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ENVIRONMENTAL SOLIDARITY IN THE AREA OF FREEDOM, SECURITY AND JUSTICE. TOWARDS THE JUDICIAL PROTECTION OF (INTERGENERATIONAL) ENVIRONMENTAL RIGHTS IN THE EU

Emanuele Vannata*

SUMMARY: 1. Introduction. – 2. Making Credible a "Solidaristic" Dimension Behind the International Legal System in Environmental Matters. – 3. Environmental Solidarity in EU. A Matter of Principles-Values in the Area of Freedom, Security and Justice. – 4. Environmental Rule of Law and Climate Justice: The EU Trend. – 5. Climate Change Litigation and EU Justice. The "Standing" Wall: Waiting for the Fall? – 6. Conclusions.

1. Introduction

Environmental protection is a core issue in the international community's agenda. The rise in global warming and the overall worsening of the effects of climate change, including the depletion of common resources, have rapidly undermined the traditional dogma of environmental matters as a sphere of *domaine réservé* of States, fostering the development of international environmental laws, and increasing proactivity and cooperation at the universal level.

Indeed, the world-wide ecosystem is highly threatened by global warming, biodiversity loss, and climate change, constituting "a climate and environmental emergency"[1], as well as a serious risk to the quality of the environment, public health, the economy, and as such, one of the most significant challenges for humanity[2].

Double blind peer reviewed article.

* Ph.D. Candidate in "Legal Sciences" (International, European and Comparative Law), University of Salerno. E-mail: evannata@unisa.it.

[1] European Parliament Resolution, *on the climate and environmental emergency*, of 28 November 2019, 2019/2930(RSP); Report of the Secretary-General, *Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, of 1 February 2016, A/HRC/31/52, para. 68.

[2] Containing global warming below the 1.5°C threshold requires much more incisive action in terms of harmful emissions, far from the current contributions at the national level, which are nowhere near sufficient to maintain the threshold set by the Paris Agreement to well below 2°C (according to the projections, *rebus sic stantibus*, 3.2°C by 2100, assuming that climate action continues steadily throughout the 21st century).

The dire consequences of climate change pose a notable challenge to international environmental law but also national and international courts. So, recent years have seen an increasing focus on climate justice, which looks at the climate crisis through a human rights lens in the belief that by working together we can create a better future for this generation and those to come. Indeed, addressing climate change raises issues of justice and equity, both between and within nations and generations in line with the solidaristic requirements of environmental law as both a relation among individuals belonging to a community of interests, and a mutual support within a group.

In this perspective, moving from the environmental solidarity at the international and EU level, this article focuses on the rule of law as legal foundation for the judicial protection of individual and collective environmental rights in order to emphasize the role of national and international courts in the progressive affirmation of a rights-based approach in environmental matters[3] and the construction of a more ethical ecological governance.

2. Making Credible a "Solidaristic" Dimension Behind the International Legal System in Environmental Matters

As anticipated, the definition of solidarity in contemporary dictionaries speaks of a relation among individuals belonging to a community of interests, but also mutual support within a group[4]. In more strictly legal terms, even in the absence of a universally recognized classification, an interesting definition of the principle of solidarity in the international legal order can be traced to UN General Assembly Resolution 56/151 of 19 December 2001[5] where solidarity is defined as "a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in

See Report of the United Nations Environment Programme (UNEP), *Emissions Gap Report 2018*, of 27 November 2018. See also UNEP, *Emissions Gap Report 2021*, of 26 October 2021. This twelfth edition of the UNEP Emissions Gap Report confirms the findings of the UNFCCC report. The report shows that new or updated NDCs and announced pledges for 2030 have only limited impact on global emissions and the emissions gap in 2030, reducing projected 2030 emissions by only 7.5 per cent, compared with previous unconditional NDCs, whereas 30 per cent is needed to limit warming to 2°C and 55 per cent is needed for 1.5°C. If continued throughout this century, they would result in warming of 2.7°C.

[3] The analysis aims to export in the environmental matters the approach adopted by some scholars in transnational criminal law and concerning the role of the EU judiciary in enhancing the rule of law especially in its substantial dimension, i.e., the adequate protection of human rights and the State's compliance with its international obligations to respect, protect, and fulfil individual guarantees. See A. ORIOLO, *The Rule of Law, Transnational Crimes, and the Human Rights-Based Approach in the European Union: The Court of Justice as Ultimate Guardian of the 'Good' Laws*, in T. RUSSO, A. ORIOLO, G. DALIA (eds.), *Solidarity and Rule of Law. The New Dimension of EU Security*, Berlin, 2023, forthcoming.

[4] See the definition of "solidarity" provided by Oxford English Dictionary (https://www.oed.com/view/Entry/184237?rskey=GpylLv&result=1&isAdvanced=false#eid) or Collins Dictionary (https://www.collinsdictionary.com/dictionary/english/solidarity).

[5] United Nations General Assembly Resolution 56/151, *Promotion of a democratic and equitable international order*, of 19 December 2001, A/RES 56/151.

accordance with basic principles of equity and social justice, and ensures that those who suffer or [who] benefit the least receive help from those who benefit the most"[6].

According to some scholars, the key elements of the concept are: i) the presence of a system of common goals and values shared between all the members of a given interdependent community, such as the international community; ii) a form of help given by some actors to other actors without expectations of reciprocity, not necessarily limited to the context of a State-to-State (horizontal) relationship, but also as help provided by one or more States to the population of the State (vertical relationship); iii) a clearly identifiable relation between providers and beneficiaries[7].

While cooperation, mutual assistance, and solidarity do not entirely overlap, the latter seems to operate as a relevant value that permeates the international legal system in environmental matters.

After all, it's far the memory of the egocentric nature of international environmental law, concerned only with preserving the State territory from environmental damage caused by another member of the international community[8], quickly shifted towards "an altruistic approach [...] based on a cooperative will of all the parties in achieving new common objectives to preserve the environment"[9]. This perspective has its foundations in many international environmental instruments. Consider, for example, Principle 7 of the Rio Declaration on Environment and Development of 1992[10] affirming: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem". The solidarity perspective also underlies the cardinal principle of international environmental law concerning common but differentiated responsibilities – enshrined in Principle 7 of the Rio Declaration but also in the Framework Convention on Climate Change[11] (Preamble and Arts. 3-4) as much as in the Paris Agreement[12] (Preamble and Arts. 2-4) – according to which all countries are responsible for the development of the global society, although each with a different set of capabilities that they can contribute to this project.

Indeed, an important step forward in the evolution of environmental protection was made at the United Nations Conference on Environment and Development (UNCED) in

[6] Ivi, para. 3(f).
[7] D. CAMPANELLI, *Solidarity, Principle of*, in *Max Planck Encyclopedia of Public International Law*, 2011, available at https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2072?rskey=bgIRtJ&result=3&prd=MPIL.
[8] K. LIFTIN, *Sovereignty in World Ecopolitics*, in *Mershon International Studies Review*, 1997, n. 41(2), pp. 167-175.
[9] F. GAUDIOSI, *The Principle of Solidarity in International Environmental Law: The Multilevel Governance Role in The Post-Pandemic Era*, in *Cammino Diritto*, 2021, n. 3, pp. 1-18, p. 8.
[10] Rio Declaration on Environment and Development, proclaimed at The United Nations Conference on Environment and Development (UNCED) of 1992, adopted at its 19th plenary meeting, on 14 June 1992, A/CONF.151/26/Rev.l (Vol. I).
[11] United Nations Framework Convention on Climate Change (UNFCCC) (New York, 9 May 1992), adopted by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, during its Fifth session, second part, entered into force 21 March 1994.
[12] Paris Agreement (Paris, 12 December 2015), adopted at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, entered into force on 4 November 2016.

1992[13], namely "sustainable development", a true achievement of the Earth Summit. With the 1987 Brundtland Report and the Rio Conference, the multidimensional nature of this concept (environmental, economic, and social) embodied the new (cooperative) perspective according to which State action for progress needs to take into account the repercussions on the whole international community, the common ecosystem, and above all, the interests of future generations. In fact, sustainable development in international law is defined as "[the] development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[14]. This expresses a "solidaristic" view where "the action of the single state determines collective benefits not only with regard to the protection of the environment and the enhancement of a new, more sustainable economic system, but also through a solidaristic dimension that enhances the interest towards the future generations"[15].

Therefore, everything would seem to orbit around a "community of interests" in a context of meaningful cooperation and mutual assistance, going well beyond the mutual obligation of States typical of the "contractual" nature of international relations at the origin of international law[16]. In fact – as recalled also by eminent scholars – "International Environmental Law, as intrinsically specific law, requires "new" methods of international cooperation and new kinds of legal and non-legal rules which, by overcoming the classical hierarchy of the sources of International Law, find in the recourse to acts of soft law the instrument to be preferred"[17]. Nevertheless, it must also be remembered that – above all in the field of climate change where thus far a point of no return is so close – the global interest into a rapid regulation and a quickly environmental action is absolutely in contrast with the slow formation and enforcement of international law through non-binding norms[18].

[13] United Nations Conference on Environment and Development (UNCED), also known as the "Earth Summit", held in Rio de Janeiro, Brazil, from 3-14 June 1992, A/RES/43/196.
[14] Report of the United Nations World Commission on Environment and Development, of 4 August 1987, A/42/427, Chapter 2, para. 1.
[15] F. GAUDIOSI, *The Principle of Solidarity in International Environmental Law: The Multilevel Governance Role in The Post-Pandemic Era*, cit., p. 9. In relation to climate change, it is useful to consider the concept of "common concern of humankind", embodied in the Preamble to the UNFCCC, which acknowledges that "change in the Earth's climate and its adverse effects are a common concern of humankind", affirming the human rights dimension of environmental protection. The common concern of humankind is a facet of "common interest", which may induce normative development in relation to issues of common interest and, in particular, may constitute – according to Bellinkx, Casalin, Türkelli, Scholtz and Vandenhole – a suitable basis for the extraterritorial human rights obligations of states. See V. BELLINKX, D. CASALIN, G. ERDEM TÜRKELLI, W. SCHOLTZ, W. VANDENHOLE, *Addressing Climate Change through International Human Rights Law: From (Extra)Territoriality to Common Concern of Humankind*, in *Transnational Environmental Law*, 2022, n. 11(1), pp. 69-93.
[16] U. LEANZA, I. CARACCIOLO (eds.), *Il Diritto internazionale: Diritto per gli Stati e Diritto per gli individui, Parte generale*, Torino, 2021, p. 68.
[17] A. DI STASI, *The Normative Force of the Outcome Document "The Future We Want": Brief Remarks*, in M. FITZMAURICE, S. MALJEAN-DUBOIS, S. NEGRI (eds.), *Environmental Protection and Sustainable Development from Rio to Rio+20*, Leiden, 2014, pp. 9-26, p. 12.
[18] *Ibid*.

3. Environmental Solidarity in EU. A Matter of Principles-Values in the Area of Freedom, Security and Justice

The EU does not escape from this reciprocity-based approach mindful of the ideas of solidarity and peaceful cooperation underpinning the construction of European integration since its first breath[19].

In the EU system, solidarity is undoubtedly a founding value – enshrined in Art. 2 of the Treaty on European Union (TEU), tangible in many provisions in the EU Treaties as well as in the Charter of Fundamental Rights of the EU (CFREU)[20] – whose post-Lisbon legal construction highlights at least a three-dimensional understanding that includes horizontal solidarity (attaining inter-state relations) and a vertical element (taking into account the role of individuals), but also an inter-generational dimension (in the perspective to reflect the responsibility towards future generations).

Next to respect for human dignity, freedom, democracy, equality, respect for human rights and rule of law, solidarity forms part of the European constitutional heritage, also underpinning the creation and consolidation of the Area of Freedom, Security and Justice (AFSJ)[21]. Originally closely linked to the realization of the single market, the AFSJ ensures EU citizens not only the right to move freely (the absence of internal border controls in the Schengen area), but also a high level of security and access to justice, as

[19] A. SANGIOVANNI, *Solidarity in the European Union*, in *Oxford Journal of Legal Studies*, 2013, n. 33(2), pp. 213-241. See also A.J. Menendez, (2003) *The Sinews of Peace. Rights to Solidarity in the Charter of Fundamental Rights of the European Union*, in *Ratio Juris*, 2003, n. 16(3), pp. 374-398, p. 374; C. BARNARD, *EU Citizenship and the Principle of Solidarity*. In E. SPAVENTA, M. DOUGAN (eds.), *Social Welfare and EU Law*, Oxford, 2005, pp. 157-180.

[20] Art. 2, TEU: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"; furthermore, for example, Arts. 1, para. 3, 3, para. 3, 24, paras. 2 and 3, 31, para. 1 TEU. Preamble to the CFREU: "(...) Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice (...)". The Charter contains also an entire "Solidarity" chapter (Chapter IV, Arts. 27–38).
For an overview of such debate, see F. MARTINES, *Solidarity in the EU. Beyond EU treaty provisions on solidarity*, in L. PASQUALI (ed.), *Solidarity in International Law. Challenges, Opportunities and The Role of Regional Organizations*, Abingdon-New York-Torino, 2022, pp. 165-190; G. MORGESE, *Il "faticoso" percorso della solidarietà nell'Unione europea,* in *I post di AISDUE,* Sezione "Atti convegni ASIDUE", 2021, n. 6, pp. 85-127; J. WOUTERS, *Revisiting Article 2 of the TEU: A True Union of Values?*, in *European Papers*, n. 1, 2020, pp. 255-277; A. BIONDI, E. DAGILYTĖ, E. KÜÇÜK (eds.), *Solidarity in EU law: Legal Principle in the Making*, Cheltenham-Northampton, 2018; A. GRIMMEL, S. MY GIANG (eds.), *Solidarity in the European Union: A Fundamental Value in Crisis*, Springer, 2017; T. RUSSO, *La solidarietà come valore fondamentale dell'Unione europea: prospettive e problematiche*, in E. TRIGGIANI, F. CHERUBINI, I. INGRAVALLO, E. NALIN, R. VIRZO (a cura di), *Dialoghi con Ugo Villani*, Bari, 2017, pp. 667-672.

[21] See A. DI STASI, L.S. ROSSI (a cura di), *Lo Spazio di Libertà Sicurezza e Giustizia a vent'anni dal Consiglio europeo di Tampere*, Napoli, 2020; A. DI STASI, *Il perfezionamento dello spazio europeo di libertà, sicurezza e giustizia: avanzamenti e criticità*, in A. DI STASI (a cura di), *Tutela dei diritti fondamentali e spazio europeo di giustizia. L'applicazione giurisprudenziale del Titolo VI della Carta*, Napoli, 2019, pp. 103-147.

well as integration in police and judicial cooperation. Even more, an Area – as recalled by relevant scholars – built on a trinomial of principles-values: freedom, security and justice, two of which (freedom and justice) appear also as parts of the "statute" of fundamental rights of the European Union founded on the CFREU[22]. Principles-values that are potentially counterposed, in respect of which only a fair balance can entail the realization of a space without interruptions, signed for a strong coefficient of effectivity and founded on a growing level of mutual trust between states but also of the citizens towards the overall process of European integration[23].

Anyway, in general terms, the EU and its institutions make prolific use of the term "solidarity", despite that its real meaning is not entirely clear. In fact, while not defined in EU legislation, the academic literature[24] is really copious as well as the European Court of Justice (ECJ) case-law[25].

Regardless of this, as for the environmental solidarity, explicit references can be found in EU legislation reflecting the shared or common interest in environmental protection and the need for transnational cooperation. In air pollution and environmental disaster regimes, solidarity is "the basis for the redistribution of financial resources, acknowledging economic differences and the need to support disadvantaged member states"[26].

In the fight against "the existential threat posed by climate change"[27], the EU is committed to stepping up efforts to tackle climate change and delivering on the implementation of the Paris Agreement adopted under the United Nations Framework

[22] With the words of Prof. Di Stasi: "*Quanto alla strutturazione di siffatto spazio esso è costituito su di un trinomio di principi-valori che assurgono ad elementi costitutivi: libertà, sicurezza e giustizia, due dei quali (libertà e giustizia) compaiono anche come capi o titoli di quello 'statuto' dei diritti fondamentali dell'Unione europea fondato sulla menzionata Carta dei diritti*". See A. DI STASI, *Lo spazio europeo di libertà, sicurezza e giustizia*, in ID., *Spazio europeo di giustizia. Il Capo VI della Carta dei diritti fondamentali nell'applicazione giurisprudenziale*, Padova, 2014, pp. 3-43, p. 8.

[23] "*Libertà, sicurezza e giustizia, quali principi-valori fondamentali di pari dignità e, pure, potenzialmente contrapposti: solo il* fair balance *tra di essi può comportare la realizzazione di uno spazio senza interruzioni, contrassegnato da un forte coefficiente di effettività e fondato su di un elevato e crescente livello di fiducia reciproca tra gli Stati (ed in particolare tra le autorità competenti) ma anche degli stessi cittadini nei confronti del complessivo processo di integrazione europea*". See A. DI STASI, *Lo spazio europeo di libertà, sicurezza e giustizia*, cit., p. 8.

[24] See, *ex multis*, A. BIONDI, E. DAGILYTĖ, E. KÜÇÜK (eds.), *Solidarity in EU Law. Legal Principle in the Making*, Cheltenham-Northampton, 2018; A. GRIMMEL, S. MY GIANG (eds.), *op. cit.*; J.C. PIERNAS, L. PASQUALI, F. PASCUAL VIVES (eds.), *Solidarity and Protection of Individuals in EU Law. Addressing New Challenges of the Union*, Torino, 2017; A. SANGIOVANNI, *Solidarity in the European Union*, cit.

[25] For the Court's own approach, see, *e pluribus*, Court of Justice, Judgment of 17 February 1993, *Christian Poucet and Pistre v Assurances Générales de France (AGF) and Caisse Mutuelle Régionale du Languedoc-Roussillon (Camulrac) and Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans (Cancava)*, joined cases C-l59/91 and C-l60/91; Court of Justice, Judgment of 16 November 1995, *Fédération Française des Sociétés d'Assurance, Société Paternelle-Vie, Union des Assurances de Paris-Vie and Caisse d'Assurance et de Prévoyance Mutuelle des Agriculteurs v Ministère de l'Agriculture et de la Pêche*, case C-244/94.

[26] I. DOMURATH, *The Three Dimensions of Solidarity in the EU Legal Order: Limits of the Judicial and Legal Approach*, in *Journal of European Integration*, 2012, n. 4, pp. 459-475, p. 464.

[27] European Parliament and Council Regulation 2021/1119, *establishing the framework for achieving climate neutrality and amending Regulations (EC), No 401/2009 and (EU) 2018/1999 ('European Climate Law')*, of 30 June 2021, OJ L 243, 9 July 2021, pp. 1-17.

Convention on Climate Change, guided by its principles and based on the best available scientific knowledge in the context of the long-term temperature goal of the Paris Agreement. The well-known "European Green Deal" set out by the Commission in its Communication of 11 December 2019[28] aims to build a new growth strategy able to transform the EU into a fair and prosperous society, with a modern, resource-efficient, and competitive economy, without net emissions of greenhouse gases in 2050, and where economic growth is decoupled from resource use. The Green Deal also aims to protect, conserve, and enhance the Union's natural capital, and protect the health and wellbeing of citizens from environment-related risks and impacts.

Even if the cited Communication does not mention the word "solidarity", there is no doubt that in taking the relevant measures at the Union and national level to achieve the climate-neutrality objective, Member States and EU institutions should, *inter alia*, take into account fairness and solidarity between and within Member States, "in light of their economic capability, national circumstances, such as the specificities of islands, and the need for convergence over time"[29]. In fact, in the new EU Climate Law establishing the climate-neutrality objective in Art. 2 of the Regulation 2021/1119[30], the EU legislator is clear in linking the goal to the importance of promoting both fairness and solidarity among Member States as well as cost-effectiveness in achieving this objective[31].

Despite these considerations concerning inter-state relations, key to understanding the correlation between solidarity and the environment in the EU order is the vertical element. The just transition towards environmentally sustainable economies and societies finds its most concrete application in a bottom-up approach that recognizes the essential role of the participation of individuals in policymaking to combat climate change no less than in reclaiming space in environmental justice. Fairness and solidarity are defining principles of the European Green Deal, implying solid policy actions to support people and their active participation as an essential requirement of a successful green transition[32]. This vision – recognizable at the international level as part of the Sustainable Development Goals (Goal 13) in the UN 2030 Agenda as well as in the Paris Agreement (Art. 2 and Art. 6) – reflects a fundamental pillar on which multilevel governance on

[28] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, of 11 December 2019, COM/2019/640 final. See M.C. CARTA, *Il Green Deal europeo. Considerazioni critiche sulla tutela dell'ambiente e le iniziative di diritto UE*, in *Eurojus*, 2020, n. 4, pp. 54-72.

[29] *Ibid*.

[30] European Parliament and Council Regulation 2021/1119, cit., Art. 2, para. 1: "Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter".

[31] European Parliament and Council Regulation 2021/1119, cit., Art. 2, para. 2: "The relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective".

[32] See Council Recommendation, *on ensuring a fair transition towards climate neutrality*, of 16 June 2022, OJ C 243, 27 June 2022, pp. 35-51.

climate change is based[33], proving the incidence and application of solidarity values within the international and EU legal system.

For what concerns the inter-generational dimension, some interesting elements emerge as a third understanding of solidarity – clearly introduced in the EU system by the Lisbon Treaty, according to Art. 3 TEU, para. 3 – that finds expression in the concept of sustainable development, based on distributive justice and inter-generational equity. In the perspective of maintaining the environment in a way that future generations can fulfil their own needs, in the EU legal order, it implies the so-called integration principle that anchors environmental protection requirements to the definition and implementation of the Union's policies and activities in which the former must necessarily be integrated, particularly with a view to promoting sustainable development[34].

According to the integration principle, the pursuit of environmental protection objectives can be well tackle also in the framework of the Title V TFEU, within the AFSJ[35].

After all, EU environmental policy was conceived from the outset as a means of improving the living conditions of European citizens and the harmonious development of economic activities to ensure the establishment and proper functioning of the common internal market[36]. And if solidarity among individuals is more developed due to the link with internal market socio-economic law and the ECJ rights-based approach[37], solidarity among Member States appears to be underdeveloped due to the discrepancy in the approach of States to solidary obligations to cooperate[38].

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[33] See the 2018 Solidarity and Just Transition Silesia Declaration, adopted at COP-24 in Katowice, and the 2021 Declaration on Supporting the Conditions for a Just Transition Internationally, adopted at COP-26 in Glasgow.

[34] F. ROLANDO, *L'integrazione delle esigenze ambientali nelle altre politiche dell'Unione europea*, Napoli, 2020.

[35] In this sense, significant efforts have been made, for instance, for the purpose of consolidating EU legislation in the judicial cooperation on criminal law, in order to tackle serious environmental wrongdoings more effectively, in the light of the European Commission Proposal of revision of Directive 2008/99/EC on the protection of the environment through criminal law in December 2021. See Proposal for a Directive of the European Parliament and of the Council, *on the protection of the environment through criminal law and replacing Directive 2008/99/EC*, of 15 December 2021, COM(2021)851. Among scholars, see A. RIZZO, *"Criminalizing" environmental wrongdoings under European Union law: a proposal from the European Commission in the light of old and new challenges*, in *Eurojus*, 2022, n. 1, pp. 69-90; A. RIZZO, *In search of Ecocide under EU Law. The international context and EU law perspectives*, in this *Journal*, 2021, n. 3, pp. 163-196.

[36] R. MASTROIANNI, *Diritti dell'uomo e libertà economiche fondamentali nell'ordinamento dell'Unione europea: nuovi equilibri?*, in *Il Diritto dell'Unione europea*, 2011, n. 2, pp. 319-355.

[37] The Court of Justice of the European Union has promoted solidarity with individuals pro-actively. See Court of Justice, Grand Chamber, Judgement of 7 September 2004, *Michel Trojani v Centre public d'aide sociale de Bruxelles (CPAS)*, Case C-456/02; Court of Justice, Judgement 17 September 2002, *Baumbast and R v Secretary of State for the Home Department*, Case C-413/99; Court of Justice, Second Chamber, Judgement of 12 May 1998, Case C-85/96, *María Martínez Sala v Freistaat Bayern*; Court of Justice, Judgement of 17 June 1997, *Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia*, Case C-70/95.

[38] I. DOMURATH, *The Three Dimensions of Solidarity in the EU Legal Order: Limits of the Judicial and Legal Approach*, cit., p. 466.

In the last State of the (European) Union address[39], the President of the European Commission Ursula von der Leyen marked the continuation of an environmental agenda that remains the compass for Europe, despite the Covid-19 pandemic – before – and the geopolitical upheaval due to Russia-Ukraine conflict (and its consequences for the EU) – after – still undermine in a highly evolving political context the priority given to the Green Deal and green transition. Anyway, this persistence is welcome and well-founded, in a continent that is still far too dependent on (imported) fossil fuels. However, the President von der Leyen is well conscious that climate change is a global affair, underlying that "countries near and far, share an interest in working with us on the great challenges of this century"[40].

4. Environmental Rule of Law and Climate Justice: The EU Trend

In view of the growing environmental complexities, the role of democracy, good governance, and the rule of law at the national and international level play an increasingly important role in environmental protection and sustainable development, and hence in fostering sustained and inclusive economic growth and social development.

Although remaining contested over time and space in terms of content, the rule of law is a fundamental legal concept expressing a "principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards"[41].

In the EU system, it is one of the founding principles of the common constitutional traditions of all EU Member States, and as such, a cornerstone of the Union recalled in 2 TEU and the Preambles to the Treaty and CFREU. A common understanding, culture and implementation of the rule of law across European countries is therefore needed to realize the AFSJ, whose strengthening heralded as one of the objectives of the Stockholm Programme[42].

Here too, the precise content of the principles and rules arising from the rule of law varies at the national level depending on the constitutional order of each Member State. However, according to ECJ and European Court of Human Rights (ECtHR) case-law, as

[39] 2022 State of the Union Address by President von der Leyen, *A Union That Stands Strong Together*, 14 September 2022, Strasbourg.
[40] *Ibid*., p. 10.
[41] U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, of 23 August 2004, U.N. Doc. S/2004/616, p. 4.
[42] S. WHOLFF, *The Rule of Law in the Area of Freedom, Security and Justice: Monitoring at Home What the European Union Preaches Abroad*, in *Hague Journal on the Rule of Law*, 2013, n. 1, pp. 119-131, pp. 120-121.

well as documents drawn up by the Council of Europe[43], a non-exhaustive list of these principles can be deduced, and as such, defining the substantive core of the rule of law. Indeed, its requirements are ensuring adherence to the principle of legality, which implies a transparent, accountable, democratic, and pluralistic process for enacting laws, legal certainty, the prohibition of arbitrariness of executive powers, the independence and impartiality of courts, effective judicial review including respect for fundamental rights and equality before the law[44].

[43] In particular, on the basis of the experience of the European Commission for Democracy Through Law (Venice Commission). See Venice Commission, *2011 Report on the rule of law study No. 512/2009*, of 25–26 March 2011, CDL–AD(2011)003rev.

[44] Long before the EU Treaties made explicit reference to the principle of the rule of law (The first reference appears for the first time in the preamble to the Maastricht Treaty of 1992; the Treaty of Amsterdam referred to the rule of law in Art. 6, para. 1 essentially in the same terms as the current Art. 2 TEU), the ECJ had stressed in the case "Les Verts" (Court of Justice, Judgement of 23 April 1986, *Parti écologiste "Les Verts" v European Parliament*, case 294/83) that the EU is a Union "by right in the sense that neither the States which are part of it nor its institutions are exempt from review of the conformity of their acts with the basic constitutional charter constituted by the Treaty". Then, the case-law of the Court set out the principles applicable in the EU legal order which have their source in the rule of law. See, *e pluribus*, Court of Justice, Grand Chamber, Judgement of 3 October 2013, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, case C-583/11 P, para. 91; Court of Justice, Second Chamber, Judgement of 22 December 2010, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, case C-279/09, para. 58; Court of Justice, Grand Chamber, Judgement of 14 September 2010, *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v European Commission*, case C-550/07 P, para. 54; Court of Justice, Grand Chamber, Judgement of 29 June 2010, *Criminal proceedings against E and F*, case C-550/09, para. 44; Court of Justice, Sixth Chamber, Judgement of 29 April 2004, *Commission of the European Communities v CAS Succhi di Frutta SpA*, case C-496/99 P, para. 63; Court of Justice, Third Chamber, Judgement of 25 July 2002, *Unión de Pequeños Agricultores v Council of the European Union*, case C-50/00 P, paras. 38-39; Court of Justice, Judgement of 11 January 2000, *Kingdom of the Netherlands and Gerard van der Wal v Commission of the European Communities*, Joined Cases C-174/98 P and C-189/98 P, para. 17; Court of Justice, Judgement of 21 September 1989, *Hoechst AG v Commission of the European Communities*, Joined Cases 46/87 and 227/88, para. 19; Court of Justice, Third Chamber, Judgement of 12 November 1981, *Amministrazione delle finanze dello Stato v Srl Meridionale Industria Salumi and others*, Joined Cases 212 to 217/80, para. 10.
In ECtHR case-law, see, *ex multis*, European Court of Human Rights, Third Section, Judgment of 6 December 2007, Application no. 30658/05, *Beian v Romania*, para. 39; European Court of Human Rights, Fifth Section, Judgment of 12 July 2007, Application no. 74613/01, *Jorgic v Germany*, para. 65; European Court of Human Rights, Grand Chamber, Judgment of 12 May 2005, Application no. 46221/99, *Öcalan v Turkey*, paras. 112, 114; European Court of Human Rights, Grand Chamber, Judgment of 6 May 2003, application nos. 39343/98, 39651/98, 43147/98 and 46664/99, *Kleyn and Others v the Netherlands*, paras. 193, 200; European Court of Human Rights, First Section, Judgment of 28 November 2002, Application no. 58442/00, *Lavents v Latvia*, par. 81; European Court of Human Rights, Grand Chamber, Judgment of 28 May 2002, Application no. 46295/99, *Stafford v the United Kingdom*, para. 78; European Court of Human Rights, Grand Chamber, Judgment of 28 October 1999, Applications nos. 24846/94 and 34165/96 to 34173/96, *Zielinski and Pradal and Gonzalez and others v France*, para. 57; European Court of Human Rights, Chamber, Judgment of 24 February 1997, Application no. 19983/92, *De Haes and Gijsels v Belgium*, para. 37; European Court of Human Rights, Judgment of 25 June 1996, Application no. 4451/70, *Amuur v France*, para. 50; European Court of Human Rights, Chamber, Judgment of 9 December 1994, Application no. 13427/87, *Stran Greek Refineries and Stratis Andreadis v Greece*, para. 49; European Court of Human Rights, Chamber, Judgment of 24 November 1994, Application no. 15287/89, *Beaumartin v France*, para. 38; European Court of Human Rights, Judgment of 23 November 1976, Application nos. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72, *Engel and others v The Netherlands*, para. 69; European Court of Human Rights, Plenary, Judgment of 21 February 1975, Application no. 4451/70, *Golder v United Kingdom*, paras. 34, 35.

Translated to the environmental domain, the rule of law implies widely respected and enforced laws to allow people to enjoy the benefits of environmental protection[45].

The Rio +20 Declaration on Justice, Governance and Law for Environmental Sustainability[46] – progeny of the World Congress on Justice, Governance and Law for Environmental Sustainability of 2012 – expressed the concern of all high-ranking representatives of the judicial, legal, and auditing professions about the continuing and unprecedented degradation of the natural environment, stressing that "environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and rule of law"[47]. At the same time, they outlined the precepts of the environmental rule of law, predicated on:

(a) Fair, clear, and implementable environmental laws;

(b) Public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration, including exploring the potential value of borrowing provisions from the Aarhus Convention in this regard;

(c) Accountability and integrity of institutions and decision-makers, including through the active engagement of environmental auditing and enforcement;

(d) Clear and coordinated mandates and roles;

(e) Accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;

(f) Recognition of the relationship between human rights and the environment;

(g) Specific criteria for the interpretation of environmental law.

John Rawls is credited with elaborating the so-called principle of "just saving"[48] in the attempt to express the idea that the main duty owed to our successors is saving sufficient material capital to maintain just institutions and a fair system of governance over time, typical elements of the rule of law. This view was later extended to the global level and applied to the environmental context, whose outcome is the concept of intergenerational equity. This principle states that every generation shares the Earth with members of the present generation and other generations, past and future, articulating a concept of fairness among generations in the use and conservation of the environment

[45] A. KREILHUBER, A. KARIUKI, *Environmental Rule of Law in the Context of Sustainable Development*, in *The Georgetown Environmental Law Review*, 2020, n. 32, pp. 591-598.

[46] Rio+20 Declaration *on Justice, Governance and Law for Environmental Sustainability*, gathered by the Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions in Rio de Janeiro, Brazil, from 17 to 20 June 2012 for the World Congress on Justice, Governance and Law for Environmental Sustainability, organized by UNEP in connection with the United Nations Conference on Sustainable Development, Rio+20. More in general, see A. DI STASI, *The Normative Force of the Outcome Document "The Future We Want": Brief Remarks*, cit.

[47] Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, para. II.

[48] J. RAWLS (ed.), *A Theory of Justice*, Cambridge, 1971.

and its natural resources[49]. Thus, concern for the needs of future generations falls into the category of what is sometimes termed intergenerational solidarity, that is widely understood as "social cohesion between generations"[50], where humanity as a whole forms an intergenerational community in which all members (generations) respect and care for each other, fulfilling the common goal of the survival of humankind.

As Edith Brown Weiss noted, hardly any other field of international law has developed with such speed and in such volume as international environmental law[51] and the international legal order governing the environment facing an uphill battle in effectively countering the main environmental challenges of our time[52]. Despite this, strengthening the rule of law is crucial to protecting the environmental, social, and cultural values, and to achieving ecologically sustainable development. As the International Union for Conservation of Nature World Declaration on the Environmental Rule of Law[53] states, "without the environmental rule of law and the enforcement of legal rights and obligations, environmental governance, conservation, and protection may be arbitrary, subjective, and unpredictable"[54]. In this perspective, the environmental rule of law should serve as the legal foundation for promoting environmental ethics and

[49] See E. BROWN WEISS, *Intergenerational Equity*, in *Max Planck Encyclopedias of International Law*, 2021, available at https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1421?prd=MPIL. More related to sustainable development, the principle of equity is central. According to Principle 2.1 of the International Law Association (ILA) Resolution 2002/3, *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, 2022 "it refers to both inter-generational equity (the right of future generations to enjoy a fair level of the common patrimony) and intra-generational equity (the right of all peoples within the current generation)" and "is central to the attainment of sustainable development". On the ground of the theory of inter-generational equity, it is quite interesting the separate opinion expressed by Judge Cancado Tringade in the case of *Whaling in the Antarctic* (International Court of Justice, Judgment of 31 March 2014, *Australia v. Japan: New Zealand intervening*), where he underlined – as a central point of the theory, recalling the "Goa Guidelines on Intergenerational Equity" (adopted on 15 February 1988 by The Advisory Committee, composed of Professors from distinct continents, met in Goa, India, to the United Nations University on a project on the matter) – that the right of each generation to benefit from this natural and cultural heritage is inseparably coupled with the obligation to use this heritage in such a manner that it can be passed on to future generations in no worse condition that it was received from past generations, so as to provide an innovative response to rising and growing concerns over the depletion of natural resources and the degradation of environmental quality and the recognition of the need to conserve the natural and cultural heritage (at all levels, national, regional and international; and governmental as well as non-governmental).

[50] See R. KATZ, A. LOWENSTEIN, J. PHILLIPS, S. OLAV DAATLAND, *Theorizing Intergenerational Family Relations: Solidarity, Conflict, And Ambivalence in Cross-National Contexts*, in V.L. BENGTSON, A.C. ACOCK, K.R. ALLEN, P. DILWORTH-ANDERSON, D.M. KLEIN (eds.), *Sourcebook of Family Theory and Research*, Thousand Oaks, 2005, pp. 393-421; R.E.L. ROBERTS, L.N. RICHARDS, V.L. BENGTSON, *Intergenerational Solidarity in Families: Untangling the Ties that Bind*, in *Marriage and Family Review*, 2009, n. 16(1-2), pp. 11-46; V.L. BENGTSON, E. OLANDER E. HADDAD, *The "Generation Gap" and Aging Family Members: Toward a Conceptual Model*, in J.F. GUBRIUM (ed.), *Time, Roles, and Self in Old Age*, 1976.

[51] E. BROWN WEISS, *The Evolution of International Environmental Law*, in *Japanese Yearbook of International Law*, 2011, n. 54, pp. 1-27.

[52] A. KREILHUBER, A. KARIUKI, *Environmental Rule of Law in the Context of Sustainable Development*, cit., p. 593.

[53] International Union for Conservation of Nature (IUCN), IUCN World Declaration on the Environmental Rule of Law, IUCN World Congress on Environmental Law, having met in Rio de Janeiro (Brazil) from 26 to 29 April 2016.

[54] IUCN World Declaration on the Environmental Rule of Law, p. 2.

achieving environmental justice, global ecological integrity, and a sustainable future for all, including for future generations, a link that binds critical environmental needs with the essential elements of the rule of law, providing the basis for reforming environmental governance[55].

In February 2013, the United Nations Environment Program Governing Council adopted Decision 27/9[56] to support national governments in developing and implementing the environmental rule of law to mutually support governance features, including information disclosure, public participation, implementable and enforceable laws, implementation and accountability mechanisms including coordination of roles, environmental auditing, and criminal, civil and administrative enforcement. In particular, as Kreilhuber and Kariuki noted, the Decision highlights the fact that the law, coupled with strong implementing institutions, is essential for societies to respond to increasing environmental pressure in a way that respects the fundamental rights and principles of fairness, including for future generations[57].

In fact, according to these authors, one of the key characteristics of the environmental rule of law is intergenerational equity as the foundation of sustainable development[58], strongly linked to the solidary rationale of the concept of sustainable development[59]. Even if still controversial as to whether the principle of intergenerational equity also conveys rights, as Weiss stressed, intergenerational rights could be viewed as part of international human rights law arguably encompassed in the specific rights guaranteed in particular instruments in the absence of explicit references to the rights of future generations in international human rights agreements[60]. Recognizing future generations as human rights holders would be a step towards sustainability, in a way that the rights of future generations become effective. Hence, the enforcement of these rights "must be founded on the elements of environmental rule of law"[61].

In the EU system, intra- and intergenerational equity can be understood as policy principles in line with sustainable development – as a goal to be attained – together with, *inter alia*, the promotion and protection of fundamental rights and the involvement of citizens[62].

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[55] *Ibid*.

[56] Governing Council of the United Nations Environment Programme Decision 27/9 *advancing justice, governance and law for environmental sustainability*, adopted by the Governing Council at its twenty-seventh and first universal session, Nairobi, from 18 to 22 February 2013.

[57] A. KREILHUBER, A. KARIUKI, *Environmental Rule of Law in the Context of Sustainable Development*, cit., p. 593.

[58] Ivi, p. 595.

[59] M.C. CORDONIER SEGGER, *Sustainable Development in International Law*, in H.C. BUGGE, C. VOIGT (eds.), *Sustainable Development in International and National Law: What Did the Brundtland Report Do to Legal Thinking and Legal Development, and Where Can We Go from Here?*, 2008, p. 168; D. FRENCH, *International law and Policy of Sustainable Development*, Manchester, 2005, p. 29.

[60] E. BROWN WEISS, *Intergenerational Equity*, cit.

[61] A. KREILHUBER, A. KARIUKI, *Environmental Rule of Law in the Context of Sustainable Development*, cit., p. 595.

[62] See 2005 EU Guiding Principles for Sustainable Development. See also M. KENIG-WITKOWSKA, *The Concept of Sustainable Development in the European Union Policy and Law*, in *Journal of Comparative Urban Law and Policy*, 2017, n. 1, pp. 64-80.

After all, despite its inclusion in treaties (Art. 3, para. 3 TEU; Art. 37 CFREU), implemented in the so-called integration principle, the EU concept of sustainable development indicates, in the practical outcome of the principle, "its operational nature in the form of a goal to achieve, entered into the general treaty goals of the European Union in relation to Europe and Earth (...), among many other goals of an economic nature"[63]. In essence, EU environmental law and policy reflect a general notion of concern for the interests of future generations that lacks specificity as well as normative power[64].

As already mentioned, the EU has committed to achieving climate neutrality by 2050: an objective that will require a transformation (cost-effective and socially balanced) of Europe's society and economy.

Without efficient legal instruments of enforcement, the New Green Deal impact is compromised.

An environmental rule of law appears to be central to sustainable development also in the EU and may highlight climate sustainability, reflect universal moral values and ethical norms of behaviour, and provide a foundation for environmental rights and obligations.

A positive trend seems to be the positions assumed in the application of intergenerational rights by a large number of national and international courts across the world addressing climate change issues.

No longer can be ignored the fact that climate change is an "inherently intergenerational problem"[65], nor the very real implications of equity between this and future generations and among communities now and in the future. No longer can we ignore the call for measures to fight climate change, prevent or mitigate damage from climate change, and measures to assist countries in adapting to climate change. No longer can we ignore the fact that the wellbeing of future generations depends on the actions that we take today, not tomorrow.

In facing the significant challenges that climate change poses – permeating national boundaries and "where the sources of the problem (...) are so many and so broad, requiring actions that touch upon virtually every aspect of human endeavour and action"[66] – the judge's role on climate change has evolved, and national and international courts have started acting.

[63] Ivi, p. 65.
[64] L.M. COLLINS, *Environmental Rights for the Future: Intergenerational Equity in the EU*, in *Review of European Community and International Environmental Law*, 2007, n. 16, pp. 321-331.
[65] E. BROWN WEISS, *Climate Change, Intergenerational Equity, and International Law*, in *Vermont Journal of Environmental Law*, 2008, n. 9, pp. 615-627.
[66] P. SANDS, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, in *Journal of Environmental Law*, 2016, n. 1, pp. 19-35, p. 23.

5. Climate Change Litigation and EU Justice. The "Standing" Wall: Waiting for the Fall?

The notion of climate justice has emerged as a way of encapsulating the equity aspects of climate change, building a platform of equitable development, human rights, and political voice. Human rights play a crucial role in catalysing action to address climate change, recognizing its impact on a wide range of human rights, and the disproportionality with which climate breakdown affects people.

Pursuant to international human rights-based approach (HRBA), States have both substantive and procedural obligations not only to protect human rights from environmental harm but also to fulfil their international commitments.

Many years ago, Judge Tesauro stated that a right is not such if it does not find adequate and effective protection[67]. That assumption is particularly true in respect to the dual perspective of access to information and judicial protection[68].

Any right risks losing meaning when affordable and timely access to justice is not granted, people are unable to have their voices heard, exercise their rights, challenge discrimination, or hold decision-makers accountable.

The recent flourishing of climate change litigation – both at the international and national level – substantiates the positive inclination toward the effectiveness of regulatory aspirations that struggle to find a fair and clear pathway.

Nevertheless, the HRBA is progressively affirming, bringing environmental protection within the broader human rights framework, resulting in the ECtHR's findings on environmental dimensions of the right to life, health, privacy, food, housing, property, and non-discrimination, contributing decisively – at least in the European regional context – to the "right to the environment", an evolutionary and interpretative approach known as the "greening of human rights"[69]. While it is clear that the effects of climate change

[67] G. TESAURO, *The Effectiveness of Judicial Protection and Cooperation Between the Court of Justice and National Courts*, in *Yearbook of European Union Law*, 1993, n. 1, pp. 1-17, p. 1.

[68] F. FERRARO, *L'evoluzione della politica ambientale dell'Unione: effetto Bruxelles, nuovi obiettivi e vecchi limiti*, in *Convegni Annuali e Interinali AISDUE*, 2022, p. 188, available at https://www.aisdue.eu/fabio-ferraro-levoluzione-della-politica-ambientale-dellunione-effetto-bruxelles-nuovi-obiettivi-e-vecchi-limiti/.

[69] Here we want to immediately underline the dynamic approach – through the frequent recourse to extensive interpretations of the existing regulatory bases – which characterizes the European Convention of Human Rights (ECHR) of 1950 as a "living instrument" capable of adapting to the needs of a social, cultural and legal reality in constant evolution. See A. DI STASI, *La Convenzione europea dei diritti umani: l'effettività di un unicum a 70 anni dalla sua firma*, in this *Journal*, 2020, n. 3, pp. 1-9. On environmental framework, see N. SADELEER, *Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases*, in *Nordic Journal of International Law*, 2012, n. 81, pp. 39-74; A. BOYLE, *Human Rights or Environmental Rights? A Reassessment*, in *Fordham Environmental Law Review*, 2006, n. 18(3), pp. 471-511. See also, *ex multis*, European Court of Human Rights, First Section, Judgment of 24 January 2019, application nos. 54414/13 and 54264/15, *Cordella and others v Italy*; European Court of Human Rights , Grand Chamber, Judgment of 28 September 2010, application no. 12050/04, *Mangouras v Spain*; European Court of Human Rights, Third Section, Judgment of 7 April 2009, application no. 6586/03, *Branduse v Romania*; European Court of Human Rights, Third Section, Judgment of 27 January 2009, application no.

hinder the full enjoyment of human rights – both civil and political (e.g., right to life and property), economic, social, and cultural rights (e.g., adequate standard of living, the highest possible standard of health), third-generation rights (e.g., to a healthy environment) – this path is by no means without difficulties (e.g., the "territoriality" of human rights, the existence (or not?) of "collective obligations", the excessive expansion of new rights, the identification of fictitious holders of rights), and procedural (e.g., proof of the quality of victim)[70]. Moreover, international courts and tribunals of limited jurisdiction (such as the ECJ) may address – and in some cases already have addressed – the issue of climate change within a "limited prism"[71], while international courts and tribunals of more general jurisdiction – such as the International Court of Justice or the International Tribunal for the Law of the Sea – may apply treaties but also customary law, ruling (in contentious or advisory cases) on the responsibility of States to contributing to climate change or for failing to address their climate change obligations[72].

As noted, an important element of the environmental rule of law is public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration as well as Arts. 4-6-7-9 of the Convention on Access to Information, Citizen Participation and Access to Justice in Environmental Matters of 1998 (Aarhus Convention)[73]. Although the ECJ has addressed (limited)

67021/01, *Tatar and Tatar v Romania*; European Court of Human Rights, Fourth Section, Judgment of 11 December 2007, application no. 62040/00, *Kozubek v Poland*; European Court of Human Rights, First Section, Judgment of 9 June 2006, application no. 55723/00, *Fadeyeva v Russia*; European Court of Human Rights, Fourth Section, Judgment of 5 July 2005, application no. 39737/98, *Aarniosalo and others v Finland*; European Court of Human Rights, Judgment of 30 November 2004, application no. 48939/99, *Öneryildiz v Turkey*; European Court of Human Rights, Judgement of 12 December 2000, application no. 50924/99, *Bahia Nova S.A. v Spain*; European Court of Human Rights, Chamber, Judgement of 9 December 1994, application no. 16798/90, *López Ostra v Spain*; European Court of Human Rights, Chamber, Judgment 23 February 1994, application no. 18928/91, *Fredin v Sweden*.

[70] A. NOLLKAEMPER, A. REINISCH, R. JANIK, F. SIMLINGER (eds.), *International Law in Domestic Courts*. Oxford, 2019; E.A. POSNER, *Climate Change and International Human Rights Litigation*, in *University of Pennsylvania Law Review*, 2006, n. 155, pp. 1925-1927.

[71] P. SANDS, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, cit., p. 24.

[72] P. SANDS, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, cit., p. 25. It is also true that scholars (and judges) have also interpreted human rights treaties as obligating states to mitigate climate change by limiting their greenhouse gas emissions, an argument instrumental to the development of climate litigation. See B. MAYER, *Climate Change Mitigation as an Obligation under Human Rights Treaties?*, in *American Journal of International Law*, 2021, n. 3, pp. 409-451; M. WEWERINKE-SINGH, *State Responsibility for Human Rights Violations Associated with Climate Change*, in S. DUYCK, S. JODOIN, A. JOHL (eds.), *Routledge Handbook of Human Rights and Climate Governance*, Abingdon-New York, 2018, pp. 75-89.

[73] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, signed in 1998 and entered into force in 2001. The Convention was approved by the European Union by Council Decision 2005/370/EC, *on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters*, of 17 February 2005, OJ L 124, 17 May 2005, pp.1-3. The European Parliament and Council then adopted Regulation (EC) No. 1367/2006, *on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies*, of 6 September 2006, OJ L 264, 25 September 2006, pp. 13-19.

climate change issues, difficulties remain in effectively accessing justice in the EU in environmental matters, especially with regard to natural or legal persons asserting their legal standing before the Court.

A global trend in climate litigation is that applicants are no longer only environmental associations operating within a State or recognized by the State against which they intend to act, but also individuals denouncing direct and concrete offenses to their lives and their extension.

The Luxembourg Court has already dismissed several cases in the field of climate change – where the applicants strive for better EU legislation regarding climate change also complaining the violation of human rights – through the severe application of the *locus standi* pursuant to Art. 263, para. 4 of the Treaty on the Functioning of the European Union (TFEU)[74], as interpreted seamlessly since the *Plaumann* judgment[75].

The Court of Justice therefore seems to take the position of clearly rejecting a revision of the *Plaumann* test, preventing individuals from seeking reviews of the performance of States and institutions on acts or measures adopted, even when human rights are violated. While the position of the ECJ is partially justified by a vision of the EU as a "complete system of legal remedies and procedures"[76] based on the combination of Arts. 263 and 267 TFEU, and hence the (decisive) role of national courts, relegating protection to exclusive recourse to a potential reference for a preliminary ruling (while the same could also apply to an infringement procedure *ex* 258 TFEU) could take the form of the right of access to justice that is only theoretical or illusory, rather than practical and effective[77]. This approach would seem to be confirmed in the position taken with regard to the EU commitments made with the ratification of the Aarhus Convention by the Aarhus Convention Compliance Committee (ACCC) established to guarantee the effectiveness of the rights recognized therein. In fact, the 2011 and 2017 reports[78] would appear to establish a violation of the Aarhus Convention by the EU, since it would not allow standing in cases of an environmental nature, insofar as neither the Aarhus Regulation nor ECJ case-law implement or conform with the obligations of the Convention (in particular, with reference to Art. 9, paras 3 and 4).

[74] See Court of Justice, Fourth Chamber, Order of 6 May 2020, *Peter Sabo and Others v European Parliament and Council of the European Union*, case T-141/19; Court of Justice, Second Chamber, Order of 8 May 2019, *Armando Carvalho and Others v European Parliament and Council of the European Union*, case T-330/18.

[75] Court of Justice, Chamber, Judgment of 15 July 1963, *Plaumann & Co. v Commission of the European Economic Community*, case 25/62.

[76] Court of Justice, Sixth Chamber, Judgment of 25 March 2021, *Armando Carvalho and Others v European Parliament and Council of the European Union*, case 565/19 P, par. 68; Court of Justice, Eighth Chamber, Order of 14 January 2021, *Peter Sabo and Others v European Parliament and Council of the European Union*, case C-297/20 P, par. 17.

[77] See Opinion of Advocate General F. JACOBS, delivered on 21 March 2002, in the case C-50/00 P, *Unión de Pequeños Agricultores v Council of the European Union*.

[78] Findings and recommendations with regard to communication ACCC/C/2008/32 (Part I), *concerning compliance by the European Union*, of14 April 2011, ECE/MP.PP/C.1/2011/4/Add.1; Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II), *on compliance by the European Union*, of 17 March 2017, ECE/MP.PP/C.1/2017/7.

On the other side, at the national level, several courts have been shown no reticence in recognizing a sufficient legal interest to bring a case, for example, on the grounds of the "protection of a sustainable society"[79] or "intergenerational responsibility"[80], admitting the plaintiffs – in the latter case – on behalf of future generations, also thanks to the integration of intergenerational values in a constitutional dimension[81]. A significant number of cases from different countries have found an intergenerational aspect of constitutional rights, assuming that future generations are protected by rights, that the principle of intergenerational equity informs the interpretation of rights, and that sustainable development to meet the needs of future generations is a fundamental right in itself[82]. Domestic legal systems, defining their own conditions for standing, demonstrate a more favourable attitude to the implementation of human rights treaties. Indeed, as Mayer noted, the absence of identifiable "victims" "could strike a fatal blow to individual or group applications before regional human rights courts and complaints to treaty bodies"[83].

The ECtHR has admitted relevant cases in environmental matters where admissibility was limited to applicants who were "directly and seriously affected"[84] or otherwise could prove "a reasonably foreseeable threat" to their rights[85]. However, as rightly noted, "the relevant cases admitted by the European Court of Human Rights, for instance, typically

[79] District Court of The Hague, judgment of 24 June 2015, *Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the* Environment, C/09/456689/HA ZA 13-1396.

[80] Supreme Court of the Philippines, Judgment of 30 July 1993, *Oposa v Factoran*, 224 S.C.R.A. 792.

[81] See A. KREILHUBER, A. KARIUKI, *Environmental Rule of Law in the Context of Sustainable Development*, cit., p.596; D.R. BOYD, *The Implicit Constitutional Right to Live in a Healthy Environment*, in *Review of European Community and International Environmental Law*, 2011, n. 2, pp. 171-179.
A more recent analysis of modern Constitutions allows us to record a good margin of tendency towards a "constitutionalization of the environment". In the perspective to give constitutional value to the protection of the environment and the common heritage of human being, see French Constitutional Court, judgment of 31 January 2020, n. 2019-823QPC. On the interpretation of the constitutional right to health as incorporating the right to live in a healthy environment in Italy, see Italian Constitutional Court, Judgment of 22 May 1987, n. 210/1987; Italian Constitutional Court, Judgment of 7 March 1990, n. 127/1990. In Italy, very recent is the definitive approval of the amendment of Arts. 9 and 41 of the Constitution (Proposal of Constitutional Law No. 3156), with which the principle of protecting the environment, biodiversity and ecosystems has been introduced, within the framework of the fundamental principles set out in the Constitution, "also in the interest of future generations".
An interesting overview of cases before European national courts can be found in N. DE SADELEER, G. ROLLER, M. DROSS, *Access to Justice in Environmental Matters. Final Report*, 2002, available at https://ec.europa.eu/environment/aarhus/pdf/accesstojustice_final.pdf; J. EBBESSON (ed.), *Access to Justice in Environmental Matters in the EU*, The Hague, 2002.

[82] L. SLOBODIAN, *Defending the Future: Intergenerational Equity in Climate Litigation*, in *Georgetown Environmental Law Review*, 2020, n. 32, pp. 569-589, p. 583.

[83] B. MAYER, *Climate Change Mitigation as an Obligation under Human Rights Treaties?*, cit., p. 422.

[84] European Court of Human Rights, First Section), Judgment of 24 January 2019, application nos. 54414/13 and 54264/15, *Cordella and others v Italy*; European Court of Human Rights, Third Section, Judgment of 1 December 2020, application no. 17840/06, *Yevgeniy Dmitriyev v Russia*, para. 32; European Court of Human Rights, Grand Chamber, Judgment of 8 July 2003, application no. 36022/97, *Hatton v UK*, para. 96.

[85] European Court of Human Rights, Judgment of 29 June 2010, application no. 48629/08, *Hubert Caron and others v France*. On the ground of legitimation and conditions of admissibility of the actions before the ECtHR, see widely A. DI STASI, *Introduzione alla Convenzione europea dei diritti dell'uomo e delle libertà fondamentali*, III ed., Padova, 2022.

concern individuals affected by a disaster or directly exposed to a major local source of pollution, rather than those exposed to more diffuse environmental harms"[86]. Indeed, demonstrating the quality of victim of a human rights violation has proven to be an obstacle, since climate change hinders the enjoyment of human rights in a diffuse way[87].

Instead, the well noted approach embraced by the ECJ led to inadmissibility rulings, for instance, in the *Carvalho and others* judgment where "the applicants have not established that the contested provisions of the legislative package infringed their fundamental rights and distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee"[88]. Overall, this procedural caveat reveals a concrete obstacle to human rights-based climate litigation, and more generally, access to justice and the rule of law, with particular regard to the "draconian conditions"[89] laid down by ECJ settled case-law on the legal standing of individuals, resulting in a *vulnus* to the effectiveness of their judicial protection.

In view of the exceptionality of the interests at stake in the field of climate justice, a more courageous position of the ECJ[90] – reinterpreting the *locus standi* requirement of "individual concern" to allow standing in cases of serious interference with human rights,

[86] B. MAYER, *Climate Change Mitigation as an Obligation under Human Rights Treaties?*, cit., p. 421.

[87] Anyway, recently, in *Sacchi v. Argentina* (Committee on the Rights of the Child, Communication of 8 October 2021 n. CRC/C/88/D/104/2019) the Committee on the Rights of the Child held that states have extraterritorial jurisdiction over harms caused by carbon emissions, declaring that victims of transboundary environmental damage, including damage caused by climate change, were within the human rights jurisdiction of states emitting greenhouse gases if the petitioners' harms were caused by the act or omission of that state and were "reasonably foreseeable" consequences of the emissions allowed by those states' policies. The Committee substantially followed the reasoning of the Inter-American Court of Human Rights (IACtHR) in its Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia.

[88] See Court of Justice, Sixth Chamber, Order of 8 May 2019, *Armando Carvalho and Others v European Parliament and Council of the European Union*, case T-330/18. See also Court of Justice, Eighth Chamber, Order of 6 May 2020, *Peter Sabo and Others v European Parliament and Council of the European Union*, case T-141/19.

[89] F. FERRARO, *L'evoluzione della politica ambientale dell'Unione: effetto Bruxelles, nuovi obiettivi e vecchi limiti*, cit., p. 191.

[90] Confirmed also in the appeal judgments of *Carvalho and others* and *Sabo*. See Court of Justice (Sixth Chamber, Judgment of 25 March 2021, *Armando Carvalho and Others v European Parliament and Council of the European* Union, case 565/19 P; Court of Justice, Eighth Chamber, Order of 14 January 2021, *Peter Sabo and Others v European Parliament and Council of the European Union*, case C-297/20. Following the Order on the appeal of Peter Sabo (the same remarks can be read, with others words, in the judgment on the appeal of Armando Carvalho), the Court is clear in re-affirming that "while it is true that that condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside that condition, expressly laid down in the FEU Treaty, without going beyond the jurisdiction conferred by the Treaty on the EU Courts" (Court of Justice, Eighth Chamber, Order of 14 January 2021, *Peter Sabo and Others v European Parliament and Council of the European Union*, case C-297/20, para. 32). At the same time, the Court seems to want to deprive itself definitively of a task which, in its view, can only belong to the Member States. In fact, the Court wanted to make clear that "while it is, admittedly, possible to envisage a system of judicial review of the legality of EU measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force" (Court of Justice, Eighth Chamber, Order of 14 January 2021, *Peter Sabo and Others v European Parliament and Council of the European Union*, case C-297/20, para. 33).

or with their essence[91] – toward the traditional approach to standing would have contributed to making the right to effective remedy – enshrined in Art. 47 CFREU – fully effective and in line with the needs envisaged by the Aarhus Convention, and would also have allowed the Court to examine the substance of the dispute.

6. Conclusions

Climate change and its dire effects are undoubtedly a common concern of humankind and call for international cooperation. The urgency of the current climate crisis shows the absolute preciousness of the time available to reverse the devastating effects, requiring substantial (collective) efforts. In an ideal world, States would come *together* and sit at the table until reaching a *shared* solution to definitively save the Planet and its inhabitants. The impending reality is rather different than we imagined and hoped for. It looks like the end of the world as we know it where "warming by the end of the 21st century will lead to high to very high risk of severe, wide-spread and irreversible impacts globally"[92]. These words of the Intergovernmental Panel on Climate Change (IPCC) leave no room for doubt.

A main challenge is to respond to increasing environmental pressure and pursue environmental sustainability in the context of fair, effective, and transparent (global) governance arrangements and rule of law, the strengthening of which is crucial to protecting environmental, social, and cultural values, and to achieving ecologically sustainable development.

Effective global legislative action on environmental protection and climate change has proven elusive, and as Sands noted, "that is one reason why attention is increasingly being given to other means and other actors"[93]. Even if the global response to the climate crisis is still unsatisfactory, a "solidaristic spirit" has never been needed more to renew "social cohesion" between generations, fulfilling the common goal of the survival of humankind. Solidarity is the cornerstone on which the international community should *concretely* found its action, pursuing a (moral – even before legal) duty of cooperation among individuals to preserve and protect the natural environment, taking into account the wellbeing of future generations.

Even in the EU – ideal realm of solidarity since World War II, a driving force for peaceful cooperation between European countries – fairness and solidarity are guiding principle in taking the relevant measures at the Union and national level to achieve the

[91] See G. WINTER, *Armando Carvalho and Others v. EU: Invoking Human Rights and the Paris Agreement for Better Climate Protection Legislation*, in *Transnational Environmental Law*, 2020, n. 1, pp. 137-164, pp. 163-164.
[92] IPPC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, 2014, available at https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf.
[93] P. SANDS, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, cit., p. 23.

climate-neutrality objectives, although environmental protection (and sustainable development, on which European environmental policies also have to be based) faces pressures deriving from economic needs, no less than the balancing required by Art. 11 TFEU, which does not necessarily imply prevalence *tout court* of environmental requirements over other interests protected by EU law[94].

A main challenge is to respond to increasing environmental pressure and pursue environmental sustainability in the context of fair, effective, and transparent (global) governance arrangements and rule of law, the strengthening of which is crucial to protecting environmental, social, and cultural values, and to achieving ecologically sustainable development[95].

Intergenerational equity, as the first distinguishing element of environmental (rule of) law strongly linked to the solidary rationale of the concept of sustainable development, plays a crucial role in global environmental governance. The application of intergenerational rights by a notable number of national and international courts across the world addressing climate change issues shows a positive trend in the progressive affirmation of a rights-based approach in environmental matters, although several complexities are on the horizon.

Nevertheless, the effectiveness of access to justice as a relevant element of the rule of law is threatened, especially with regard to the difficulties encountered by natural or legal persons in asserting their legal standing before a judge. If domestic legal systems demonstrate a more favourable attitude – even if not entirely uniform – to the implementation of human rights treaties also through a dynamic interpretation of their standing criteria, the approach embraced by the ECJ is more reticent and *de facto* prevents individuals from reviewing the performance of States and institutions on acts or measures adopted, even when human rights are involved.

The construction of an "Europe of Justice" – at the top of the EU's priorities since the Stockholm Programme of 2010[96] – in the more general framework of the strengthening of the AFSJ, requires a more facilitated access to justice. Among the objectives for the AFSJ laid down in Art. 67 of the TFEU, it's clearly set that "The Union shall facilitate access to justice". Nevertheless, the AFSJ is above all a space of enjoyment of fundamental rights and their legal protection, including through the right of access to justice when they are the object of infringement[97]. It is placed in this direction, between

[94] P. FOIS, *Il diritto ambientale dell'Unione europea*, in G. CORDINI, P. FOIS, S. MARCHISIO (a cura di), *Diritto ambientale. Profili internazionali, europei e comparati*, Torino, 2017, pp. 61-107; F. ROLANDO, *L'integrazione delle esigenze ambientali nelle altre politiche dell'Unione europea*, cit.

[95] Taking up the question posed by Di Stasi in 2014 – still current – in terms of sustainable development: "Beyond the global summits, does the goal of maximum access to the three dimensions of sustainable development by everyone all over the planet still require shift from vision to action?". See A. DI STASI, *The Normative Force of the Outcome Document "The Future We Want": Brief Remarks*, cit., p. 26.

[96] European Council, *The Stockholm Programme — An open and secure Europe serving and protecting citizens*, 2010/C 115/01, in OJ C115, 4 May 2010, pp. 1-38.

[97] As masterfully said by Judge Pocar: "*Non vi è altra area del pianeta in cui la cooperazione fra Stati abbia prodotto uno Spazio di libertà, di sicurezza e di giustizia paragonabile a quello europeo, soprattutto*

other fundamental rights, in particular the right to access to justice and an effective remedy, guaranteed by Art. 47 of the Charter of fundamental rights of the European Union, which is an essential element to the area of freedom, security and justice[98].

Moreover, we should be aware that it is a right enshrined in a provision which – like those analogues of Art. 14 of the International Covenant on Civil and Political Rights and Arts. 6 and 13 of the European Convention of Human Rights (ECHR) – does not allow limitations of any kind and is also part of the objectives of the 2030 Agenda for sustainable development approved by the United Nations[99], whose Objective 16 stresses the importance of promoting societies based on institutions that respect the rule of law and ensure access to justice for all[100].

At the same time, the development of the area, in the framework of an "European judicial space", presupposes adherence to common legal principles and values enshrined in particular in the ECHR, in addition to CFREU. The relevance of the contribution brought by these catalogues of rights to the realization of the European space of justice – within the framework of a European "system" for the guarantee of fundamental rights now distinctly multilevel[101] – risks to find a huge limit on the procedural ground.

Indeed, interest in human rights in relation to climate change largely concerns access to litigation and other compliance mechanisms. And if neither the UNFCCC nor the Paris Agreement have an effective compliance system, human rights treaties can provide individuals or groups with the opportunity to claim spaces of protection, subjecting States to an assessment of their performance with regard to their obligations, whereas individuals cannot generally rely directly on treaties or customary law[102]. Therefore, within the EU framework, it is reasonable to consider there is a need to go beyond the

in termini di libertà di movimento e di circolazione, di sicurezza sociale e di godimento dei diritti fondamentali e della loro protezione giuridica, anche attraverso il diritto di accesso alla giustizia quando essi siano oggetto di violazione". See F. POCAR, *Osservazioni introduttive: Spazio di libertà, sicurezza e giustizia, brexit e tutela dei diritti fondamentali*, in A. DI STASI, L.S. ROSSI (a cura di), *Lo Spazio di Libertà Sicurezza e Giustizia a vent'anni dal Consiglio europeo di Tampere*, Napoli, 2020, pp. 19-23, p. 19.

[98] More in deep, see A. D' AVINO, *Il diritto alla tutela giurisdizionale effettiva nell'art. 47 par. 1 della Carta dei diritti fondamentali dell'UE*, in A. DI STASI (a cura di), *Tutela dei diritti fondamentali e spazio europeo di giustizia. L'applicazione giurisprudenziale del Titolo VI della Carta*, Napoli, 2019, pp. 151-205.

[99] Once again here we treasure the words of Judge Pocar. See F. POCAR, *op. cit.*, p. 23.

[100] UN 2030 Agenda for Sustainable Development, Sustainable Development Goals, Goal n. 16 "*Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*".

[101] See A. DI STASI, *L'incidenza virtuosa della tutela dei diritti fondamentali nel completamento dello spazio europeo di giustizia*, in this *Journal*, 2019, n. 1, pp. 1-9, p. 4. In the framework of the protection of fundamental rights in EU, it's important here to stress, within the multilevel system, the ongoing "osmotic process of great permeability among european law and national law with a relationship of mutual "semantic feeding" between constitutional and European enunciations" (see A. DI STASI, *Lo spazio europeo di libertà, sicurezza e giustizia*, cit., p. 41) that unfortunately struggles to find a concrete realization in environmental matters. See also A. DI STASI, *Diritti umani e sicurezza regionale. Il "sistema" europeo*, Napoli, 2011.

[102] More in general, see A. NOLLKAEMPER, A. REINISCH, R. JANIK, F. SIMLINGER (eds.), *International Law in Domestic Courts*, cit.; E.A. POSNER, *Climate Change and International Human Rights Litigation*, in *University of Pennsylvania Law Review*, cit.

Plaumann test, through a less rigid interpretative approach to the *locus standi* criteria[103], taking into account the specific weight of climate change compared to the full and effective enjoyment of the rights strongly threatened by it, also in light of the findings of the ACCC pointing to the EU's severe failure in terms of access to environmental justice.

However, we also need to remember that even if we are right to want something more radical about change climate, the courts are not the starting point. They come at the end of the legislative process, not at the beginning[104].

ABSTRACT: Climate change and its dire effects are undoubtedly a common concern of humankind and call for international cooperation. The dire consequences of climate change pose a notable challenge to international environmental law but also national and international courts. This contribution aims to discuss the application of the principles of solidarity and rule of law in International and European Union (EU) environmental law, also in the context of the Area of Freedom, Security and Justice (AFSJ), and their implications as two key pillars of 21st century environmental law on strengthening environmental governance, where a "solidaristic spirit" has never been more necessary than now to renew "social cohesion" between generations, fulfilling the common goal of the survival of humankind. Furthermore, the analysis will consider the role of climate justice and the potential contribution of international human rights law and jurisprudence as increasingly central to combating environmental problems, where intergenerational equity, as the first distinguishing element of environmental (rule of) law strongly linked to the solidary rationale of the concept of sustainable development, may play a crucial role.

KEYWORDS: AFSJ – climate change litigation – ECJ – intergenerational equity – rule of law – environmental solidarity.

[103] A rethink by the Luxembourg judges could be envisaged on the ground of the recently approved reform of the Aarhus Regulation (Regulation (EU) 2021/1767 of the European Parliament and of the Council, *amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies*, of 6 October 2021, OJ L 356, 8 October 2021, pp. 1-7).

[104] A. BOYLE, *Progressive Development of International Environmental Law: Legislate or Litigate?*, in *German Yearbook of International Law*, 2020, n. 1, pp. 305-333.