

THE VOICE OF FUTURE GENERATIONS: INSTITUTIONAL REPRESENTATION, LESSONS LEARNED AND THE WAY FORWARD

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Climate change is inherently an intergenerational issue, and different strategies have been developed in order to channel future generations' perspectives in climate-related decision-making processes. These strategies include youth-led strategic cases, which, at the same time pose significant challenges to the existing legal framework, mainly relating to establishing standing before courts, duties of the present generation, and proving the causal connection between a human rights violation and the impacts of climate change. Such dilemmas, however, should not hinder endeavors to channel intergenerational equity in legislation and jurisdiction. This study argues that a possible solution for the representation of future generations could be realized through high-level specialized institutions that have the power to influence decisions at domestic, regional, and international levels. The study also aims to evaluate precedent-setting examples from the practice of future generations' institutions and reflect on the lessons that higher-level institutions could learn from these practices.

Keywords: intergenerational justice; the rights of future generations; future generations' institutions

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I. INTRODUCTION

Intergenerational justice plays a crucial role in contemporary endeavors to protect the environment and mitigate and adapt to climate change.¹ However, the inclusion of a future-generations-perspective in decision-making processes² may raise several questions on theoretical and practical levels. Establishing standing before courts, defining the needs and arguably the ‘rights’ of future generations, and assigning duties to the present generation are among the most thrilling legal challenges in this field. These questions have been addressed in recently emerging youth-led climate litigation cases, which aim to enforce the intergenerational perspective through court decisions in order to provide a liveable planet for the

¹ Julie H. Albers, ‘Human Rights and Climate Change: Protecting the Right to Life of Individuals of Present and Future Generations’ (2021) 28 *Security and Human Rights* 113, 136–137.

² In this context, environmental decision-making is interpreted as decision-making in Principle 10 of the Rio Declaration on Environment and Development, namely, it entails all forms of decision-making relating to the environment at the national and supranational levels of setting the legislative and regulatory framework. See: Jonas Ebbesson, ‘Principle 10. Public Participation’ in Jorge E. Viñuales (ed), *The Rio Declaration on Environment and Development. A Commentary* (Oxford University Press 2015) 287, 291–292.

generations to come by ordering States³ and non-State actors⁴ to comply with the goals undertaken in the Paris Agreement.⁵

The present study argues that – parallel to climate change litigation efforts, which receive significant attention in contemporary legal scholarship – another potential solution for the representation of future generations could be found in high-level specialized institutions that have the power to influence decisions at domestic, regional, and international levels, such as the institutions mentioned in the UN Secretary General’s report from 2013.⁶ The report proposed several ideas for the institutionalization of the representation of future generations at the international level and presented certain institutions that operate at the domestic level that could serve as role models for the establishment of similar institutions at both domestic and international levels. The fact that the institutional protection of future generations is a currently evolving field in the international sphere also holds great potential for future developments: their competencies, scope of action, as well as their potential role in human rights-based climate change litigation

³ See, for instance *Urgenda Foundation v State of the Netherlands* ECLI:NL:HR:2019:2007 (NL 2019) or *Neubauer et al v Germany*, Case no. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 (BVerfG 2021). See also Jacqueline Peel and Rebekkah Markey-Towler, ‘Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases’ (2021) 8 *German Law Journal* 1484.

⁴ See: *Milieudéfensie et al v. Royal Dutch Shell plc* ECLI:NL:RBDHA:2021:5339 (NL 2021). See also Annalisa Savaresi and Juan Auz, ‘Climate Change Litigation and Human Rights: Pushing the Boundaries’ (2019) 9 *Climate Law* 244.

⁵ In this context, litigants tend to refer to the violation of Article 2(1)(a) of the Paris Agreement, which envisions the goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

⁶ Report of the Secretary-General, ‘Intergenerational solidarity and the needs of future generations’ (2013) A/68/322.

are some of the most fascinating development directions of future generations' institutions.

This paper reflects on ongoing efforts at the international level to establish a normative and institutional framework for future generations and evaluates the insights that could be drawn from existing domestic institutions to contribute to creating an institutional framework at the UN level. The paper is structured as follows. The second section discusses the theoretical foundations of intergenerational equity and its recognition in international law, reflecting on current initiatives at the UN level to establish an institutional framework for future generations. The third section is dedicated to the already existing good practices at the domestic level and suggests further areas of development, concluding on how a bottom-up structured institutional representation of future generations could contribute to enforcing a future-generations-perspective in decision-making processes. Section four summarizes the key lessons derived from the institutional examples discussed and reflects on their relevance for international-level institutions to be set up in the future.

II. THE THEORY OF INTERGENERATIONAL EQUITY AND ITS RECOGNITION IN INTERNATIONAL LAW

The recognition of the importance of protecting the natural environment for the future has been an inherent part of international environmental law from the first stages of its development.⁷ In parallel, the theory of intergenerational equity was developed by Edith Brown Weiss in 1989, and

⁷ See, for instance, the Preambles of the International Convention for the Regulation of Whaling and the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Article 2(5)(c) of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes; the Preamble of the Convention on the Conservation of Migratory Species of Wild Animals; Article 4 of the Convention for the Protection of the World Cultural and Natural Heritage; and Principle 1 of the Stockholm Declaration.

subsequently.⁸ According to her concept, each generation holds the planet on trust and is obliged to bequeath it to future generations in at least as good conditions as they received it. The theory of intergenerational equity is grounded on three principles: options, quality, and access. First, the principle of comparable options requires the conservation of options and the diversity of natural resources so that future generations can use them to satisfy their own values. Second, the principle of comparable quality proposes that the quality of the environment should be comparable to that which has been enjoyed by previous generations. And finally, the principle of comparable access means non-discriminatory access among generations to the Earth and its resources.⁹ Each generation is therefore both a trustee for the planet with obligations to preserve it and a beneficiary with rights to use it. This dynamic is expressed through ‘planetary obligations’ and ‘planetary rights’, which stems from each generation’s position as part of the intertemporal entity of humans on this planet.¹⁰

The doctrine of intergenerational equity proposed by Brown Weiss was not developed merely as a conceptual framework but as a call for action,¹¹ aiming to address the problems of unsustainable development and environmental degradation and induce future-oriented decision-making. However, it should be borne in mind that up until now the doctrine has had limited recognition in international law: there is no binding international treaty that incorporates intergenerational equity, though it is reflected in some non-binding international documents, and it also received some support from the

⁸ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers, Inc. 1989).

⁹ Edith Brown Weiss, ‘Climate Change, Intergenerational Equity, and International Law’ (2008) 9 *Vermont Journal of Environmental Law* 615, 616–617. See also Edith Brown Weiss, ‘In Fairness to Future Generations and Sustainable Development’ (1992) 1 *American University International Law Review* 19, 22–23.

¹⁰ Edith Brown Weiss, ‘Our Rights and Obligations to Future Generations for the Environment’ (1990) 84 *American Journal of International Law* 198, 202.

¹¹ Richard Falk, Preface to Weiss, *In Fairness to Future Generations* (n 7) xxiii.

International Court of Justice (ICJ), mainly in dissenting and concurring opinions.¹²

Notwithstanding that intergenerational equity is not enforceable under binding international legal instruments, the doctrine certainly influenced the development of international environmental law. While treaties adopted before the development of the theory of intergenerational equity tended to include reference to future generations in the confines of the preamble,¹³ the documents adopted at the 1992 UN Conference on Environment and Development embraced care for future generations in their operative provisions.¹⁴ Principle 3 of the Rio Declaration on Environment and Development which provides that ‘the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’, rather serves as a guiding principle for States to preserve the environment for the benefit of future generations.¹⁵ Furthermore, Article 6 of the Convention on Biological Diversity requires parties to develop plans or programmes for the conservation and sustainable use of biological diversity, in which context ‘sustainable use’ refers to the use of biological diversity in a way that maintains its potential to meet the needs and aspirations of present and future generations. Among the principles listed in Article 3, the UN Framework Convention on Climate Change

¹² Intergenerational equity and care for future generations was accentuated by Judge Christopher Weeramantry in his dissenting opinion to the *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) ICJ Reports 1996, 233–234; and in his separate opinion to the *Gabčíkovo–Nagymaros Project* (Judgment) ICJ Reports 1997, 110. For a detailed overview on the reception of intergenerational equity at the ICJ, see Lynda M. Collins, ‘Revisiting the Doctrine of Intergenerational Equity in Global Environmental Governance’ (2004) 1 *Dalhousie Law Journal* 74, 127–129.

¹³ See above (n 6).

¹⁴ See Principle 3 of the Rio Declaration on Environment and Development; Articles 2 and 6 of the Convention on Biological Diversity; Article 3 of the UNFCCC.

¹⁵ Jane-Anstee Wedderburn, ‘Giving a Voice to Future Generations: Intergenerational Equity, Representatives of Generations to Come, and the Challenge of Planetary Rights’ (2014) 1 *Australian Journal of Environmental Law* 37, 45.

(UNFCCC) provides that ‘the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities’, which, similarly to the Rio Declaration and the Convention on Biological Diversity, puts emphasis on the benefit of future generations as a guiding principle, without assigning planetary rights and obligations.¹⁶

Furthermore, a more comprehensive commitment to the rights of future generations was expressed in the 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations, which declares the responsibility of the present generations to ensure that ‘the needs and interests of present and future generations are fully safeguarded’ and requires present generations to ensure that future generations are not exposed to pollution which may endanger their health or existence, to preserve natural resources for future generations, and to take into account possible consequences for future generations of major projects before they are carried out.¹⁷ The Declaration thus provides (non-enforceable) obligations for the present generations but does not go so far as to grant rights to future generations, in contrast with its predecessor, the draft Bill of Rights for Future Generations.¹⁸

¹⁶ It should be noted that the inclusion of the principles set out in Article 3 of the UNFCCC did not receive unanimous support from the States Parties. The United States, for instance, successfully advocated for changes to this article, in order to limit its legal implications. See Daniel Bodansky, ‘The United Nations Framework Convention on Climate Change: A Commentary’ (1993) 18 *Yale Journal of International Law* 451, 501.

¹⁷ Articles 1 and 5 of the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations.

¹⁸ Article 1 of the Cousteau Society, *Bill of Rights for Future Generations* (1990): ‘Future Generations have a right to an uncontaminated and undamaged Earth and to its enjoyment as the ground of human history, of culture, and of the social bonds that make each generation and individual a member of one human family.’

It could be concluded that the international legal documents discussed above did not incorporate the doctrine of intergenerational equity in its entirety, but rather some elements of it. For instance, the 2015 Paris Agreement attempts to embrace the doctrine, by providing that ‘Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, [...] and intergenerational equity.’¹⁹ While still a preambular reference,²⁰ declaring obligations on intergenerational equity reflects a commitment of the international community²¹ to recognize the doctrine in the context of climate change.

Moreover, there are continuous and ongoing endeavors to adopt a Declaration on Future Generations, as proposed by the Secretary-General of the UN in their Report ‘Our Common Agenda’ in 2021. The report, building on the constitutional protection of future generations and the practice of domestic courts, suggested these efforts to be consolidated in the form of a declaration that could build on the above-mentioned UNESCO Declaration and elaborate on the rights and obligations of present and future generations.²² The Netherlands and Fiji played a leading role in the

¹⁹ Preamble, Recital 12 of the Paris Agreement.

²⁰ Although the preamble may not be capable of creating rights or obligations on its own, it certainly determines the interpretation of the operative provisions, meaning that parties should recognize an obligation to comply with their respective obligations when carrying out climate-change-related actions under the Paris Agreement. See Benoit Mayer, ‘Human Rights in the Paris Agreement’ (2016) 6 *Climate Law* 109, 113–114.

²¹ The Paris Agreement enjoys widespread support. As of October 2023, 195 parties to the UNFCCC are parties to the Paris Agreement. See UN – Climate Change, ‘Paris Agreement – Status of Ratification’ <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed 26 October 2023.

²² ‘Our Common Agenda – Report of the Secretary General’ (UN 2021) <<https://www.un.org/en/common-agenda>> accessed 26 October 2023.

preparation process and submitted an Elements Paper to the UN General Assembly.²³

In the meantime, on 4 May 2023, the High-Level Committee on Programmes adopted a set of common principles for the UN system to serve as a basis for a shared understanding of the concept of future generations and intergenerational equity.²⁴ The Common Principles on Future Generations also builds upon the findings of the Maastricht Principles on the Human Rights of Future Generations, which is an expert document signed on 3 February 2023 by current and former members of international and regional human rights treaty bodies and special rapporteurs of the UN Human Rights Council. The Maastricht Principles attempt to give a definition to future generations – those generations that do not yet exist but will exist and who will inherit the Earth, including persons, groups, and Peoples – as reflected in the Common Principles. The Maastricht Principles represent a first attempt to elaborate on the implications of regarding future generations as holders of human rights under international law, and they aim at contributing to the normative and institutional reforms required to effectively protect the human rights of the upcoming generations.²⁵

Notwithstanding the fact that none of these documents is binding, they could serve as a starting point to raise intergenerational equity to the level of customary law, with the parallel support of adjudicative bodies, especially the ICJ. As mentioned above, the ICJ did not incorporate the doctrine of intergenerational equity either, yet judges tended to build on it in their

²³ General Assembly of the UN, ‘Declaration on Future Generations’ <<https://www.un.org/pga/76/2022/09/12/general-assembly-declaration-on-future-generations-pga-letter/>> accessed 26 October 2023.

²⁴ ‘The Maastricht Principles on the Human Rights of Future Generations’ <<https://www.rightsoffuturegenerations.org/>> accessed 26 October 2023.

²⁵ Ana María Suárez Franco and Sandra Liebenberg, ‘The Maastricht Principles on the Human Rights of Future Generations’ in Hansjörg Lanz and Jens Martens (eds), *Spotlight on Global Multilateralism: Perspectives on the Future of International Cooperation in Times of Multiple Crises* (Global Policy Forum Europe 2023) 62–63.

dissenting or concurring opinions. The currently pending Request for Advisory Opinion on the Obligation of States in respect of Climate Change²⁶ may provide an opportunity for the Court to elaborate its opinion on States' obligations towards future generations and the legal consequences arising therefrom with respect to present and future generations, and provide a comprehensive overview on planetary rights and obligations.²⁷

Parallel to this development, there have been endeavors to enforce the intergenerational perspective through contentious cases before human rights adjudicative bodies, however, these cases may encounter significant challenges due to the strict admissibility criteria.²⁸ Thus, procedural hurdles in human rights litigation underscore the need to develop alternative ways to incorporate intergenerational equity into decision-making processes.

²⁶ Obligations of States in respect of Climate Change (Request for Advisory Opinion) (2023) <<https://www.icj-cij.org/case/187/request-advisory-opinion>> accessed 20 March 2024.

²⁷ On the potential impact of the pending advisory opinion, see Jacques Hartmann, Margaretha Wewerinke-Singh and Ayan Garg, 'The advisory proceedings on climate change before the International Court of Justice' (2023) 102 Questions of International Law 23; see also Margaretha Wewerinke-Singh, Julian Aguon and Julie Hunter, 'Bringing Climate Change before the International Court of Justice: Prospects for Contentious Cases and Advisory Opinions' in Ivano Alogna, Christine Bakker and Jean-Pierre Gauci (eds), *Climate Change Litigation: Global Perspectives* (Brill/Nijhoff 2021) 393.

²⁸ See, for instance, *Sacchi and Others v. Argentina and Others* CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019, CRC/C/88/D/108/2019 (UN CRC, 22 September 2021); and *Duarte Agostinho and Others v. Portugal and Others* App no 39371/20 (ECtHR, 9 April 2024). See also Elizabeth Donger, 'Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization' (2022) 11/2 Transnational Environmental Law 263; Corina Heri, 'On the Duarte Agostinho Decision' (Verfassungsblog, 15 April, 2024) <<https://verfassungsblog.de/on-the-duarte-agostinho-decision/>> accessed 15 May 2024.

III. INSTITUTIONAL REPRESENTATION OF FUTURE GENERATIONS: PRECEDENT-SETTING EXAMPLES

Therefore, I propose that a viable way for the representation of the interests of future generations could be realized through high-level specialized institutions that have the power to influence decisions at national and international levels. The importance of the issue was pointed out in the UN Secretary General's report from 2013, which proposed several ideas for the institutionalization of the representation of future generations at the international level. These included a High Commissioner for Future Generations, a Special Envoy of the UN Secretary-General for future generations to address intergenerational solidarity and the needs of future generations as a recurring agenda item in the high-level political forum, and inter-agency coordination concerning the needs of future generations.²⁹ Among these proposals, special attention shall be dedicated to the establishment of a High Commissioner for Future Generations who, according to the report, could help to address the long-term consequences of present-day actions by drawing attention to future impacts in tangible, non-abstract terms and by supporting the integration of sustainability into planning government decisions. As presented above, there are ongoing efforts to implement these proposals within the UN.

A high-level institution dedicated to the protection of future generations – as pointed out also in the 2013 report – could be based on the already functioning national institutions specialized in protecting their interests and needs. The report examined certain national institutions as outstanding examples of the institutional protection of future generations which could serve as a model for the establishment of a similar institution at the international level.³⁰ The following paragraphs aim at rethinking the role of domestic institutions set out in the report in light of the recent developments

²⁹ Report of the Secretary-General (n 5) 62–67.

³⁰ Report of the Secretary-General (n 5) 39–48.

in climate change law and litigation and pointing out how they could contribute to the enforcement of intergenerational justice in decision-making processes.

The office of the Parliamentary Commissioner for the Environment in New Zealand was one of the first institutions to embrace the protection of the environment. Taking into account that the office was established in 1986 – not long before the issue of sustainable development appeared on the agenda of the UN Conferences – the needs of future generations were originally not explicitly addressed by the Parliamentary Commissioner,³¹ but it is apparent from its documents that from its perspective concerns for future generations and the environment are intertwined.³² The primary role of the Commissioner is investigative, but he may also provide the Parliament with advice and briefings – for instance, he had a major role in the adoption of the Climate Change Response (Zero Carbon) Amendment Act of 2019³³ –, present his work to the public and respond to public concerns. The role of the Parliamentary Commissioner in connection with the adoption of the Zero Carbon Amendment shows that the institution has the means and the power to shape climate policy directly if there is a political will to embrace the issue.

³¹ Jonathan Boston, 'Parliamentary Commissioner for the Environment, New Zealand' in Marie-Claire Cordonier Segger, Marcel Szabó and Alexandra R. Harrington (eds), *Intergenerational Justice in Sustainable Development Treaty Implementation* (Cambridge University Press 2021) 434.

³² See Parliamentary Commissioner for the Environment, 'Creating Our Future: Sustainable Development for New Zealand' (2002) <<https://pce.parliament.nz/publications/archive/1997-2006/creating-our-future-sustainable-development-for-new-zealand/>> accessed 10 April 2024.

³³ See Parliamentary Commissioner for the Environment, 'Stepping stones to Paris and beyond: Climate change, progress, and predictability' (2017) <<https://pce.parliament.nz/publications/stepping-stones-to-paris-and-beyond-climate-change-progress-and-predictability/>> accessed 10 April 2024.

The Finnish Committee for the Future was established in 1993 and has a relatively limited role, given that it does not have the powers and rights of an ombudsman, but it serves as a Think Tank for future, science and technology policy. This shows that the mandate of the Committee extends well beyond environmental sustainability and the protection of future generations. The Committee may issue a report on long-term future prospects and the Government's targets and adopt statements, draft submissions to other committees of the Parliament, discuss issues pertaining to future development factors, and analyse research regarding the future.³⁴ The role of the Committee in addressing intergenerational justice is not explicitly defined and it is, thus, difficult to determine whether it had a role in the adoption of the Climate Act (423/2022), which is now being challenged by climate litigation.³⁵

The position of the Canadian Commissioner of the Environment and Sustainable Development was established in 1995. The office is embedded within the Office of the Auditor General and mainly issues reports on assessing whether departments of the Federal Government are meeting their sustainable development objectives for air, biodiversity, climate change, environmental assessment, land, toxins, water, industry, and Sustainable Development Goals (SDGs).³⁶ Similar to the scope of the Parliamentary Commissioner in New Zealand, future generations are not specifically defined in the work of the Canadian Commissioner. However, its dedication to sustainable development may indirectly embrace a certain level of concern

³⁴ Paula Tiihonen, 'Power over Coming Generations: Finland' in Cordonier Segger et al (n 30) 401.

³⁵ *Finnish Association for Nature Conservation and Greenpeace v Finland* (pending). See Climate Change Litigation Database <<http://climatecasechart.com/non-us-case/finnish-association-for-nature-conservation-and-greenpeace-v-finland/>> accessed 10 April 2024.

³⁶ See, for instance, Commissioner of the Environment and Sustainable Development Reports from the years 2018, 2019, 2020, 2021, 2022 <https://www.oag-bvg.gc.ca/internet/english/parl_lp_e_901.html> accessed 10 April 2024.

toward the interests of future generations.³⁷ The role of the Commissioner in connection with climate change is also significant: besides monitoring the implementation of federal laws and policies, the Office may also respond to citizens' environmental petitions and bring them to the attention of federal ministers. For instance, petition no. 471 ('Greenhouse gas emissions in Canada, monitoring, reporting, and climate action') requests information from the Federal Government about the implementation, possible impacts, and timelines of the regulations to combat greenhouse gas emissions.³⁸ This example suggests that the Canadian Commissioner has a significant role in transferring citizens' claims to respective government bodies, also in connection with climate change.

The Israeli Parliament, the Knesset created the Commission on Future Generations with a Knesset Commissioner for Future Generations in 2001. The main function of the Commission was to assess bills with particular relevance for future generations, to demand information from state agencies, and to issue recommendations on matters relevant for future generations. In practice, the Commissioner had strong power in the decision-making process: the fact that it claimed the right to issue an informed opinion even when the Knesset was bound by law to make a decision within a given timeframe effectively led to the Commission having informal veto power over law-making. Furthermore, one of the key powers of the Commission was to request a 'reasonable time' from parliamentary committees to collect data and prepare evaluations on certain bills or secondary legislation which could even require committee chairs to delay their discussion to allow this. Needless to say, this arrangement endowed the Commissioner with a strong bargaining position which he did not hesitate to maintain. The first Commissioner's term ended in 2006, and in 2007, the Parliament abolished

³⁷ David Wright and James McKenzie, 'Canadian Commissioner of the Environment and Sustainable Development' in Cordonier Segger et al (n 30) 465.

³⁸ Office of the Auditor General of Canada, 'Petition no. 471 (Greenhouse gas emissions in Canada, monitoring, reporting, and climate action)' <https://www.oag-bvg.gc.ca/internet/English/pet_471_e_44220.html> accessed 10 April 2024.

the Commission. Apart from the high cost of its operation, the fear that the Commission had received too much authority to interfere with the work of the Knesset certainly contributed to the dissolution of the entity.³⁹ This example is certainly a lesson suggesting that a delicate balance should be struck between the competencies of future generations advocates and political bodies when defining the scope of their influence.

Furthermore, in 2007, the Hungarian Parliament established the office of the Parliamentary Commissioner for Future Generations or the Ombudsman for Future Generations. Following the adoption of the new constitution, the Fundamental Law in 2011, it continued to operate within the institution of the Commissioner for Fundamental Rights as one of the two Deputies of the Commissioner. The position of the Deputy Commissioner for Future Generations or Advocate for Future Generations primarily and expressly represents the interests of future generations. One of the strongest powers of the Advocate is its influence on the Constitutional Court practice. The most striking example of the involvement of the Advocate with the work of the Constitutional Court is certainly tangible in Decision no. 14/2020 (VII.6.) given that the proceeding was initiated by the Commissioner upon the request of the Advocate in connection with forest protection. In addition to finding a violation of the prohibition of non-derogation and thus the values of the Fundamental Law, the Constitutional Court affirmed that the natural and cultural values stipulated in Article P (1) of the Hungarian Fundamental Law⁴⁰ shall be protected per se for future generations, even if against the

³⁹ Shlomo Shoham and Friederike Kurre, 'Institutions for a Sustainable Future: The Former Israeli Commission for Future Generations' in Cordonier Segger et al (n 30) 336–339.

⁴⁰ Article P (1) of the Hungarian Fundamental Law reads as follows: 'Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.'

actual economic interest of current generations.⁴¹ Furthermore, thanks to the knowledge-sharing opportunity at the Network of Institutions for Future Generations,⁴² the idea of granting legal personhood to Lake Balaton,⁴³ the largest lake in Central Europe, was clearly inspired by the successful initiative concerning the Whanganui River in New Zealand.⁴⁴

In addition, the Welsh Commissioner for Sustainable Futures mentioned in the 2013 report was replaced in 2015 by the currently operating Future Generations Commissioner for Wales. Based on the Well-Being of Future Generations (Wales) Act adopted in 2015, the new Commissioner may provide advice or assistance to a public body (including advice on climate change), encourage best practices, undertake the necessary research, and publish regular reports and recommendations.⁴⁵ The Welsh model is considered to be a leading example to protect future generations, as Wales is the only country in the world to have put the UN's SDGs into statute,⁴⁶ requiring public bodies to set well-being objectives and reach them in accordance with the sustainable development principle. The Commissioner may conduct a review of the long-term impacts of the public bodies'

⁴¹ Decision no. 14/2020 (VII.6.) Constitutional Court of Hungary [35].

⁴² The Network was established and is coordinated by the Hungarian Advocate for Future Generations. See: <<https://futureroundtable.org/en/web/network-of-institutions-for-future-generations>> accessed 10 April 2024.

⁴³ Commissioner for Fundamental Rights, '2018 Report' B/4398 367.

⁴⁴ In 2017, the Whanganui river in New Zealand was the first river to receive the status of a legal person. This act also recognizes the spiritual attachment of the indigenous Maori people to the river. This approach expresses respect towards the value of the natural resource and aims at preventing irreversible pollution in the future. See Matthias Kramm, 'When a River Becomes a Person' (2020) 4 *Journal of Human Development and Capabilities* 307.

⁴⁵ Well-Being of Future Generations (Wales) Act 2015, [17]–[24].

⁴⁶ 'Wales leading the way with Future Generations Legislation – UN plans to adopt Welsh Approach' <<https://www.futuregenerations.wales/news/wales-leading-the-way-with-future-generations-legislation-un-plans-to-adopt-welsh-approach/>> accessed 10 April 2023.

activities in connection with safeguarding the interests of future generations. The fact that the obligation of public bodies to follow the recommendations of the Commissioner is set out in the Well-Being of Future Generations (Wales) Act shows the important role of the institution in enforcing intergenerational justice in the country.

Furthermore, the Norwegian Ombudsman for Children was established in 1981 as the world's first ombudsperson for children. Although the Norwegian Ombudsman for Children does not expressly advocate for future generations, as her main duty is to ensure the proper implementation of the Convention on the Rights of the Child, recent constitutional developments in Norway⁴⁷ have certainly created significant room for the Ombudsman to act in support of future generations as well.⁴⁸ In my view, the fact that the Norwegian Ombudsman for Children, who is expressly advocating for children, was analysed in the 2013 report of the UN Secretary-General also proves the strong interlinkage between advocating for children and for future generations. Furthermore, draft general comment no. 26 to the Convention on the Rights of the Child, which was adopted at the 93rd session of the Committee on the Rights of the Child,⁴⁹ also represents a firm standpoint on the interrelation of the two issues, stating that “[d]iscussions of future generations should take into account the rights of children who are

⁴⁷ As a result of a series of amendments starting in 2014, the Norwegian Constitution was amended with two provisions of particular interest concerning the rights of children: the duty to create conditions that facilitate the child's development, including adequate economic, social, and health conditions (article 104) and the right to education (article 109), which are strongly linked to sustainable development and thus future generations.

⁴⁸ Ole Kristian Fauchald and Elisabeth Gording Stang, 'Norway: Norwegian Ombudsman for Children' in Cordonier Segger et al (n 30) 358–362.

⁴⁹ Committee on the Rights of the Child, 'General comment No. 26 on children's rights and the environment, with a special focus on climate change', CRC/C/GC/26.

already present on this planet and those constantly arriving.”⁵⁰ The adoption of this general comment was ground-breaking, not only for clarifying States’ obligations under the Convention on the Rights of the Child on climate change,⁵¹ but it for enhancing children’s perspectives in discussing intergenerational equity.⁵² These development directions may imply that children’s representatives, such as the Norwegian Ombudsman for Children, have a legal basis to advocate for future generations as well. Furthermore, it is worth mentioning that the Hungarian Advocate for Future Generations also provided input for drafting the general comment, along with other national human rights institutions, States, regional organizations, UN agencies, civil society organizations, academics, and children and adolescent groups.⁵³

Finally, the German Parliamentary Advisory Council on Sustainable Development merits mention, which was established in 2009 to serve as the advocate of long-term responsibility. The Council is integrated within the parliamentary system and its main task is to monitor compatibility with the National Sustainability Strategy. For this purpose, the Council may adopt recommendations and carry out an evaluation of the sustainability impact assessment. The latter encompasses four areas which are strongly related to the protection of future generations: (a) fairness between generations; (b)

⁵⁰ Committee on the Rights of the Child, ‘Draft general comment No. 26’ II.A.12. See <<https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-childrens-rights-and-environment-special>> accessed 10 April 2024.

⁵¹ Angeliki Papantoniou, *Children and the Environment* (Brill 2022) 73.

⁵² Enikő Krajnyák, ‘The Development of the UN CRC’s Approach to Children and Climate Change: Any Impact on the Future of Youth-led Climate Litigation?’ (2024) 8/1 *Católica Law Review* 61, 71–73.

⁵³ UN CRC, ‘Call for comments on the draft general comment on children’s rights and the environment with a special focus on climate change’ (22 August 2023). See <<https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-childrens-rights-and-environment-special>> accessed 10 May 2024.

social cohesion; (c) quality of life; and (d) international responsibility.⁵⁴ On the one hand, the strength of the Council lies in its clear-cut role in the legislative procedure and its effective contribution to the institutionalization of sustainability. On the other, the fact that the Council functions in the framework of the parliamentary work shows the political vulnerability of the institution and the formalistic role of the Council in the legislative process.⁵⁵

IV. CONCLUDING REMARKS: WHAT COULD BE LEARNT FROM DOMESTIC INSTITUTIONS?

Although the moral responsibility toward future generations is recognized by international conventions, national constitutions, and non-binding instruments, the practical enforcement of their needs and interests seems difficult under the current legal regime. The representation of people not born yet may raise certain concerns, such as the uncertainty of defining their preferences, the lack of concrete claims and claimants, and the separation of rights and obligations in legal relationships. But these dilemmas should not hinder the endeavors to include a future-generations-perspective in decision-making.

Although climate change litigation has enjoyed a degree of success in a growing number of cases, which, in my opinion, may be one way to enforce the rights of future generations, other solutions are needed to ensure the implementation of intergenerational equity. One alternative solution, which does not question the power of climate litigation, nor does it exclude the use of this solution in the future, could lie in the institutional representation from a bottom-up approach. Until the establishment of a High Commissioner or a similar international institution for the protection of future generations,

⁵⁴ Franz Reimer, 'Institutions for a Sustainable Future: The German Parliamentary Advisory Council on Sustainable Development' in Cordonier Segger et al (n 30) 391–394.

⁵⁵ *ibid* 385–387.

the creation of more and more national institutions and their close cooperation could certainly provide a solution as a first step.

This institutional protection, however, is also a currently evolving field in the international sphere and numerous questions arise also in relation to their establishment and future. Defining their scope of action, institutional structure, and relationship to political bodies, as well as the potential role of advocates in youth-led environmental litigations, are certainly challenging issues for the legal sphere, which require solving if the interests of future generations are to be enforced in practice.

Institutional examples at the domestic level may offer valuable lessons for the creation of an international institution as well. The institutions discussed above show that they could serve as a platform for engaging with civil society and science, which, at the UN level could be extended to other international institutions, governments, and other UN agencies, and may also function as a global-level think tank to research and promote best practices at domestic levels. Examples include the recognition of the legal personhood of the Whanganui river, or the contribution of the Hungarian and Norwegian Ombudsmen to the preparation of general comment no. 26 to the Convention on the Rights of the Child. The latter example also indicates that, although an international representative of future generations may not propose new hard laws in the UN, they may contribute to the development of soft instruments that can nevertheless channel intergenerational equity into the interpretation of the already existing human rights or environmental instruments, such as general comments to human rights treaties, reports and guidance. Furthermore, as the Hungarian example suggests, the institution could also influence the practice of various forums: while the Hungarian Ombudsman has the potential to contribute to the development of the Constitutional Court's practice, the international representative could also participate in the proceedings before international adjudicative bodies, including regional human rights courts, the ICJ, and other forums through advocates or third-party interveners.

While domestic institutions can be influential at the domestic level, and sometimes also at the international level, an international-level representative of future generations, such as a Special Envoy or a High Commissioner for Future Generations, would provide a more systematized action at the global level. This representative would have the means to consult with and facilitate cooperation between various stakeholders, including civil society, international institutions and organizations, national ombudsmen, States, scholarship and other groups, in order to enhance the involvement of future generations' perspectives in international environmental decision-making processes. Nonetheless, as the example of the Israeli Commissioner suggests, such a position may face political pressure, especially in the global context. That is why a compromise solution should be found which places emphasis on soft powers: namely agenda-setting, capacity-building, and awareness-raising to balance between present and future generations' interests.

