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The Environmental Rule of Law for Oceans

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1.1 INTRODUCTION: OCEANS UNDER THREAT

Various economic activities have severe impacts on marine ecosystems. These impacts include habitat destruction; visible pollution such as plastic litter, particles and oil spills; invisible pollution such as microplastics, underwater noise, chemicals and nutrients; and hydro-morphological changes to the seabed. Additionally, climate change and greenhouse gas emissions adversely impact seas, coasts and people living in those areas. Climate change leads to changes in water temperature, acidification, intensifying algae blooms, rising sea levels and more frequent and intense flooding and erosion. In combination with threats posed by biodiversity loss, which is driven by climate change, pollution, over-exploitation of resources and the destruction of natural habitats, these impacts will severely challenge the resilience of marine ecosystems, and consequently, of societies around coastlines. Without urgent and coherent action, our oceans face an uncertain future. We still have a chance to protect and restore marine ecosystems if we act decisively and coherently and strike a sustainable balance between how we use our seas and how we protect them.

Clearly, strengthening the rule of law for oceans is urgent. Many of our seas are among the busiest marine regions in the world, where multiple maritime sectors are competing for increased space. Complex multi-level and multi-sector governance landscapes have unfolded over several decades, resulting in a situation where existing legal and policy frames of reference contain overlaps, gaps, weaknesses and inconsistencies.[1] Authorities responsible for implementation and compliance are affected by institutional challenges, and actors may face a lack of clarity and predictability, while local communities and other stakeholder groups may not be

[1] UN General Assembly (2018) Gaps in international environmental law and environment-related instruments: towards a global pact for the environment. 30 November.

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sufficiently or effectively included in planning, policymaking and decision-making, negatively affecting legitimacy and inclusiveness. Challenges also arise in the context of difficult science–policy–society interfaces, where a lack of sound methods and mechanisms to systematically handle incomplete scientific knowledge, uncertainty and contested knowledge, and the broader institutional challenges related to environmental policy integration and coordination, easily lead to unsustainable outcomes and failure to prioritize preservation of the environment and oceans.

After many decades of intensive law-making, we now face highly comprehensive, multi-level and multi-sector policy and legal frameworks that apply to the marine domain. Arguably, this strengthens the rule of law, in that the overall picture appears to provide a web of laws and regulations that could provide clarity and predictability with regard to the rights and duties of citizens, private actors, authorities and States, fostering predictability, accountability, clarity, legal certainty and coherence. The question is, though, whether this backdrop also ensures the *environmental* rule of law for oceans. Is law effective enough and strong enough to ensure protection of our oceans against increasing pressures and demands?

This book explores the environmental rule of law for oceans from a range of different perspectives. As an overarching question we ask whether existing legal frameworks are sufficiently effective, dynamic and robust enough to address new challenges and pressures in light of advanced scientific knowledge and understanding of oceans. Do we have adequate governance and compliance mechanisms and solutions in place to ensure satisfactory implementation of the law in its existing and evolving dimensions? And how can we further strengthen the rule of law for better protection of our oceans. The book provides future-oriented perspectives on how law should evolve to better preserve the oceans. All chapters incorporate novel insights and ideas for legal solutions that might inspire scholars, actors, authorities, citizens and communities around the globe.

1.2 FROM RULE OF LAW TO ENVIRONMENTAL RULE OF LAW FOR OCEANS

The rule of law is essential for democracy and good governance. Multiple approaches to and understandings of the rule of law have evolved at the national level, and notion(s) of the rule of law are accordingly influenced by (and adjusted to) national legal contexts.[2] The traditional meaning of the rule of law, though, is a system of governance based on generally applicable abstract rules and limited state discretion, in which the government is subject to the same law as individual citizens. This means that governments are bound by rules fixed and announced beforehand. As such, these rules enable foreseeing with fair certainty how authorities will

[2] For an overview of these main approaches see, e.g., Henk Addink, *Good Governance: Concept and Context* (Oxford: Oxford University Press 2019), 75–76.

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implement legislation and policies.[3] The formal elements of the rule of law therefore encompass the notions that law must be set forth in advance (be prospective), be made public, be general, be clear, be stable and certain and be applied to everyone according to its terms.[4] Application of laws should be administered by impartial and independent courts that are reasonably accessible to all, and people and governments ought to be given adequate opportunity to comply with the law.[5]

Probably the best-known aspects of the rule of law are the eight formal principles of Lon Fuller's 'inner morality of law'. Fuller's account of the rule of law requires that the State should do whatever it wants to do in an orderly and predictable way, giving us plenty of advance notice by publicizing the general norms on which its actions will be based, and that it should then stick to those norms and not arbitrarily depart from them even if it seems politically advantageous to do so.[6] More specifically, Fuller suggested the following principles:

1. *Generality*: Legal prescriptions must be issued at some level of generality. No legal system can function by addressing its prescriptions to individuals, one by one, or by addressing each particular act separately.
2. *Promulgation*: For the law to be able to guide human conduct, it must be promulgated to its subjects. People can only be guided by rules or prescriptions if they know about the existence of the rule or prescription.
3. *No retroactive rules*: For the law to be able to guide human conduct, it must prescribe modes of behaviour prospectively. Retroactive rules, which purport to affect behaviour which had already occurred prior to promulgation of a rule, cannot achieve the purpose of actually guiding human conduct.
4. *Clarity*: Rules or prescriptions can only guide human conduct if the subjects understand what the rule requires. Promulgation is not enough. A certain level of understanding of the rule is essential in order to follow the rule.
5. *No contradictory rules*: For similar reasons, if a rule prescribes one thing and at the same time prescribes a contradictory or inconsistent rule, people cannot follow it. Or if people are required to do x by one rule and not-x by another rule, then there is no way in which they are able to follow both.
6. *No impossible prescriptions*: A rule or prescription may be comprehensible and not inconsistent but, in practice, impossible to follow. A rule

[3] Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press 1944).

[4] Brian Z. Tamanaha, 'A Concise Guide to the Rule of Law', in Neil Walker and Gianluggi Palombella (eds.), *Florence Workshop on the Rule of Law* (Oxford: Hart Publishing 2007), 3.

[5] Andrei Marmor, 'The Ideal of the Rule of Law', *USC Legal Studies Research Paper No. 08-6* (2008) 1.

[6] Ibid., 6; see further Lon Fuller, *The Morality of Law* (New Haven: Yale University Press 1969), 46–90.

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that people cannot follow is a rule that cannot guide human conduct, even if it is understood perfectly well. To guide human conduct, rules must require conduct that is feasible for the rule subjects.

7. *Stability*: It is generally assumed that some level of stability over time is essential for the law to achieve its purposes, whatever they are. The law can change, of course, but the assumption is that if changes are too frequent, people cannot follow the law. This stems partly from the fact that many of our actions that the law purports to regulate require advance planning, preparation and a certain level of guaranteed expectations about the future normative environment.
8. *Consistent application*: For the law to be able to guide human conduct, it must maintain considerable congruence between the rules promulgated and their actual application to specific cases. In other words, the law cannot guide human conduct if actual deviations from it are not treated as such, namely as deviations from the rule. This is actually a highly complex requirement, which entails a whole range of principles and practices. Generally speaking, it requires that agencies dealing with enforcing and applying law to specific cases actually apply rules promulgated by the law.[7]

These are the formal aspects of the rule of law because they concern the form of those norms that are applied to our conduct: generality, prospectivity, stability, publicity, clarity and so on.[8] An important benefit of the rule of law is thus that it enhances legal certainty, predictability and legitimacy.[9] It restricts the discretion of government officials, reducing wilfulness and arbitrariness. Government officials may be unduly influenced in their government actions by inappropriate considerations – by prejudice, by whim, by arbitrariness, by passion, by ill will or a foul disposition or by any of the many factors that warp human decision-making and actions.[10] The rule of law constrains these factors by insisting that government officials act pursuant to and consistent with applicable legal rules. Government officials are required to consult and conform to the law both before and during

[7] Andrei Marmor, 'The Rule of Law and Its Limits', *USC Public Policy Research Paper No. 03-16* (2003) 6–8.

Referring to Lon Fuller in his book *The Morality of Law*, ch. 2. Many others have basically endorsed Fuller's list, for example: John Finnis, *Natural Law and Natural Rights* (2nd ed., Oxford: Oxford University Press 2011), 270–276; N. MacCormick, 'Natural Law and the Separation of Law and Morals', in Robert P. George (ed.), *Natural Law Theory: Modern Essays* (Oxford: Clarendon Press 1992); and Joseph Raz, *The Authority of Law* (Oxford: Oxford University Press 2009), ch.11.

[8] Jeremy Waldron, 'The Concept of and the Rule of Law', *Public Law & Legal Theory Research Paper Series Working Papers No. 08-5* (2008) 8.

[9] Ibid., 1.

[10] Ibid., 9.

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actions, and legal rules provide publicly available requirements and standards that can be used to hold government officials accountable during and after their actions.[11]

1.2.1 *The International Dimension*

The rule of law is also highly relevant at the international level. The notion of the international rule of law has been critically examined in the scholarly literature. On the one hand, the international rule of law has to a large extent evolved from concepts and practices of the rule of law at the national level. This is evident in some of the essential aspects of the international rule of law as formulated by the UN, international courts and legal scholars (accountability, non-arbitrariness, predictability, certainty and so on).[12] On the other hand, the absence in international law of certain normative and institutional qualities characteristic of the national legal order,[13] alongside concerns pertaining to the (seeming or real) disruption of the unity of the international legal order,[14] gives reasons to doubt the very existence of the international rule of law.

In the international legal system, all States are sovereigns and equals. No legislative, executive or judicial powers exist with competence to bind States, or non-State actors, or take enforcement or coercive measures against those not complying with international law.[15] Moreover, the UN speaks of the 'rule of law at the international level', not 'international rule of law'; however, it seeks to promote 'an international order based on the rule of law and international law'.[16] These aspects have also been acknowledged by the United Nations Security Council, which stresses that the rule of law requires 'measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency'.[17]

It has been suggested that the various components of the rule of law at the international level may be of a different character from those at the national level.[18] Notwithstanding, some common requirements of the rule of law acceptable to all

[11] Ibid.

[12] See, e.g., discussion by Noora Arajärvi, 'The Core Requirements of the International Rule of Law in the Practice of States', *Hague Journal on the Rule of Law* (2021) 13: 173–193.

[13] Simon Chesterman, 'An International Rule of Law?', *The American Journal of Comparative Law* (2008) 56(2): 331–361.

[14] Arajärvi (n 12), 173–193.

[15] Robert McCorquodale, 'Defining the International Rule of Law: Defying Gravity?', *International and Comparative Law Quarterly* (2016) 65: 277–304.

[16] Ibid.

[17] United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, document no. S/2004/616 (United Nations 2004).

[18] McCorquodale (n 15), 277–304, 290.

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States can be identified, such as non-arbitrariness, consistency and predictability (as minimum core requirements).[19]

At the international level, the rule of law presupposes at the very least that norm-creating behaviour and compliance with environmental obligations are not incidental, *ad hoc* actions guided by random considerations of power interplay or self-interest on the part of actors. Indeed, the rule of law implies that actors operate under a shared understanding that their actions (or abstention from action) are required and controlled by certain principles and norms. Thus, actors are guided by a common perception of legal obligations and a sense of legal commitment to shared values.[20] Such a shared, reciprocal commitment to law is crucial for the existence and effectiveness of law, because problems are mostly not local, but international and global, including transboundary pollution of oceans and climate change.

For that reason, as argued by Brunnée and Toope, who build on the views of Fuller, '[l]aw does not depend on hierarchy between law-givers and subjects, but on reciprocity between all participants in the enterprise. By "reciprocity" we mean that law is not a "one-way street". It can exist only when actors collaborate to build shared understandings and uphold a practice of legality.'[21] They view the notion of reciprocity as standing at the very heart of the interactional account of international law.

1.2.2 *The Rule of Law for Oceans*

In addition to these formal requirements of the rule of law, the concept also contains a substantive content requiring that law complies with internationally recognized human rights norms and standards regarding fundamental rights and freedoms, personal security and protection of personal integrity.[22] The substantive dimension of the rule of law may be particularly important for protection of our oceans. In the context of environmental and ecosystem degradation, the concept of the rule of law has also been given a more specific understanding through introducing the concept of the 'rule of law for nature'.[23] This refers to a 'system of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that aim at protecting the health, integrity and security of the

[19] e.g., Arajärvi (n 12), 173–193.

[20] See, e.g., Fuller (n 6).

[21] Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press 2013), 7, https://doi.org/10.1017/CBO9780511781261

[22] Hans Christian Bugge, 'Twelve Fundamental Challenges in Environmental Law', in Christina Voigt (ed.), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge: Cambridge University Press 2013), 6–7.

[23] Christina Voigt (ed.), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge: Cambridge University Press 2013).

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environment'.[24] As such, the concept encompasses local, national, regional and international levels of governance. Given the transversal nature of many types of ecosystems, including oceans, this partly blurs the distinction between national and international rule of law.[25] Environmental issues have always transcended national borders and existed even in those areas where the borderlines between the national and international legal order become unclear, that is, areas beyond national jurisdiction.[26] For that reason, both dimensions are equally relevant for the protection of our oceans.

Bugge explains that the rule of law for nature means better legal protection of nature from human activities that may threaten or damage nature. Substantially, it aims at the integrity and security of nature.[27] This means that nature and natural values are protected by law from encroachments, deterioration and destruction in fundamentally the same way as citizens are protected by law. Of course, this does not mean that nature and its values must be protected at any price, regardless of other conflicting goals or interests. But those goals or interests must be strong enough to justify environmental damage, and procedural rules must be available to ensure that the trade-off is made with due regard to nature's value and all other relevant facts. Rule of law for nature means predictability, security and the absence of arbitrariness and bias in decisions that affect nature, as well as a full accounting of environmental values in decision-making – be it by private or public authorities.[28] In essence, a legal system would not be adhering to the rule of law if it fails to prevent people from destroying the functioning of ecosystems.[29] Likewise, Bosselmann notices that connecting the rule of law to the ecological challenge is very timely and that law has been complicit in the sense of legitimizing and legalizing excessive growth and environmental destruction.[30]

The importance of the rule of law for environmental protection and sustainable development has received significant impetus through adoption of the Agenda 2030, and particularly through Sustainable Development Goal (SDG) 16. As described in the 2016 UNDP Annual Report on The Rule of Law and Human Rights, SDG 16 – for peaceful, just and inclusive societies – ushers a new kind of development: one where people have the opportunity to influence decisions that affect their lives and create communities that thrive. SDG 16 articulates the key role that governance and the rule of law play in promoting peaceful, just and inclusive societies and in ensuring sustainable development. As such, adhering to the rule of law will enhance the implementation of, for example, SDG 14, which aims to

[24] Bugge (n 22), 5.
[25] Arajärvi (n 12), 173–193.
[26] Ibid., 177.
[27] Voigt (ed.) (n 23).
[28] Bugge (n 22), 7–8.
[29] Cormac Cullinan, 'The Rule of Nature's Law', in Voigt (ed.) (n 23), 100.
[30] Klaus Bosselmann, 'Grounding the Rule of Law', in Voigt (ed.) (n 23), 76.

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conserve and – sustainably – exploit the oceans, seas and marine resources with a view to sustainable development.

1.3 AIM OF THE BOOK

At present, our oceans need a strong and effective environmental rule of law. Adhering to the rule of law through clear, predictable, coherent and legitimate rules will contribute to the protection of our oceans against increased pressures and demands. In this book, we are searching for ways to improve, strengthen and further develop the environmental rule of law for oceans. In short, the environmental rule of law for oceans requires the existence of a set of rules and policies at multiple governance levels that appropriately regulate human activities at sea and ensure that pressures on the marine ecosystem are tackled effectively. As such, law should contribute to ensuring the long-term functioning of our marine ecosystems and ocean resilience.

Throughout the book, we identify and critically examine different areas of law that need to change or evolve to respond to pressures on our oceans and future challenges in terms of governing the oceans in times to come. The authors examine whether current legal frameworks are sufficiently effective to address new challenges and pressures in light of advanced scientific knowledge and understanding of oceans. They thereby also shed light on whether we have adequate governance and compliance mechanisms and solutions in place to ensure the effectiveness of the law in its existing and evolving dimensions. The authors address different rule of law norms, such as legitimacy, coherence, clarity and legal certainty and accountability. In addition, they propose solutions to identified regulatory weaknesses, gaps or other barriers that adversely affect protection of the oceans. In some areas, existing laws may need to evolve, adapt and improve, while in other areas we need to think afresh. Together, the twenty-five chapters in this book seek to contribute to the overarching question, namely what new legal solutions are needed to strengthen the environmental rule of law for oceans?

1.4 STRUCTURE OF THE BOOK

The book consists of six parts. Part I introduces the concept of the rule of law and more specifically the environmental rule of law for oceans. Part II focuses on a selection of current pressures on the marine environment and assesses regulatory and governance aspects from a rule of law perspective. Part III discusses the challenge of balancing conservation of the oceans in light of new demands and interests. Part IV presents proposals for innovative governance approaches that contribute to effectiveness, legitimacy and other rule of law values. Part V encompasses diverse regional regulatory and governance practices and experiences.

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Finally, Part VI presents conclusions and solutions in terms of strengthening the environmental rule of law for oceans.

1.4.1 *Part II: Tackling Multiple Pressures on the Oceans*

Part II of the book addresses selected pressures on the oceans, including shipping, fishing, spaceflight-source pollution, plastic pollution and climate change. *Christina Voigt* addresses the impacts of climate change and greenhouse gas emissions on marine life and biodiversity and assesses to what extent this interlinkage is appropriately addressed in the UNCLOS and UNFCCC regimes. She goes on to discuss the opportunities for comprehensive and synergetic regulation in this regard. *David Testa* examines whether UNCLOS is fit-for-purpose in terms of addressing the problem of GHG emissions from shipping. To increase effectiveness, he notes that current provisions need to be complemented by more technical rules and measures that also need to be integrated with the wider international environmental law framework. This will enhance coherence, comprehensiveness and effectiveness. *Dawoon Jung* examines how the rule of law could be enhanced in relation to regulation of marine plastics and microplastics pollution. She stresses the need for cooperation and coordination between sector-specific instruments and between the multiple layers of regulations at global, regional and national levels, as well as adoption of a life-cycle approach to plastics. *Anastasia Telesetsky* sheds light on the problem of single-use plastic packaging and identifies several current weaknesses, including a lack of comprehensive and effective regulation as well as lack of accountability mechanisms. She urges States to agree to a single-use plastic product waste tariff and a fishing gear tariff to increase legal accountability for plastic pollution. Finally, *Alla Pozdnakova* presents an innovative perspective on pollution of the marine environment from spaceflight activities. In the absence of specific environmental provisions in the international law of outer space, she discusses the effectiveness of the applicable environmental law provisions from general environmental laws and multilateral environmental agreements such as the UN Convention on the Law of the Sea.

1.4.2 *Part III: Balancing the Exploitation and Preservation of Ocean Resources*

Part III of the book presents a variety of perspectives on resources or challenges in need of a proper balance between use and preservation. It also examines the usefulness of the precautionary principle for the management of living resources and problems pertaining to the use of resources beyond national jurisdiction. *Rozemarijn Roland Holst* addresses the problem of marine plastic pollution and specifically discusses the legal challenges raised by the use of new technologies for marine environmental restoration purposes, using The Ocean Cleanup's plastic

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clean-up activities in areas beyond national jurisdiction as a case study. Next, *Brita Bohman and Henrik Ringbom* analyze the challenges to the rule of law related to different types of risks and benefits of activities and related uncertainty. The authors shed light on the challenge posed by novel technologies to combat eutrophication in the Baltic Sea, thereby also exploring how marine environmental law operates in the absence of specific rules and how environmental law principles manage to fill legal gaps. In particular, they discuss the case of 'sea-based measures' to target pollution that has already been released into the sea, as a complement to land-based measures to prevent marine pollution. In view of the purely environmental objectives behind these technologies and the scientific uncertainty that surrounds their effectiveness, the case study presents particular challenges in terms of balancing the interests at stake, thereby establishing the content and role of law in this field. *Aref Shams* analyses utilization of icebergs for fresh water and discusses the legality of proposed plans for such action. Despite a gap in the regulatory capacities of international law, this is an example of emerging demands on the oceans, which need to be regulated by an adequate rule of law. *Maurus Wollensak* studies the management of living resources under the United Nations Convention on the Law of the Sea, in particular considering the so-called precautionary principle/approach. He discusses to what extent application of the precautionary principle/approach is required and fit-for-purpose in respect to management of living resources *vel non*. *Pierre Cloutier de Repentigny* discusses law's capacity to adequately protect marine biodiversity through green legal theory. He demonstrates the entanglement of the UNCLOS marine conservation framework with economic growth and reflects on how to move past the limitations of this framework to build better rules for the protection of marine life, including beyond national jurisdiction. *Mitchell Lennan* addresses whether and to what extent the international legal framework adequately places an obligation on States to adapt to the complexities caused by marine living resources shifting their location (redistribution of fish stocks under climate change). He points out that despite a general obligation on States, there are gaps in law and governance with respect to addressing fluctuating or changing distributions of fish stocks. *Jakub Ciesielczuk* stresses the importance of the legal definition of marine genetic resources for the legal certainty and clarity of international legal regimes, and goes on to provide a working, legal definition of marine genetic resources. A compass in the form of a working definition of MGRs helps navigate the sea of uncertainties and strenghtens the rule of law.

1.4.3 *Part IV: Paths towards Effective Ocean Governance, Implementation and Compliance*

Part IV of the book examines a variety of tools and mechanisms – and the gaps in existing tools and mechanisms – to ensure implementation and compliance with the law. Different issues require different solutions and tools, so this Part consists of

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chapters addressing litigation and the role of international courts; regulation of environmental crimes and the need for international law development in this field; and the role of the international trade organization – the WTO – with regard to sustainable fisheries. *David Langlet* assesses and compares the extent to which and how legitimacy is considered in the three main legal instruments making up the EU regulatory framework for marine conservation, blue growth and efficient use of marine space, that is, the Water Framework Directive, the Marine Strategy Framework Directive and the Maritime Spatial Planning Directive. He identifies various legitimacy challenges in this regard and potential for strengthening these. *Vasco Becker-Weinberg* focuses on maritime environmental crimes as one of the main causes of the destruction of marine ecosystems and devastation of marine life, also discussing the lack of a joint international regulatory approach to these crimes. He emphasizes the need for a new global paradigm that is also aligned with international law. *Pieter van Welzen* discusses illegal fisheries as a pressure on global marine resources as well as on the economies and societies of many developing coastal States. He questions the effectiveness of fisheries regulations and in particular their enforcement in tackling illegal fisheries. *Carlos A. Cruz Carrillo* examines the potential of the advisory jurisdiction of the plenary of the International Tribunal for the Law of the Sea (ITLOS) to strengthen ocean governance. Since its conception, the legal basis of this judicial function has been unclear. Nevertheless, these instruments could assist in adapting the UNCLOS to new challenges such as climate change or technological developments. *Leonila Guglya* assesses the potential contribution of the WTO to the rule of law for oceans through prohibitions of subsidies contributing to overcapacity and overfishing; subsidies for fishing on overfished stocks; and subsidies to vessels and/or operators involved in IUU fishing. Finally, *Solène Guggisberg* sheds light on litigation as a tool to improve compliance with international fisheries law. The traditional regime regulating international fisheries appears inadequate at ensuring the rule of law, since many States are unwilling or unable to respect their relevant obligations. She stresses that recourse to international courts and tribunals is an option that should be considered by States, in that it could bring an end to specific violations, hence tackling the most egregious cases of non-compliance, as well as enabling clarification of certain obligations.

1.4.4 *Part V: Strengthening the Rule of Law in Regional Seas and Oceans*

Part V of the book provides regional solutions to environmental pressures and challenges to governance from a rule of law perspective. This part covers case studies from the Baltic Sea, Africa, the Eastern Tropical Pacific, the South China Sea and Northeast Asia. *Sarah Enright* analyses State-led regional cooperation efforts in the Eastern Tropical Pacific Ocean to create a transboundary marine corridor linking five Marine Protected Areas (MPAs) across four jurisdictions. This might potentially overcome challenges related to lack of a legally binding

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cooperation agreement, limited sectoral participation, the vast scale of the project and lack of a cohesive regional ocean governance framework. *Kirsi White* discusses oil Pollution Control Regulations in the Baltic Sea and discusses the potential effects of institutional interplay on implementation of the ecosystem approach. She suggests that development of institutional interlinkages may facilitate common policy objectives, decision-making and implementation of sectoral measures, also shedding light on the role of soft modes of governance from a rule of law perspective. *Andrey Todorov* addresses the ecosystem-based approach to Arctic Ocean governance. He discusses how to make regional measures in areas beyond national jurisdiction binding and ensure compliance by non-Arctic States; and how the ecosystem-based approach correlates with sectoral environmental measures regarding, in particular, fisheries, exploitation of resources in the Area and vessel traffic in the Arctic, adopted by relevant sectoral international organizations. *Constantinos Yiallourides* offers an overview of the Japanese legal system governing marine environmental conservation and Japan's approach towards the management, conservation and sustainable use of marine living resources, including whales. Commercial whaling is part of the broader international environmental law debate – ensuring environmental protection while facilitating sustainable use of the natural resources of the sea – and the author discusses the use of scientific knowledge and the precautionary principle. Finally, *Agnes Chong* takes a look at the South China Sea, where the rule of law is failing to protect the marine environment. Maritime claims and competition for resources often disregard conservation and sustainability, undermining cooperation on environmental protection. She discusses the requirements for cooperation and due regard, and the potential for a binding ASEAN Code of Conduct as a possible way forward.

1.4.5 *Part VI: Concluding Remarks*

Part VI concludes the book, wherein the editors reflect on legal solutions for changing oceans in light of the discussions throughout the book. Several cross-cutting rule of law challenges are discussed, including the absence of fit-for-purpose law, vagueness and ambiguity, lack of coordination and cooperation, lack of effective and enforceable law, the conflicting need for both specificity and generality under different circumstances, and so forth. The editors discuss the legal solutions identified throughout the book to these cross-cutting challenges and propose a way forward. The Part concludes with some answers and reflections related to the four main questions as identified in this chapter as key for the Rule of Law for Oceans.

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