
Future generations

Gyula Bándi

1. Sustainable development and future generations – a survey of international policy documents and debate

Intergenerational fairness, or generational equity, is an essential part of sustainable development. Therefore, the major milestones of sustainable development should first be discussed briefly. The first milestone was the Stockholm Conference on the Human Environment in 1972.¹ The Stockholm Declaration, a major outcome of the conference, provided the foundations and covered almost all of the issues raised during subsequent similar UN conferences. Principle 1 covers human rights, Principle 2 covers current and future generations, and Principle 4 sets out the special responsibility that human beings bear for conserving the natural environment.

The UN General Assembly in 1983 established the World Commission on Environment and Development,² better known as the Brundtland Commission. This commission drafted the report “Our Common Future”.³ According to the report, “sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” This definition establishes the principle of intergenerational equality as a cornerstone of sustainable development, meaning that no generation has the right to destroy the living conditions of future generations by exploiting resources excessively and unfairly. Therefore, sustainable development requires states to consider the interests of future generations and to satisfy the legitimate needs of less developed areas of the world. The Brundtland concept of sustainable development strikes a delicate balance between the need for development and the objective of preserving the natural environment.

The Rio Declaration⁴ marks considerable progress in regard to the elaboration of the concept of sustainable development with its 27 principles, among which Principle 3 on generational equity is our main focus: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” Principle 4 on integration, Principle 10 on public participation and Principle 15 on the precautionary principle are also important.

Since the UNCED in 1992, the concept of sustainable development has been analysed and scrutinised in several forums. One of these was the Commission on Sustainable Development, which identified the “Principles of International Law for Sustainable Development”.⁵ The report does not present a coher-

1 Stockholm 1972.

2 The Commission was set up by the Resolution 38/161 of the UN Assembly.

3 Our Common Future 1987.

4 Rio Declaration, 1992.

5 Expert Group, 1995.

ent concept; rather, it is a combination of principles, instruments, specific sustainable development aspects, and general concepts of international cooperation. Future generations are mentioned in relation to the need to recognise the right to a healthy environment (point 31), alongside elements that exhibit a strong, direct link to sustainable development. As such, these elements may be regarded as specific legal principles and concepts of sustainable development law or environmental interests. In this context, the principle of equity encompasses intergenerational equity, as well as the concepts of prevention, precaution and public participation.

Five years after the Rio conference, UNESCO issued a declaration on the responsibilities of present generations towards future generations.⁶ This declaration set out several commitments, which were presented as moral obligations to formulate behavioral guidelines for present generations. “Convinced that there is a moral obligation to formulate behavioral guidelines for the present generations within a broad, future-oriented perspective”, the General Conference of UNESCO clearly articulated the duties of current generation, which we will discuss later: “Resolved to strive to ensure that the present generations are fully aware of their responsibilities towards future generations...”⁷

Many years later, a comprehensive approach was presented in the 2015 Sustainable Development Goals (SDGs), which had a much wider vision and received much greater attention. The preamble of the UN SDG resolution – Transforming our world: the 2030 Agenda for Sustainable Development⁸ – states: “The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development Goals and complete what they did not achieve.” When considering the core constituents of sustainable development, intergenerational equity should form the basis.

“Development will be sustainable only when both intergenerational (environmental protection) and intragenerational (fair economic and social development) equity are granted, and this is to be achieved through their integration.”⁹

6 UNESCO Declaration (1997).

7 The UNESCO Declaration (1997) lists in 11 articles what might also be taken today as the most crucial content of the duties: needs and interests of future generations, freedom of choice – also referring to human rights, maintenance and perpetuation of humankind “with due respect for the dignity of the human person”, preservation of life on Earth, protection of the environment, protecting human genome and biodiversity, preservation of cultural diversity and cultural heritage, common heritage of humankind, peace, development and education, and non-discrimination.

8 SDG (2015).

9 Barral (2012), p. 380.

Of all the vital constituents of the concept of sustainable development, intergenerational equity, or the concern for the interests and rights of future generations, is the most crucial question. Of the legal components of sustainable development, ranging from the precautionary principle to public participation, intergenerational equity is probably the greatest challenge. The right to environment, which is discussed below, is also connected with future generations.

Edith Brown Weiss, a prominent author of the concept of future generations,¹⁰ wrote: “This ethical and philosophical commitment acts as a constraint on a natural inclination to take advantage of our temporary control over the earth’s resources and to use them only for our benefit without careful regard for what we leave to our children and their descendants”. We must also agree with the author, that “this concept conveys both rights and responsibilities. Most importantly it implies that future generations have rights too”. Weiss classifies three major principles in connection with intergenerational equity, namely:

- First, to conserve options, diversity of choice – “Future generations are entitled to diversity comparable to that which has been enjoyed by previous generations”;
- Second, to maintain the quality comparable to that which has been enjoyed by previous generations; and
- Third, equitable access, e.g. access to potable water supplies.

The rights of future generations are more closely linked to the concept of “justice” – specifically, intergenerational justice – and are therefore best considered as a moral concern. As Tremmel describes,¹¹ “no logical or conceptual error is involved in speaking about rights of members of future generations. Whom we declare a rights-bearer with regard to a moral right is a question of convention. Whom we declare a rights-bearer with regard to a legal right is an empirical question. But moral rights precede legal rights, thus the former must first be justified. To whom we ascribe such rights is a question of our empathy, of convention and definition.” Consequently, “right” does not necessarily have a narrow meaning.

Gaba focuses on current morality, on the basis of present times: “Ultimately, it means that the relationship between the present and the future is not derived from what the future demands of us based on their needs, but what we say to the future about our aspirations.”¹² Accordingly, when examining the core of the problem, it is more realistic to emphasise the limitations and obligations of the present.

10 Brown Weiss (1992), pp. 19, 22 and 23 (It is worth mentioning that the major publication of the same author in this respect is Brown Weiss (1989)).

11 Tremmel (2014), p. 69.

12 Gaba (1999), p. 288.

Many sources and documents, like UNESCO in 1997, refer to the whole problem as essentially a moral question. In his report, the UN Secretary-General¹³ mentions the ethical dimensions as an initial point under a conceptual framework. He quoted the OECD glossary: Intergenerational equity has been defined as “the issue of sustainable development referring, in the environmental context, to fairness in the inter-temporal distribution of the endowment with natural assets or of the rights to their exploitation”. He also discussed “who exactly falls into the scope of discussion”, and the answer could also come from ancient ethical considerations. “For instance, the Confederation of the Six Nations of the Iroquois passed on the principle that decisions take into account the welfare and wellbeing of the seventh generation. Nearly all human traditions recognize that we, the livings are, sojourners on earth and temporary stewards of our resources.”

The encyclical letter of Pope Francis should also be mentioned in light of ethical considerations.¹⁴ It reads:

95. The natural environment is a collective good, the patrimony of all humanity and the responsibility of everyone. ...

159. The notion of the common good also extends to future generations. ... We can no longer speak of sustainable development apart from intergenerational solidarity. ...

160.... It is no longer enough, then, simply to state that we should be concerned for future generations. We need to see that what is at stake is our own dignity.

There is an ongoing and rapidly changing development all over the world, which is linked with the interests of future generations at international, regional and national level. It is vital to open the door to these interests and empower some form of representation. This has also been clearly reflected in the recent advisory opinion of the International Court of Justice¹⁵ related to climate issues. The ICJ, effectively summarising and somehow consenting most of those elements mentioned above, stated:

156. Intergenerational equity is an expression of the idea that present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations. ...

157. In the Court’s view, intergenerational equity is a manifestation of equity in the general sense and thus shares its legal significance as a guide for the interpretation of applicable rules. Accordingly, considerations of intergenerational equity

13 Report of the Secretary-General (2013).

14 *Laudato Si'* (2015).

15 ICJ advisory opinion on obligations of states in respect of climate change (2025).

must play a role *infra legem*, without displacing or exceeding the limits of the applicable law. Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law.

2. Rights of future generations or duties of the current generation and other open questions

2.1. Rights or duties

In terms of intergenerational equity, the question of whether we should define the rights of future generations or establish the duties and obligations of existing generations is of highly practical importance. “62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”¹⁶ What should be done? Why does it seem so difficult to find the right answer? We face many difficulties in looking at the answer. As a legal scholar described,¹⁷ “democracy’s neglect of future citizens has at least four sources. First, there is the natural human tendency to prefer the immediate to the distant, both in what one fears and what one desires. ... The second reason ... that representatives should be responsive to their constituents ... The third source of the neglect of the future stems from the fact that democracy is government *pro tempore*. ... They try to pass laws and policies that produce results within the limit of their time in office. ... Finally, there is a tendency in most modern democracies today to favor the older age group...”. His suggestion is: “to protect future democratic capacities, we should therefore establish some institutions that create roles that give special attention to democratic potential of individuals or groups who are otherwise not represented or not adequately represented”.

I favour Bosselmann’s evaluation, which has a clear message:¹⁸ “For principal reasons we are unable to determine the needs of future generations. Only more or less informed guesses are possible about the options that future generations may justifiably expect. The reasonable choice, therefore, is for a duty to pass on the integrity of the planetary ecosystem as we have inherited it (ecological integrity). Uncertainty requires precaution, and there seems no better precautionary measure than assuming that future generations would like the planetary ecosystem as bountiful as we have found it.”

¹⁶ UNHCR (2018).

¹⁷ Thompson (2010), pp. 17-37.

¹⁸ Bosselmann (2017), p. 119.

Anyhow, the central concern here, as mentioned by the UN Secretary General¹⁹ is: “5. Future generations are politically powerless, with the representation of their interests limited to the vicarious concern of present generations”. As the UN Report of the World Commission on Environment and Development, *Our Common Future* (1987), states: “We act as we do because we can get away with it: future generations do not vote, they have no political or financial power; they cannot challenge our decisions”.

In terms of possible courses of action, there are two main options relating to the protection of future generations’ rights or interests, along with several additional ideas associated with them. One alternative might be to limit the prospective rights of future generations, or at least refer to them in some way. Rather than dreaming about the exact interests and rights of future generations, it is better to focus on the proper implementation of the existing complexity of human rights. In this context, the message of the Human Rights Council,²⁰ “... *Acknowledging* the importance of a safe, clean, healthy and sustainable environment as critical to the enjoyment of all human rights...” is crucial, as is a UN GA decision,²¹ which “1. Recognizes the right to a clean, healthy and sustainable environment as a human right;” followed by the explanatory statement: “Recognizing further that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights”. This would not plead for the establishment of a distinct right for future generations, but might rather be seen as an umbrella covering several current problems. Nevertheless, there are several doubts related to the problem of the right-bearer or the necessity of a balance between rights and duties, which cannot be resolved if we do not know who is obliged. Other interpretations²² think that human rights are so universal, as many of them might not be personalised. “There is no reason to be fetishist about rights.” – could also be a proper answer,²³ referring to a broader sense of “rights”.

The other alternative is to develop duties and obligations for the current generations, obliging them to take care for the coming ones. In the *Minors Oposa* case²⁴ the court stated:

Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.

19 Report of the Secretary-General (2013).

20 UNHCR (2021).

21 UN GA (2022).

22 Maastricht Principles (2023).

23 Gosseries (2008), pp. 446-474.

24 *Minors Oposa* (1993).

Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

In its decision 28/2017. (X. 25.) AB the Hungarian Constitutional Court referred to the concepts of legal scholars. Edith Brown Weiss, translating the messages into a constitutional language, stated that: “[33] On the basis of Par (1) of Art. P) of the Fundamental Law the current generation has three major responsibilities: to preserve the option of choice, to preserve the quality and to provide access. Option of choice is based upon the consideration that the living conditions of future generations might best be guaranteed if the inherited natural heritage could ensure the freedom of choice for future generations in order to solve their problems, instead of taking the decisions of the present as constraints for the coming generations. On the basis of preserving the quality, we shall take all necessary steps to leave the natural environment at least in the same condition as it had been given to us by the past generations. Access to natural resources would allow current generations access to the available resources as long as they respect the reasonable interests of future generations.” Another important message of the decision urges us for long-term thinking: “[34] The legislator might only meet these principal requirements, if its decisions are based upon a balanced long-term thinking, overarching political phases.”²⁵

In his Report in 2013 the then UN Secretary General underlined: “25. ... Since we cannot with great certainty ascertain the precise needs and preferences of future generations, we could in devising policies at the very least begin with two considerations: minimizing harm and doing that which benefits both present and future generations.”

The current UN Secretary General later also emphasised: “54. ... Accounting for the interests of future generations would require two adaptations: strengthening our capacities to understand and assess the future, building long-term thinking into important policies and decision-making; and creating specific forums and instruments to protect the interests of future generations at all levels of governance.”²⁶

Undoubtedly, the second alternative seems to be more beneficial without requiring much legal imagination. It uses already available means and methods or develops them on the basis of current realities. This observation is reflected in The Strasbourg Principles of International Environmental Human Rights Law:²⁷

25 HCC Decision 28/2017. (X. 25.) AB.

26 Our Common Agenda (2021).

27 The Strasbourg Principles (2022).

35. States are under the obligation to ensure, for the benefit of present and future generations, as well as for the benefit of the environment itself, that everyone within their jurisdiction can: (i) enjoy safe, clean, healthy and sustainable environmental conditions adequate for their right to health, well-being, dignity and culture, and (ii) can effectively fulfil a duty to respect and to take care of the environment.

While the Principles themselves are strictly rights-based, the obligations are universal and endless.

The Maastricht Principles on The Human Rights of Future Generations²⁸ have a very straightforward vision:

II. Neither the Universal Declaration of Human Rights, nor any other human rights instrument contains a temporal limitation or limits rights to the present time. Human rights extend to all members of the human family, including both present and future generations. (Preamble)

Similarly, the different rights are combined in the principles:

XIV. The human rights of future generations must be understood, interpreted, and integrated within the evolving legal context recognizing humanity's relationships with the natural world, and the best available science. This context includes the right to a clean, healthy and sustainable environment, the growing recognition of the rights of Nature, and the knowledge systems of Indigenous Peoples, local and traditional communities.

Consequently, the main idea behind the principles is the universality and timelessness of human rights, which are values in themselves. The document focuses on duties and obligations (points 7 and 8) and emphasises the importance of principles of prevention and precaution. While emphasising that rights are universal, the principles precisely outline duties and obligations.

In the *Verein KlimaSeniorinnen Schweiz v. Switzerland* case²⁹ the European Court of Human Rights stresses the importance of inter-generational burden-sharing under Article 8 of the European Convention on Human Rights and Fundamental Freedoms. The Court stipulated various requirements for designing greenhouse gas reduction targets and pathways based on the best available science. These targets must be incorporated into a binding domestic legal framework and implemented adequately. Furthermore, the targets must be updated with due diligence. According to the judgment, “410. At the outset, the Court notes that climate change is one of the most pressing issues of our times. While

²⁸ <https://www.rightsoffuturegenerations.org/home>.

²⁹ ECHR of 9 April 2024, Appl. No. 53600/20 (*KlimaSeniorinnen*).

the primary cause of climate change arises from the accumulation of GHG in the Earth's atmosphere, the resulting consequences for the environment, and its adverse effects on the living conditions of various human communities and individuals, are complex and multiple. The Court is also aware that the damaging effects of climate change raise an issue of intergenerational burden-sharing (see paragraph 420 below) and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities."

2.2. Who shall belong to future generations – is there a timeline?

The Maastricht Principles provide a very convenient definition (I. General Provisions, 1. Definition: Future Generations): "For the purposes of these Principles, future generations are those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and Peoples."

As future generations do not yet exist, we should not restrict the scope of the definition; consequently, this means an unlimited legacy. This is the primary difficulty when designing rights and/or duties. We are not in a position to discriminate between different future generations, as this could lead to severe discrimination. Also, since we cannot delineate the rights and interests of future generations, why should we make any distinction between them?

2.3. The baseline – are children part of future generations?

In the Convention on the Rights of the Child³⁰ Article 1 states that: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier." Children are members of their family as set out in the preamble: "Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". They already exist as human beings. Future generations also belong the humanity, but their existence is conditional.

Nevertheless, intergenerational equity will come into play:

11. The Committee recognizes the principle of intergenerational equity and the interests of future generations, to which the children consulted overwhelmingly referred. While the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent. Beyond their immediate

³⁰ Convention on the Rights of the Child (1989).

obligations under the Convention with regard to the environment, States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades.³¹

The rights of children are clearly defined, as are the duties and obligations of all interested parties, from individuals to public administrations and the international community. Accordingly, legally speaking, children and future generations are different: one is visible at present, the other is not.

2.4. Recommended means and measures

There may be several means and measures that could serve the interests of future generations. Three closely interrelated examples are mentioned here: non-retrogression, the precautionary principle, and long-term planning. These could also be used when making individual decisions. While they are tendencies rather than concrete movements, they could also form the basis of concrete actions. In all three examples, my primary reference is the case law of the Hungarian Constitutional Court (HCC).

2.4.1. Non-retrogression

This principle is originally connected to the interpretation of human dignity, right to life or similar other rights which characterise the legal status of human beings. Retrogression from the actual status of human person is not tolerable, while the opposite – to extend this status – is welcome. This principle is originally connected to the interpretation of human dignity and the right to life, as well as other rights that characterise the legal status of human beings. “Non-retrogression” means:³² “The principle of non-derogation³³ holds that there is a core of fundamental rights that may not be infringed or limited, even in an emergency. Although it is often conceded in many constitutions, as it is in international human rights instruments, that the state may derogate from its obligations in an emergency, it is also acknowledged that certain essential protections and rights cannot be derogated from (i.e., those protections/obligations are non-derogable). For instance, the right against torture is generally regarded as a principle of *ius cogens*...”.

³¹ General comment (2023).

³² Tushnet/Fleiner/Sounders (2013), pp. 90-91.

³³ This definition is also used in the official translation of HCC judgment, still the two terms are identical. When considering the content of the judgment, non-retrogression seems to be understood as a little different from and wider than non-derogation, but as the official website of the HCC speaks of “non-derogation”, we should also stick to this.

One of the preparatory papers of the Rio+20 Conference³⁴ explains: “One example for a principle which expands the frontiers of environmental law is the Principle of Non-Regression. More common in the field of human rights law, this principle is understood as requiring that norms which have already been adopted by states may not be revised in ways which would imply going backwards on the previous standard of protection.” A similar reference to this principle can be found in the Global Pact for the Environment project, which was launched in 2018. Among its various conditions of the “right to an ecologically sound environment” non-retrogression is included in Article 17.

In its initial decision on environmental rights, the HCC emphasised³⁵ that the level of protection in the field of environment and nature conservation should not be restricted unless other fundamental constitutional values or rights are affected. Later, the HCC further explained non-retrogression:³⁶ “... the state should not step back from the already given level of protection only in case if otherwise the limitation of a fundamental right makes it possible... Derogation from this obligation may only be possible in a situation of necessity and only in a proportionate mode.” Similarly, the state should not shift from preventive measures to liability-based protection.

In another decision³⁷ the necessity/proportionality test was identified as a core element: “3.2. ... A significant constitutional justification might only be the protection of another fundamental right or the implementation of another constitutional objective...”. Thus, the limitation of the right to environment might only be permitted under exceptionally reasonable conditions using the proportionality test.

In a case regarding water management legislation³⁸ the Court concluded: “[62] The State shall ensure that the condition of the environment does not deteriorate due to a specific measure. This does not constitute a step back, nor does it cause any irreversible damage or provide an opportunity for such damage in principle.”

Non-retrogression seems to be the case for the present when compared with the past, while the consequences will last longer, even in the future. The most recent decision of the HCC on the Climate Act³⁹ converted this direction, extending the influence of the principle to the future activities either, moving it from a relatively static nature to a more progressive direction, which better serves

34 World Congress on Justice (2017).

35 HCC Decision No. 28/1994 (V. 20.) AB.

36 HCC Decision No. 48/1997 (X. 6.) AB.

37 HCC Decision No. 106/2007 (XII. 20.) AB.

38 HCC Decision No. 13/2018 (IX. 4.) AB.

39 HCC Decision No. 5/2025 (VI. 30.) AB, [120].

the interests of the future. “The fact that a legal regulation remains unchanged over a long period of time does not therefore formally violate the principle of non-regression (in the absence of formal regression), but in terms of content it is still possible that a regulation which previously (due to a change in the level of scientific certainty at the time of its creation) fulfilled the requirements of the precautionary principle and the principle of prevention may later become not only obsolete but also contrary to Fundamental Law. The actual protection of our natural resources and of the living conditions of future generations cannot be identified with the merely formal, one-off fulfilment of a momentary legislative obligation: this obligation of protection is ‘always’ (i.e. continuously) incumbent on ‘the State and everyone’ in accordance with the wording of Article P).”

2.4.2. Precautionary principle

At international level, the precautionary principle was first acknowledged in Article 11, para. b) of the World Charter for Nature⁴⁰ adopted by the UN General Assembly in 1982. It stipulates that activities should not proceed in cases where there is a significant risk and the potential adverse effects are not fully understood. The principle was enshrined at the 1992 Rio Declaration⁴¹ in Principle 15. References to CJEU cases can be found Chapter IV on EU legislation.

In 2018, the HCC provided a more precise clarification of the meaning and role of the principle:⁴²

[14]... The fact that the Fundamental Law explicitly mentions in Article P) (1) the obligation of preserving for the future generations the common heritage of the nation, raises a general expectation regarding the legislation that in the course of adopting the laws, not only the individual and common needs of the present generations should be weighed, but also securing the living conditions for future generations should be taken into account, and the assessment of the expected effects of individual decisions should be based on the current state of science, in accordance with the precautionary and preventive principles.

Consequently, the general message focuses not only on legislation itself, but also on individual decisions.

⁴⁰ file:///C:/Users/bandi/Downloads/A_RES_37_7-EN.pdf.

⁴¹ https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

⁴² Decision No. 13/2018 (IX.4.) AB.

2.4.3. Planning

Article 3 of the draft Global Pact for the Environment⁴³ remarkably combines integration and sustainable development with planning and implementation of policies. The Court of Justice of the EU has also repeatedly emphasised the importance of plans and policies, and their role in establishing the basis for legal regulation and implementation.⁴⁴ In that regard, the Court has held that the notion of “plans and programmes” relates to any measure which establishes, by defining rules and procedures, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment.⁴⁵

Also, the HCC practice has emphasised the importance of planning. It has focused on the need for long-term vision and operation, which is sometimes directly combined with the non-derogation principle:

[28] ... In order to implement non-derogation completely, it is essential to apply such a regulatory and enforcement approach, which implements the long-term and continuous codification and planning activities, usually spanning across government cycles due to the nature of situations in question, as opposite to the short-term, mostly business-oriented approach ... this meets the requirements of the necessity-proportionality test as a means of comparison in case of limiting fundamental rights...

Strategic vision and long-term thinking, as they are manifested in planning, incorporate the ideas of gradualness and predictability at the same time. Environmental protection measures shall be implemented in a carefully planned and easily itemised way. It is even more important if the requirements are really demanding. This equally helps the users of environmental resources and the public administration.

The UN Declaration for the Future of 2024⁴⁶ highlights: “35. Leveraging science, data, statistics and strategic foresight to ensure long-term thinking and planning, and to develop and implement sustainable practices and the institutional reforms necessary to ensure evidence-based decision-making, while making governance more anticipatory, adaptive and responsive to future opportunities, risks and challenges.”

43 <https://globalpactenvironment.org/uploads/EN.pdf>.

44 See ECJ C-53/02 (Commune de Braine-le-Château), ECJ C-237/07 (Janecek), and ECJ C-43/18 (Compagnie d'entreprises).

45 ECJ C-43/18, para. 61.

46 <https://www.un.org/sites/un2.un.org/files/sotf-declaration-on-future-generations-rev3.pdf>.

3. Intergenerational equity and the prospective institutional arrangements

3.1. General questions and overview

Neither the environment nor future generations have a voice of their own, but they need some kind of representation, preferably through an institution. As the entity responsible for safeguarding both intra- and inter-generational equity, the state could fulfil this role with or without specific representation, provided it is a vital part of the political process. There are several options, such as a council, committee, ombudsperson or spokesperson, and their roles may differ. Nothing has been finalised yet, but there are already existing examples today.

Various institutional arrangements were mentioned in the 2013 and 2021 papers of the UN Secretary-Generals. Weiss also referred to the need for institutional representation of future generations, and several legal and policy scholars have analysed the problem in order to clarify the most general features of such representation.⁴⁷

One example is the World Future Council, which lists the key features of such an institution as long-termism, integration, establishing authority for agreed sustainability goals, holding governments and private actors accountable for failing to deliver on these goals, and connecting citizens with national and international decision-making processes.⁴⁸ In their 2018 leaflet⁴⁹ the main responsibilities of a guardian are listed. He/she:

- as an ombudsperson conveys citizen concerns to the legislating units,
- as an interface creates incentives for integration and prevents policy incoherence,
- as an advisory body recommends solutions,
- as an auditing body traces conflicts of interests and roadblocks to implementation.

The UN Secretary General in “Our Common Agenda” of 2021 articulates:

57. Future generations are, by definition, unrepresented in today’s decision-making and unable to articulate their needs. To translate the principle of intergenerational equity into practice, consideration could be given to forums to act on their behalf, as their trustees, as well as instruments to further protect their interests.

⁴⁷ Among the different papers, a comprehensive one is Szabó (2015) or Cordonier Segger-Szabó-Harrington (2021).

⁴⁸ <https://www.worldfuturecouncil.org/future-justice/>.

⁴⁹ <https://www.worldfuturecouncil.org/guarding-our-future/>.

Existing arrangements were also mentioned:

58. At the national level, some countries have established committees for the future or future generations commissioners who advise governments and public bodies on the effects of present decisions on people in the future. Other States could establish similar mechanisms, building on these good practices.

The Declaration on Future Generations of the UN Summit of the Future⁵⁰ underlined in its Guiding Principles:

2. The pursuit and enjoyment of human rights and fundamental freedoms for all, encompassing civil, political, economic, social and cultural rights, which includes the right to development, must be respected, protected and promoted, without distinction or discrimination of any kind.

There are some institutions, listed below, which – at least to my understanding – mostly or partly focus on future generations.⁵¹

Members & potential members	Type of Institution	Focus & Reflections
Wales – Future Generations Commissioner	Commissioner	<ul style="list-style-type: none"> – Focus: sustainable development; long-term perspective on policy – Approach: policy framework of collective responsibility and accountability; legal foundations and strong remit; Internationally active supporting UN developments.
Hungary – Ombudsperson for Future Generation (Parliamentary!)	Ombudsperson	<ul style="list-style-type: none"> – Focus: sustainable development; environmental protection; nature conservation; cultural heritage protection.
Gibraltar – Commissioner for Sustainable Development and Future Generations	Commissioner	<ul style="list-style-type: none"> – Focus: bringing the agenda forward, education and capacity building; dialogue and multi-stakeholder; internationally active supporting UN developments.
Netherlands – Informal Ombudsperson for Future Generations	Ombudsperson – Informal / Self-Appointed	<ul style="list-style-type: none"> – Focus: public, business and political buy-in, collaborative approach – Pushing for the position of Ombudsperson Future Generations to be officially recognised by the Dutch Government

50 <https://www.un.org/en/summit-of-the-future>.

51 See: <https://ourfuturegenerations.com/> of the Network of Institutions and Leaders for Future Generations.

Members & potential members	Type of Institution	Focus & Reflections
Canada – Commissioner of the Environment and Sustainable Development	Commissioner	<ul style="list-style-type: none"> – Focus: auditing government departments' progress towards sustainable development – Credible voice in Canadian political environmental landscape
New Zealand – Parliamentary Commissioner for the Environment	Commissioner	<ul style="list-style-type: none"> – Focus: the environment and natural resources; ecosystems restoration – Body has devoted most of its resources to environmental policy and regulatory issues; investigator of serious environmental risks
UK – Office for Environmental Protection	Commission	<p>The mission is to protect and improve the environment by holding government and other public authorities to account; scrutinising environmental improvement plans and targets</p> <ul style="list-style-type: none"> – Scrutinising environmental law – Advising government on environmental law – Enforcing against failures to comply with environmental law

3.2. The Hungarian example⁵²

The institution of the Hungarian Ombudsmen (commissioner of fundamental rights) was established during the democratisation process of the late 1980s and early 1990s,⁵³ and the first ombudspersons were elected in 1995. Proposed by the President of Hungary, the Ombudsmen are elected by Parliament with a two-thirds majority for a six-year term. This also signifies their independence from the government. Based on an NGO initiative, a novel institution for the protection of future generations had been established in 2007 and the first Ombudsman for Future Generations (OFG) was elected in May 2008.⁵⁴ The OFG had strong competences to investigate issues concerning the citizens' right to a healthy environment or concrete powers to intervene in case of plans and programmes having a likely impact on long-term sustainability and the condition of the natural environment. He also had powers to prepare independent reports, resolutions, and legal recommendations, initiate judicial and Constitutional Court proceedings, or even veto concrete measures,

52 Macrory also discusses this unique Hungarian institution in his contribution to this book, though more from a perspective of law enforcement – Environmental Supervisory Bodies at National Level – Why We Need Them.

53 The first ombudsman act was the Act LIX. of 1993, while the current act is the Act CXI of 2011 – one may find the English version at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

54 For a better introduction see Debisso/Szabó (2021) or Fülöp (2014).

decisions of public administration. Alongside the ombudsman for future generations, there was an independent ombudsperson for the rights of national minorities in Hungary, for data protection and the original general commissioner for fundamental rights.

In 2012, the new constitution, the Fundamental Law, and a new Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the “Ombudsman Act”) were established, creating a new institution: the Office of the Commissioner for Fundamental Rights. This was formed by merging three independent ombudsman offices into one, with the data protection office being converted into a national authority. Since 2012, the OFG has been a deputy to the Commissioner for Fundamental Rights, as has the Ombudsman for the Rights of National Minorities. The drafters of the new constitution did not approve of the relatively strong, specific ombudsman system; instead, the idea of having one general ombudsman’s office with deputies was favoured. The Ombudsman nominates the deputies to Parliament, who are elected with a two-thirds majority for a six-year term.

The status of the OFG was solidified through the inclusion of anchors and specific provisions in the new Fundamental Law. His main mandate focuses on a broadly defined representation of the interests of future generations through the preservation of natural and cultural resources and the protection of the citizen’s fundamental right to a healthy environment, physical and mental health.⁵⁵ The Fundamental Law states the following:

Article 30:

- (1) The Commissioner of Fundamental Rights shall protect fundamental rights and shall act at the request of any person.
- (2) The Commissioner of Fundamental Rights shall examine or cause to examine any abuses of fundamental rights of which he or she becomes aware of and shall propose general or specific measures for their remedy.
- (3) The Commissioner of Fundamental Rights and his or her deputies shall be elected for six years by a two-thirds vote of the Members of Parliament. The deputies shall defend the interests of future generations and the rights of nationalities living in Hungary.

It is also worthwhile to refer to the current Ombudsman Act under which the Commissioner is also responsible for the protection of the values determined in Article P of the Fundamental Law (hereinafter referred to as “the interests of future generations”). Articles 1(2)c) and 3(1) of the Ombudsman Act describe the responsibilities of the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations.

55 For the details of the history and major tasks, also of the most important theoretical background of the institution, see: Cordonnier/Segger/Szabó/Harrington (2021).

The Fundamental Law contains multiple references to future generations, with the preamble setting out the following: “We bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.” The constitutional mandate of the OFG has two main pillars: the human right to a healthy environment (Article XX on health and Article XXI. on the right to a healthy environment) and a novel provision stipulating the “common heritage of the nation”, which should be preserved for future generations (Article P, paragraph (1)). Based on the constitutional language, the OFG has a broadly defined environmental mandate, with special focus on intergenerational justice, together with sustainability and cultural heritage protection.

The means and methods through which the OFG exercises his/her mandate are set out in the Ombudsman Act. The Ombudsman works closely with the General Commissioner in many areas, but may act independently in other instances.

- a) The Ombudsman investigates *citizens' complaints*, having extensive authority to request relevant information and look into documentation they deem significant. Concluding these investigations, the Ombudsman and the Commissioner issue joint reports containing recommendations.
- b) The Ombudsman with the Commissioner can launch *ex officio investigations*.
- c) The Ombudsman, through the Commissioner, can seek a *constitutional review* procedure before the Constitutional Court relating to any piece of legislation.
- d) In case of an alleged *conflict* between a *local and a national piece of regulation*, the Ombudsman, through the Commissioner, may request the Curia (Highest Court) to review their compatibility.
- e) The Ombudsman functions as a *watchdog* in monitoring the national sustainability strategy and the situation and enforcement of the rights of future generations, raising awareness in this respect. He or she has the right to examine and advise on national and local legislative actions; to monitor policy developments and legislative proposals to ensure that they do not pose a severe or irreversible threat to the environment or harm the interests of future generations. In doing so, the Ombudsman can inform competent ministers and stakeholders; has the right to be heard at the different committees of the Parliament, submit legislative proposals, publish so-called Ombudsman opinions, and quasi-position papers regarding any matter, and issue press releases to call attention to significant matters.

In a report presented to the Parliament the OFG wrote: “The primary mission of the Ombudsman for Future Generations is to remind the state, including all the state organs and levels, of this task and responsibility. The elaboration of a modern and efficient system of responsibility is a kind of job in which everyone participates, from the civil society organisations through the professional-economic advocacy groups to the state. The operation of this unique system of

cooperation, the harmonization of interests and viewpoints is such a challenge which can be best met by an independent institution like the Ombudsman for Future Generations.”⁵⁶

Recently, the Hungarian Constitutional Court adopted a groundbreaking decision in connection with the Climate Act of 2020 in June 2025, after nearly five years of consideration.⁵⁷ Two aspects of the judgment may be particularly relevant to our current subject. The first is a brief overview of the Court’s stance on the issue of future generations: “[123] Articles P(1), XX(1) and XXI of the Fundamental Law impose an obligation not only to designate a level of protection for the first time, but also to maintain this obligation unchanged in accordance with the prohibition of retrogression. They also impose a continuing obligation to protect in accordance with the precautionary and prevention principles, taking into account the principle of intergenerational equity when determining burden-sharing between present and future generations, as well as the latest legal developments in science and technology in the fight against climate change.”

The second quotation is highly relevant to the OFG activities in Hungary, but has also much broader implications: “[128] As the Constitutional Court has already pointed out, the present generation has a threefold obligation under the Fundamental Law, covering the entire spectrum of both legislation and law enforcement: towards present generations, future generations and the resources that constitute the common heritage of the nation. The present generations may themselves assert their rights guaranteed by law under the Fundamental Law and may also take direct action (by initiating official and judicial proceedings and, where appropriate, by lodging a constitutional complaint) in the event of the infringement of their fundamental rights. The interests of future generations are protected by the Deputy Commissioner for Fundamental Rights and Ombudsman for Future Generations, in accordance with Article 30(3) of the Fundamental Law, whose constitutional duty it is to act in the interests of future generations, including, where appropriate, the obligation to take action by legal means in all cases where this is not expressly excluded by law.”

4. EU and future generations

Our primary focus is to review the EU’s policies, primary and secondary legislation, and provide a summary of those items that could benefit future generations. The current situation can be summarised as follows.⁵⁸

56 2018 report, <https://www.ajbh.hu/documents/14315/2993057/Report+on+the+Activities+of+the+Commissioner+for+Fundamental+Rights+and+his+Deputies+2018.pdf/ef5f4ffa-ef99-8cf8-e4d3-7ebb39b1026?version=1.0&t=1558947152563>.

57 5/2025 (VI. 30.) AB.

58 Sulyok (2024).

“Currently, there is no provision in the Treaties that would explicitly impose an obligation on the EU to protect the needs of future generations. Future generations are often referred to in non-binding passages, such as preambular references in environmental secondary legislation or the European Green Deal, which mentions future generations only once among the key objectives of the European Climate Pact. However, substantive provisions of key secondary legislation such as the European Climate Act remain noticeably silent on future generations. The need to protect the interests of future generations has long been conceived as a mere moral aspiration that is peripheral and external to the main mission of the EU, the creation of the common market. ... the creation of the Union and its predecessor the European Communities were rooted in the idea of ensuring lasting peace and prosperity for Europe, a project which at its core concerns the well-being of future generations. ... There is an acute need for the EU to use its powers to protect long-term interests.”

4.1. Policy issues

In terms of European environmental policy, it is sufficient to consider the current, 8th action programme without going through all of them.⁵⁹ Its Preamble mentions future generations in paragraph 5, referring to the Green Deal (“The Commission responded to the challenges identified in SOER 2020 by adopting the communication of 11 December 2019 entitled ‘The European Green Deal’, a new growth strategy for the twin green and digital transition that aims to transform the Union into a fair and prosperous society, with a sustainable, competitive, climate-neutral and resource-efficient economy, and to protect, conserve and enhance the Union’s natural capital whilst improving the quality of life of current and future generations....”), and in paragraph 16 in connection with the circular economy and green transition, the result of which might be that “the well-being economy strengthens resilience and protects the well-being of present and future generations.”

The 8th Action Programme also recalls what has already been mentioned in the Preamble in Article 2(1) on Priority Objectives, concluding that “...the Union sets the pace for ensuring the prosperity of present and future generations globally, guided by intergenerational responsibility”.

The European Green Deal confirms⁶⁰ that it “launches a new growth strategy for the EU. It supports the transition of the EU to a fair and prosperous society that responds to the challenges posed by climate change and environmental degradation, improving the quality of life of current and future generations”.

⁵⁹ Decision (EU) 2022/59.

⁶⁰ Communication from the Commission (2019).

However, the policy papers do not explain what the interests of future generations mean; rather, they take this for granted.

4.2. Primary law

Among the objectives of the EU, the Treaties refer to the protection of future generations under EU law. Article 3(3) of the TEU, which primarily aims to establish an internal market and promote sustainable development, a high level of environmental protection and improvement in environmental quality, states the following: “It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”. Beside this, sustainable development – as already discussed above – encompasses future generations, as reinforced in paragraph 3.

As integration is a means of implementing sustainable development in practice, Article 11 of the TFEU is of the utmost significance. Indeed it calls for environmental protection measures to be integrated into all areas of EU action to promote sustainable development. As previously discussed, future generations are a key part of this.

While the environmental title (XX) of the TFEU does not refer directly to sustainable development and its constituents, it covers the major principles of environmental protection in Article 191(2): “2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.” The precautionary principle, with its long-term vision, is the principle that is closest to the interests of future generations. The most famous interpretation of the precautionary principle⁶¹ is to be found in the BSE judgment,⁶² stating: “where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent”. The Court soon later construed the precautionary principle as an autonomous general principle of EU law.⁶³

61 Communication from the Commission (2000).

62 ECJ C-157/96 and ECJ C-180/96, para. 63.

63 For the first time in 2002: GC T-13/99 (Pfizer Animal Health), para. 114, and GC T-74, 76, 83-85, 132, 137 and 141/00 (Artogodan).

4.3. Human rights within the EU

Article 6(1) confirms the Charter of Fundamental Rights of the European Union as having the same legal force as the Treaties, while Article 6 paragraph 3 refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to Member States. The first element is genuine EU law, while the two other elements “shall constitute general principles of the Union’s law”.

The preamble of the Charter of Fundamental Rights mentions (balanced and) sustainable development. However, there is an additional remarkable element of the preamble which covers future generations as a necessary third constituent of target groups through the application of obligations and duties: “Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.” This is a clear and direct reference towards the interests of future generations, understood as a legal obligation, not only in the environmental context but more broadly.

The specific article of the Charter is Article 37⁶⁴ on “Environmental protection”. Although it does not mention rights or duties, as it is a part of a human rights document, it should be taken as a human rights reference. However, the wording is more policy-oriented and less legal. It reiterates the components of Article 191. An additional argument to the human rights character of the Charter is the reference to the European Convention, parallel with the national human rights traditions. Both directly incorporate certain environmental human rights into their body, and the conclusion should only be that Article 37 is augmented as a true human right reference.

Many experts also emphasise that Article 21 of the Charter prohibits any form of discrimination based on any ground, including age. This could also have added value for future generations, as our insufficient present actions could be seen as a form of indirect age-based discrimination.

4.4. International commitments

The EU is a party to several international conventions which also contain references to protecting the interests of future generations. However, these provisions are relatively broad, leaving a great deal of room for interpretation. The most important conventions are:

- the 1992 UN Framework Convention on Climate Change and 2015 the UN Paris Agreement, creating obligations for the EU climate policy. Both

⁶⁴ “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”

treaties enshrine intergenerational equity. The UNFCCC in its preamble and Article 3(1);

- The 1992 UN Convention on Biological Diversity (CBD), mentioning future generations in its preamble;
- The 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention). Again, the preamble (every person “has the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.” Article 1 might also be mentioned.

The Aarhus Convention is referenced in some court judgments, although no interpretation or explanation is provided. These references are mere citations of the relevant provisions.

5. Ideas about the representation of future generations – and the current steps

There have been, and continue to be, several ideas on how to incorporate the future into EU decision-making processes. The Institute of European Environmental Policy in collaboration with the World Future Council⁶⁵ analyses many problems, such as the discounting of environmental factors in economic decisions and the voting system used in political decisions. The main message is to establish a specific institution, a guardian:

The Hungarian and Welsh examples of the guardian for future generation roles showed the importance of broad support based on two linked elements:

- (i) the role of civil society and
- (ii) broad institutional and cross-party support.

.... A coordinated campaign to support the creation of an EU guardian role could be an element in encouraging wider understanding of the impact of human activity now on the conditions for human society in future.

Once a Guardian role is established, a continuing close relationship with civil society needs to be ensured. ... Essentially the office of the EU guardian should be independent from other EU institutions, as well as from other lobbying activities and thus seen as a non-partisan organization. A careful balancing strategy between cooperative and confrontational approaches towards all stakeholders could help to achieve this while ensuring EU-wide support.

The report highlights the possibility of amending primary legislation. “In principle, the most attractive approach to establishing an EU-level Guardian

⁶⁵ Nesbit/Illés (2015) point 5.2.

for Future Generations role is to enshrine it in the founding treaties of the EU. There is precedent for the creation of new roles by the Treaties; a good example is the creation of an EU Ombudsman by the Maastricht Treaty in 1992 (with the first ombudsman taking office in 1995).⁶⁶ However, there may be easier ways to achieve the desired changes, such as using the current EU ombudsman or the Fundamental Rights Agency, or amending secondary legislation which is also discussed in the quoted paper.

In 2024, the responsibilities of one EU Commissioner were slightly changed to encompass future generations, in a manner that follows the above suggestions. The new portfolio within the Commission is the Commissioner for Intergenerational Fairness, Youth, Culture and Sport. While it is a real step forward, it is still a very specific mix of tasks covering many different items and not necessarily in a consistent way. Anyhow, the intergenerational fairness component is still under clarification, and the discussions on how to manage it properly are under way at the time of finishing the current paper. The mission letter, issued by the President of the European Commission⁶⁷ underlines: “We must ensure that decisions taken today do no harm to future generations and that there are increased solidarity and engagement between people of different ages. You will prepare a Strategy on Intergenerational Fairness to map out how we can strengthen communication between generations and ensure that interests of present and future generations are respected throughout our policy and law making.” Some months later the new Commissioner issued a statement⁶⁸ accentuating the importance of the would-be new strategy and the role of citizens consultation is preparing it.

In September 2025, the 2025 Strategic Foresight Report has been presented by the Commission,⁶⁹ where Point 3 discusses “the path towards a resilient EU in 2040: areas of action”. In this list of main areas “Key area No. 8” deals with future generations in a broader sense “anticipating demographic transformation and strengthening intergenerational fairness”. On the one hand, intergenerational fairness focuses on future generations, while on the other hand, it emphasises “increasing solidarity and engagement between people of different ages”. Consequently, this concept is a fairly new combination of ideas, the real content of which has not been clarified at the time of finishing this paper. This is what we know in September 2025.

66 See above, point 6.2.

67 Signed at Brussels, 1 December 2024, https://commission.europa.eu/document/download/c8b8682b-ca47-461b-bc95-c98195919eb0_en?filename=Mission%20letter%20-%20MICALLEF.pdf.

68 Statement by Commissioner Micallef (2025).

69 Strategic Foresight Report 2025.

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