative measures. Economic theories of (liability) law[32] offer standards for "rational choices" among regulatory tools, and the "desirability of liability [versus state-centered] regulation" is thought to be largely determined by the disparities in knowledge or "information asymmetries"[33] between public authorities and private parties regarding risky activities[34]. Our rational observation is that

[29] Gailhofer, (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication, 25.

[30] Chinen, M. (2012). Complexity Theory and the Horizontal and Vertical Dimensions of State Responsibility. *The European Journal of International Law*, Vol. 25, No. 3 /2012, 707.

[31] For a more complex analysis, see: Deffains, B., Rouillon, S. (2018). Economics of Liability, Precaution versus Avoidance. *Revue d'Economie Politique*, Vol. 128(1). Dalloz, 41. Retrieved on 13. 10. 2024. from https://shs.cairn.info/revue-d-economie-politique-2018-1-page-41?lang=fr.

[32] Cooter, R. (1991). Economic Theories of Liability Law. *Journal of Economic Perspectives*, Vol. 5, No. 3/1991, 11–12. The American Economic Association Platform. Retrieved on 14. 10. 2024. from https://www.aeaweb.org/articles?id=10.1257/jep.5.3.11.

[33] Gailhofer, (2023). *Op. cit.*, 29–30;

[34] *Ibid.,* 31.

the internalization of external effects through state-centred regulation may not work in some situations, such as when there is a lack of knowledge about the contributions of different polluters, the severity of risky activities, the likelihood of damage occurring, or the extent of damage, should it occur.

Ab Tertio: Liability law can be viewed as adopting the premise of regulatory decentralization, and environmental liability may be seen as establishing a decentralized method of standard enforcement. It goes a step further by granting affected parties the ability to enforce pertinent commitments and file a lawsuit in court to prevent rights violations. The fact that a significant amount of the consequent harm to people's rights and entitlements goes unpunished is often cited as the reason for the overexploitation of common environmental goods. Traditionally, state-centred methods of enforcing and controlling public environmental law have been criticized for their inability to guarantee that violations are sufficiently and successfully punished.

Exempli Gratia

1. The interconnected economic consequences of environmental responsibility may be of a cascading nature. Hence, in the context of recent liability judgments, such as in *Lliuya v. RWE*, property damage claims against CO2 emitters might further raise liability concerns because, in theory, emitters should anticipate a large volume of these claims due to the scattered and varied nature of climate change-related damage[35]. Crucially, corporation law obligations are also impacted by these claims. Government representatives, business attorneys, and insurance providers engage in heated debates about their duties to disclose and be transparent about the financial risks associated with climate change, especially in light of lawsuits pertaining to the issue. For instance, new shareholder litigation suits may result from violation of such commitments. Because they clarify such liability concerns, transparency and disclosure requirements may potentially influence financiers' choices about CO2-emission-intensive ventures[36].

2. A group of 2,400 elderly Swiss women known as the KlimaSeniorinnen (2024)[37] informed the European Court of Human Rights that they were being denied a number of their rights. They contended that Switzerland

[35] Essen Regional Court, *Luciano Lliuya v. RWE AG*, Case No. 2 O 285/15, on appeal.

[36] German Watch. (2023). *8 years of climate lawsuit against RWE*. Retrived on 24. 11. 2024. from https://www.germanwatch.org/en/node/89817.

[37] European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland (communicated case)* – 53600/20.

should contribute to halting global warming pursuant to the Paris Agreement's objective of 1.5°C (2.7°F) over preindustrial levels, as older women are more likely to perish in heat waves, which have gotten hotter and more frequent due to fossil fuels. The Court decided that Swiss officials had not taken prompt action to develop a sufficient plan to reduce emissions[38]. The applicants' improper access to Swiss justice was also discovered.

The First Climate Case in Romania

The first climate trial in Romania began in 2023 when the Declic Association[39], a Romanian non-governmental organization, and four other Romanian citizens sued the government in the Cluj Court of Appeal. They argue that their fundamental rights are violated by the State's lax policy against climate change challenges and they urge the government to take action. The Court of Appeal in Cluj responded in June of 2023 by dismissing the lawsuit as unfounded. However, the plaintiffs filed an appeal to contest this first climate verdict in Romania.

What Are We Attempting to Deduce?

The plaintiffs' first claim is that the defendants have not fulfilled their legal duty to cut greenhouse gas (GHG) emissions by at least 55 % below 1990 levels in accordance with Regulation 2021/1119. Romania is a party to the Paris Agreement, which states that this is necessary in order to assist in reaching the 1.5°C target. If all nations fulfil their obligations, the goal is to provide a high standard of living in accordance with human dignity both now and in the future.

Second, the plaintiffs contend that the 45 % goal set by the REPowerEU Plan is much higher than the Romanian government's goals to raise the proportion of renewable energy sources to 30.7 % by 2030 through the INECP and to 29 % through the National Recovery and Resilience Plan (NRRP[40]). Further

[38] For more Information, see: Global Litigation News. (2024). *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: European Court of Human Rights identifies shortfalls in Swiss climate mitigation measures and access to justice.* Retrieved on 13. 10. 2024. from https://globallitigationnews.bakermckenzie.com/2024/04/17/verein-klimaseniorinnen-schweiz-and-others-v-switzerland-european-court-of-human-rights-identifies-shortfalls-in-swiss-climate-mitigation-measures-and-access-to-justice/.

[39] Court of Appeal in Cluj, *Case No. 114/33/2023* (trial proceedings); *Case No. 2683/1/2023* (appeal proceedings).

[40] For further details, see the ruling of the Romanian Court of First Instance in Cluj. Retrieved on 14. 10. 2024. from https://climatecasechart.com/non-us-case/declic-et-al-v-the-romanian-government/.

disputed are the emphasis on hydropower and biomass projects, ongoing fuel-related projects and investments, inefficient solar energy investment programs, and the propensity to present data that does not accurately reflect the situation on the ground in order to give the appearance of national progress[41]. Given the favourable geographic conditions for both onshore and offshore wind and solar energy, it is contended that the defendants' plans fall short of the most feasible climate ambition.

Third, the plaintiffs contend that their fundamental rights, both individually and collectively, are immediately and seriously threatened by the absence of clear plans, strict regulations, and monitoring and reporting systems.

The Romanian Constitution and the Charter of Fundamental Rights of the European Union (CFR) provide the right to health protection and the right to a healthy and ecologically balanced environment, even though these rights are not expressly stated in the European Convention on Human Rights (ECHR)[42].

The plaintiffs argue that because climate change affects people's ability to maintain their health, the defendants' existing actions may completely deny them this right. The Court ruled that EU member states should determine how to accomplish energy efficiency and the required shift to a climate-neutral society by 2050[43]. As a result, the Court came to the conclusion that the plaintiffs' implied claims – that Romania thinks it can accomplish the goals through projects with different goals than the plaintiffs, cannot be granted. The point is that, even while talking about a cross-border issue, the Council of the European Union would have invoked Article 192(2)(c) of the Treaty on the Functioning of the European Union if there had been any issues in this regard.

The conclusion is that the effectiveness of international and European regulations, especially when they deal with a cross-border problem like climate change, greatly depends on the individual commitment of member states[44]. To put it simply, each member state has a responsibility to make sure that their actions have the intended effect. The national courts, which have the authority to determine whether the state in question carries out its responsibilities, may

[41] For a broader and more complex analysis, see: Hereșeanu, A. (2023). *New climate case in the European Union: Romania's first climate lawsuit*. Blog de Droit Europeen. Retrieved on 18.10.2024. from https://blogdroiteuropeen.com/2023/10/20/new-climate-case-in-the-european-union-romanias-first-climate-lawsuit-by-anisia-heresanu/.

[42] *Ibid.*,2.

[43] Niculicea, A. M., Miu, L., Cătuți, M. (2023). *The Case for Climate Law in Romania*. The Energy Policy Group, Romania, 2–4. Case study retrieved on 18.10.2024. from https://www.enpg.ro/wp-content/uploads/2023/10/EPG_Report_The-Case-for-a-Climate-Law-in-Romania.pdf.

[44] *Ibid.*, 6.

then investigate this. Because of this, the case is still pending[45]. It is important to note that the plaintiffs asked the High Court of Cassation and Justice of Romania to get an advisory opinion from the ECHR in accordance with Article 1 of Protocol No. 16 of the European Convention on Human Rights.

WHAT DOES THE FUTURE BRING? A PROSPECT OF IDEAS

Two essential aspects of global environmental change present difficulties for modern democracies: accountability for choices that affect future generations and the long term (intergenerational justice) and decisions that affect current generations and those outside the country (intergenerational justice)[46].

We are enjoying the freedom of an open society today, but the future will be closed off for future generations (actually, it has already been closed for the current generation of children and teenagers), if corrective action is not taken against irreversible global environmental change. This is because the cumulative effects of current production and consumption patterns over time reduce future opportunities for human prosperity[47]. This logic leads to two recommendations for requirements for the right to development and, consequently, to guidelines to be used for democratic decision-making: To prevent crossing national or international limits for the safe use of natural resources and sinks, public and development policies in every nation must take into account the best available knowledge about the limits of the Earth's ecosystems and set their goals and actions appropriately. This will help to reduce the threats to human existence. All nations' public and developmental policies must respect others' rights to development and the full enjoyment of all human rights (human justice within and between generations).

The most obvious multilateral problems arise when accountability is implemented. The scope of the right to invoke responsibility may be tested, especially on issues that are acknowledged in theory but infrequently used in practice, as evidenced by the unequal degree of consent with adjudicators and the practical reluctance to express claims against powerful states in sufficiently

[45] The Court of Appeal in Cluj adjourned the case until May 22, 2023, in this sense instructing the plaintiffs' representative to submit to the file, by the date of the hearing, a summary of the pleas for unlawfulness raised in the action. Further reading can be done at https://instrumente.declic.ro/uploads/Court-Resolution-Declic-April2023.pdf.

[46] For a more complex analysis, see: Skillington, K. (2019). *Climate Change and Intergenerational Justice*. Rutlege, British Sociological Association, 6–9.

[47] *Ibid.*, 7.

formalized terms. How does a state become "specially affected" in order to invoke responsibility? When states are not harmed, can they, nevertheless, argue for responsibility? If yes, what obligations are involved? Can these states use, so-called, third-party countermeasures to enforce responsibility? State behaviour does not often reflect the seeming level of court support for different international perspectives[48].

CONCLUSION

In summary, the Paris Agreement, the UN Declaration on the Right to Development, and the 2030 Agenda's standards outline five new responsibilities for nations as obligation bearers, highlighting the essential connections between human flourishing and environmental change worldwide. In order to fully realize all three generations of human rights (as outlined in Articles 3, 4, and 6 of the UN Declaration on the Right to Development), nations must first view environmental protection and the provision of global environmental goods as essential and vital areas of public policy and action.

Second, this entails appropriate collective action at the national, regional, and international levels (i.e., public policies, legal frameworks, and measures pertaining to areas of public responsibility and guidelines for non-state actors). Third, nations must make sure that they honour and carry out their extraterritorial responsibilities to the environment and to individuals both inside and outside of their borders. Fourth, when they make decisions today that will affect future generations, they must respect their rights. Lastly, states ought to take the initial steps toward creating a normative framework for the rights of all living things and their interrelationships.

We need to understand that we live in an utmost dynamic society and, more than that, an unstable planet that keeps on showing us the immense torment that the human species has unleashed on a continuously modifying nature. From massive earthquakes to alarming floods, the responsibility of states can no longer be seen as an individual project but as a collective one. The bilateral nature of liability will have to evolve into a multilayered dimension, into a giant organic project of the manifestation of Wills to protect against all forms of state aggressiveness towards nature, if we would like to keep intact what Mother Gaia exists for. *Quo vadis Domine*…? To preserve, is the golden standard!

[48] Paparinskis, M. (2020). The Once and Future Law of State Responsibility. *American Journal of International Law*. Cambridge University Press, 16–18.

BIBLIOGRAPHY

Chinen, M. (2012). Complexity Theory and the Horizontal and Vertical Dimensions of State Responsibility. *The European Journal of International Law*, 25(3).

Cooter,R. (1991). Economic Theories of Liability Law. *Journal of Economic Perspectives*, 5(3).

Deffains, B., Rouillon, S. (2018). Economics of Liability, Precaution versus Avoidance. *Revue d'Economie Politique*, Dalloz, 128(1), 41–58. Dalloz.

Fitzmaurice, M. (2015). *The Rio Declaration On Environment and Development: A Commentary*. Oxford Scholarly Authorities on International Law [OSAIL], Oxford Public International Law. Oxford University Press.

Fromageau, J. (2023). *International Union For Conservation of Nature and Natural Resources Report*.

Gailhofer, P. (2023). Functions and Objectives of Corporate Liability for Transboundary Environmental Harm. In: *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective*. Springer International Publication.

Hereșeanu, A. (2023). *New climate case in the European Union: Romania's first climate lawsuit*. Blog de Droit Europeen.

Kerbrat, Y., Maljean-Dubois, S. (2019). *The Role of International Law in the Promotion of the Precautionary Principle*. The Hal Open Science Platform.

Meyer, B., (2017). Climate Change Reparations and the Law and Practice of State Responsibility. *Asian Journal of International Law*, 7/2017.

Niculicea, A. M., Miu, L., Cătuți, M. (2023). *The Case for Climate Law in Romania*. The Energy Policy Group, Romania, 2–4.

Ott, H. (2002). Climate Policy after The Marrakesh Accords: From Legislation to Implementation. *Yearbook of International Environmental Law,* 12/2001.

Paparinskis, M. (2021). Crippling Compensation in the Law of State Responsibility. *The Blog of the European Journal of International Law*. Online Edition.

Paparinskis, M. (2020). The Once and Future Law of State Responsibility. *American Journal of International Law*. Cambridge University Press.

Rosencrantz, A. (2003). The Origin and Emergence of International Environmental Norms. *UC Law SF International Review*, 3/2003.

Schmalenbach, K. (2023). States Responsibility and Liability for Transboundary Environmental Harm. *Corporate Liability for Transboundary Environmental Harm, An International and Transnational Perspective.* Springer International Publication.

Skillington, K. (2019). *Climate Change and Intergenerational Justice*. Rutlege, British Sociological Association.

Subramanya, T.R. (2017). *Emergence of Principle of Sic Utere Tuo Ut Alienum Non-Laedes in Environmental Law and Its Endorsement by International and National Courts: An Assessment*.

Sucharitkul, S. (1996). Responsibility and Liability for Environmental Damage Under International Law. *Publications, Paper*, 664/1996, 4–5. Golden Gate University School of Law Digital Commons.

Voulgaris, N. (2022). The International Law Commission and Politics: Taking the Science Out of International Law's Progressive Development. *The European Journal of International Law,* 33(3).

Case law and legal dispositions

Art. 31, United Nations. (2001). Report on the Responsibility of States for Internationally Wrongful Acts.

Court of Appeal in Cluj, *Case No. 114/33/2023* (trial proceedings). *Case No. 2683/1/2023* (appeal proceedings).

Essen Regional Court, *Luciano Lliuya v. RWE AG, Case No. 2 O 285/15*.

European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland (communicated case),* 53600/20.

Inter-American Court of Human Rights. (2017). *Advisory Opinion OC-23/17 from November 15/2017, requested by The Republic of Columbia*.

United Nations. *Official Report on Achieving the Internationally Agreed Development Goals Dialogues at the Economic and Social Council*.

United Nations Commission. (2005). *Report on State Responsibility on Wrongful Acts (Responsibility of States for Internationally Wrongful Acts)*.

United Nations. (2002). *Report of The World Summit on Sustainable Development*.