

How to Protect Future Generations' Rights in European Governance

Göpel, Maja; Arhelger, Malte

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Göpel, M., & Arhelger, M. (2010). How to Protect Future Generations' Rights in European Governance. *Intergenerational Justice Review*, 1, 4-10. <https://doi.org/10.24357/igjr.5.1.468>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY Lizenz (Namensnennung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier: <https://creativecommons.org/licenses/by/4.0/deed.de>

Terms of use:

This document is made available under a CC BY Licence (Attribution). For more information see: <https://creativecommons.org/licenses/by/4.0>

How to Protect Future Generations' Rights in European Governance

by Dr. Maja Göpel and Malte Arbelger

Abstract: Given that future generations are right-bearing citizens of tomorrow, legislative systems should secure these rights through appropriate institutions. In the case of the European Union, reference to intergenerational justice can be found in various fundamental legal texts, but, paradoxically, no institutions exist to defend it. The structural short-termism inscribed into representative democracies means that present interests easily trump future concerns. We argue that the best way to overcome this problem is a system of temporal checks and balances. By comparing a selection of existing instruments with regards to their impact on the legislative process, we propose the creation of a European Guardian for Future Generations as the most effective measure to protect the rights of future generations and provide an overview of recent developments in this direction.¹

The rights of future generations

In the philosophical debate, it is still unclear how normative concepts like 'obligations', 'rights' or 'harm' may be interpreted, when applied to the intergenerational context. This is mostly due to the fact that future people do not exist yet and that, consequently, their number, identity and interests remain unclear.² At the same time, even in the absence of a coherent ethical theory, most people attribute moral importance to the lives of future generations, and the discourse on the matter is typically a rights-based one. If we declare universal human rights for every individual, why should in-

It was never the people who complained of the universality of human rights, nor did the people consider human rights as a Western or Northern imposition. It was often their leaders who did so.

/ Kofi Annan /

dividuals born tomorrow not impose obligations on present individuals? It therefore seems appropriate to consider future people as rights-bearers – even in the absence of a clear definition of what this implies for present people, practically and legally.³ This article will not be concerned with the question of *what* exactly to transmit to fu-

ture generations, but focus on *how* to protect options and opportunities for similar freedom of choice in the development of societies. We believe that the present generation is obliged to avoid and intervene with trends that threaten these options and opportunities, such as biodiversity loss, climate change, resource depletion, perpetuation and aggravation of extreme poverty and inequity, to name a few. By means of regulation, political institutions play an important role in the execution of these responsibilities. Given the increasing authoritative and legislative power of the European Union, this article explores how the European institutions may improve the protection of future generations and concludes with the recommendation of a new body with an explicit mandate for just that purpose.

Future generations in European legislation

To derive the institutional imperative for the representation of future generations for which we argue, we provide a brief historical overview of the status of future generations in European policies with reference to the most significant developments in international treaties and conventions.

Generally, it is important to distinguish between explicit and implicit reference to future generations. Implicit formulations include 'heritage', implying that something is handed on to posterity, and the principle of 'sustainable development', as it is defined by the 1987 Brundtland Report: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁴ Reference to future generations in the European context has gone from explicit and non-binding to implicit and binding while taking an increasingly prominent place in European legislation.

Future generations and European environmental policy

In terms of official recognition, the declarations and recommendations of the United Nations Stockholm Conference on the Human Environment in 1972 mark the be-

ginning of institutionalised environmental politics. The wording of its final declaration⁵ influenced the first formulations of European environmental policies. In the European context, future generations are mentioned for the first time in the 1973 Programme of Action of the European Communities on the Environment. When explaining the need for awareness of environmental problems, the document states that "educational activity should take place in order that the entire Community may become aware of the problem and assume its responsibilities in full towards the generations to come."⁶ The Commission's 1974 Recommendation concerning the protection of birds and their habitat also contains an indirect reference to future generations, when it notes that "[p]ublic opinion is coming to consider migratory birds more and more as a common heritage."⁷ However, these formulations were hardly of binding character and appear rather randomly.

Meanwhile, with the adoption of the first pieces of binding European environmental legislation, normative reference to future generations disappears almost completely. This is also certainly due to the much narrower-legislative mandate of the European Communities at that time. The objectives then were the creation of a common market and included neither reference to future generations nor to the environment. Accordingly, the 1975 Waste Framework Directive, among the first legally binding texts in the environmental field, while calling for the "recovery of waste (...) to conserve natural resources,"⁸ referred to the functioning of the common market and to Article 235 of the Treaty of Rome, regulating Community action in the case of absence of any further legal basis.

The 1976 Bathing Water Directive presented a similar situation. While arguing that the surveillance of bathing water is necessary in order to attain the objectives of the common market, it applies a relatively large definition of 'bathing water'.⁹ Similarly, the 1979 Bird Directive describes the protection of wild bird species in the EU as a means to fulfil the objectives of the common market –

although, exceptionally, it also states that “species of wild birds naturally occurring in the European territory of the Member States (...) constitute a common heritage” and views “the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe.”¹⁰ Additionally, the preamble of the 1985 Environmental Impact Assessment Directive states that the effects of human intervention on nature must be observed “to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life”. It also states that cultural heritage shall be taken into account in this assessment.¹¹ Overall, however, European environmental legislation has only referred to future generations randomly and implicitly.

For a successful technology, reality must take precedence over public relations, for nature cannot be fooled.

/ Richard P. Feynman /

International treaties: future generations through the backdoor

It is mainly through conventions of the United Nations (UN) that reference to future generations finds its way back into European legislation, primarily via preambles. This is the case, first, for the 1982 Convention on the conservation of migratory species of wild animals, according to the preamble of which “each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely.”¹² Second, in the 1993 European Council decision on the 1992 Convention on Biodiversity, which refers to future generations in its preamble,¹³ the European environmental policy agenda adapts again to that of the UN. The European Council decision states that the reason for the EU to adhere to the convention is the fact that “conservation of biological diversity is a global concern and it is therefore appropriate for the Community and its Member States to participate in international efforts.” The preamble continues that the “conservation and sustainable use of biological diversity” are appropriate means to attain this goal.¹⁴ Third, the United Nations Educational, Scientific and Cultural Organisation’s Declaration on the Responsibilities of the Present Generations Towards Future Generations in 1997 contains twelve

Articles defining issues regarded as relevant to protect for future generations, including non-environmental ones like education, peace, common heritage and cultural diversity.¹⁵ The declaration is however not legally binding.

Fourth, and from a legal perspective most notably, the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, a regional UN convention, contains a concrete description of how rights of future generations transform into present duties. Also known as the Aarhus Convention, it states that “every person has the right to live in an environment adequate to her or his health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”¹⁶ Especially when arguing for an institution protecting future generations, it should be noted, the preamble obliges the State to support citizens in exercising their rights and duties. It states that “to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters”, and that “citizens may need assistance in order to exercise their rights.”¹⁷ But it was not until 2006 that this path-breaking Convention became European law.¹⁸

From Rio to Brussels

Since the publication of the 1987 Brundtland Report, future generations have received attention in the European Council, implicitly and explicitly, albeit only in non-binding declarations. Nevertheless, this fact indicates how intergenerational justice has become a growing concern for European policy makers. The first declaration taking up the prominent implicit formula of sustainable development is the 1988 Rhodes Summit Declaration on the Environment, which states that “sustainable development must be one of the overriding objectives of all Community policies.”¹⁹ Another notably explicit example is the 1990 Dublin Summit Declaration on the Environmental Imperative, which states that “[m]ankind is the trustee of the natural environment and has the duty to ensure its enlightened stewardship for the benefit of this and future generations.”²⁰ But it is equally notable that, given its boldness, this declaration remains with only few consequences. The principle of sus-

tainable development gains further momentum after the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, in the form of the Fifth Environmental Action Programme: *Towards Sustainability*.²¹

Sustainable development: future generations in the treaties

Future generations make their first implicit appearance in the European treaties through a principle of sustainable development in the 1997 Amsterdam Treaty.²² The 2000 Charter of Fundamental Rights of the European Union is the first fundamental legal text mentioning future generations explicitly. Its preamble states that the rights ensured by the Charter entail duties with regards to future generations.²³ The document becomes legally binding with the adoption of the 2008 Lisbon Treaty. Several articles of the Treaty contain references to future generations in the form of the principle of sustainable development, namely in Articles 3 and 21, and Article 37, which states that “[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into politics of the Union and ensured in accordance with the principle of sustainable development.”²⁴ Ever since the 1997 Amsterdam Treaty, the principle of sustainable development has become the predominant wording to frame environmental policies in European discourse. This is true not only of the Council declarations urging the implementation of the principle (namely Luxembourg 1997, Cardiff 1998, Vienna 1998, Cologne 1999 and Helsinki 1999), but also for various policy programmes of the European Commission. These include, most prominently, the 2001 European Sustainable Development Strategy *A Sustainable Europe for a Better World*²⁵ and its 2005²⁶ and 2009²⁷ revisions, and also the 2004 Action Plan on Environmental Technologies.²⁸ It may also be worth noting that references to intergenerational justice can be found in various member-state constitutions. Eight constitutions contain explicit references to future generations (Belgium, the Czech Republic, Estonia, France, Germany, Luxembourg, Poland, and Sweden), and five constitutions make indirect reference to future generations via the concept of heritage (Finland, Italy, Portugal, Slovakia, Slovenia). Almost all texts contain references to the role of the state concerning the protection of the environment.²⁹

Despite ample references to intergenera-

tional justice in constitutive legal frameworks at the European and national levels, and notwithstanding the fact that since the 1998 Cardiff summit, attempts have been made to institutionalise European sustainable development policies – and three more summits were dedicated to the issue (Helsinki 1998, Gothenburg 2001 and Barcelona 2002) – there is neither an institutional mechanism to ensure that self-imposed obligations in sustainable-development issues are in fact respected, nor a clear reference to establish such a mechanism. The respective legislation would have to rely on Article 352 of the Lisbon Treaty; the Council may adopt appropriate measures to attain objectives set out in the treaties, which cannot be attained with the powers provided by the treaties.³⁰

The credit crunch is about borrowing from our children; the climate crunch is about stealing from them.
/ David Pencheon /

Existing intergenerational checks and balances

Unlike present people, future people cannot themselves protest against present political decisions or argue how these will inflict upon their lives and wellbeing. Several countries around the world have acknowledged this representational omission and established institutions to protect the interests of future people. In this paper we only discuss institutions that can engage in the legislative process.³¹ Our primary purpose is to evaluate how such institutions could be important governance innovations in representative democracies, so that core mandates and functions can be defined for the European governance level.

It is necessary to clarify the terminology used to distinguish the various sorts of temporal checks and balances existing in national political systems. We will distinguish institutions according to the way their holders are appointed and the status of their legal basis.

We will call *Parliamentary Committee* an institution consisting of directly elected parliamentarians, operating on the basis of parliamentary rules of procedure, *Parliamentary Commissioner* an institution held by an appointed or indirectly elected non-parliamentarian, operating on the basis of parliamentary rules of procedure and *Commissioner* an institution consisting of an appointed or indirectly elected non-parliamentarian, operating on the basis of an independent legislation. Several other possible mechanisms of temporal checks and balances are discussed in the academic literature, including reserved seats in parliament,³² deliberative control mechanisms³³ and specialized second chambers.³⁴ We will limit our discussion to existing cases.

A few remarks on methodology

We will attempt to determine which model best suits our goal to identify a strong mechanism of temporal checks and balances.

Table 1. Examples of institutional mechanisms of temporary checks and balances in comparison.

Institution	Country	1) independent	2) proficient	3) transparent	4) legitimate	5) having access	6) being accessible
<i>Parliamentary Committee</i>	Finland (Tulevaisuusvaliokunta, 1999), Germany (Parlamentarischer Beirat für Nachhaltige Entwicklung 2006)	Separate body inside the legislative, consisting of elected parliamentarians. Flowing from parliamentary rules of procedure. Separate budget (Finland). ³⁵	Body publishes reports and advises other standing committees. ³⁶ Members have voting rights in plenary.	Bound by mandates to follow-up on governmental long-term strategies. Body publishes general reports on regular basis and specific reports and statements on topical issues.	Body established by government (Germany) or emerged in parliamentary debate (Finland). Members elected in direct elections.	Members may obtain governmental information by the procedure of written or oral questions. Members can initiate research on future scenarios in various policy fields (Finland).	Body shall improve communication among relevant political actors and include general public in the debate on sustainable development. ³⁷
<i>Parliamentary Commissioner</i>	Israel (Israeli Commission for Future Generations, 2001-2006)	Flowing from parliamentary rules of procedure. Separate budget, which is part of the Parliament's budget. ³⁸	Body publishes statements. May ask for delaying legislative decisions to present statements. ³⁹	Bound by mandate to report on bills with "significant consequences for future generations." ⁴⁰ Body publishes general report on regular basis.	Body conceived by parliamentary vote on parliamentary rules of procedure. Holder appointed on merit-base. ⁴¹	Body has access to state institutions defined under the State Comptroller Act. ⁴² Body may express opinions on laws and advise parliamentarians. It may appear in parliamentary committees.	Body receives all bills and secondary legislation treated in Parliament. De facto, it also became a gateway for economic and civil-society actors. ⁴³
<i>Commissioner</i>	Canada (Commissioner for Environment and Sustainable Development, 1995), Hungary (Parliamentary Commissioner for Future Generations, 2006), New Zealand (Parliamentary Commissioner for the Environment, 1986)	Flowing from separate legislation. Separate budget determined in the State budget, which is passed by the Parliament.	Body may initiate suspension of administrative or other acts potentially causing irreversible environmental damage. It may therefore appear in court. It may initiate judicial reviews, when improprieties occur, i.e. when laws violate fundamental rights. ⁴⁴	Bound by mandate to "ensure the protection of the fundamental right to a healthy environment", ⁴⁵ which is a fundamental right. Body regularly publishes general report.	Body conceived by parliamentary vote on respective legislation. Holder selected on merit-base, confirmed by parliamentary majority (Hungary). ⁴⁶	Body may investigate any activity, limited only by state secrecy, not by business secrecy. It may urge the Parliament to discuss grave improprieties. It may appear in Parliament. ⁴⁷	Anybody has the right to petition. Body may also investigate on its own initiative.

The ideal institution should respond to two sorts of requirements. Firstly, it should address the requirements of the separation of powers. This means it should be independent and its function should be to increase political efficiency by reducing the abuse of political power. The abuse of political power can impose political and economic costs for present and future generations. Costs to the present generation include the costs caused by friction in the political process, for example legitimacy gaps through lack of consultation, or short-term delivery gaps through tactical procrastination of agreement. Costs to future people include the costs of, for example, climate change, biodiversity loss, or other risky technology choices, in particular if they are not addressed at an early stage because of short-term interest dominance. Secondly, the institution should be capable of integrating the high level of uncertainty related to long-term developments and accommodate the possibility of technological and social innovations in its considerations.

Based on this reasoning, we can define six criteria for comparative analysis. For the institution to be able to limit the abuse of power of present institutions, it has to be 1) independent and 2) proficient. For the institution to increase the efficiency of policy making, it needs to be 3) transparent and 4) legitimate by democratic standards. While the interests of present and future generations may be opposed in particular issues, the institution as such should be democratically legitimate so that its existence derives from the general importance people attribute to future generations. Analogously, a complainant may be opposed to a legal decision contrary to her or his interest but still attribute legitimacy to judicative institutions with the mandate to protect the general interest. To enable the institution to cope with uncertainty, it should 5) have access to all the relevant information and 6) be widely accessible to expert assessments and citizens' concerns so that well-informed and broad argumentation becomes possible. In practice, activities falling under 6) may be identical with activities falling under 3). However, transparency is an output-related quality, accessibility is clearly input-related. The more the institution is accessible, the sooner it may adapt to change and the lower the risk its focus remains systemically limited to particular issues.

How shall these criteria be treated when comparing institutions? Any institution ful-

filling any one of the six criteria can function to some extent as a mechanism of temporal checks and balances. But the more an institution fulfils several criteria, the better it seems equipped for this task. With these remarks in mind we may begin our comparative assessment (See Table 1).

Indicative conclusions

What conclusions can be drawn from this comparison? First, we may consider how existing bodies rank in relation to the defined criteria. If a body functioning as a mechanism of temporal checks and balances is supposed to be 1) independent, according to the logic of the division of powers, then a post in this body should not be held by the same person holding a post in another branch of political power. Ideally, this body shall also rest on an independent legal basis, in order to increase the independence of the respective body. The Hungarian Commissioner enjoys most independence, even

Maturity is the capacity to endure uncertainty.

/ John Huston Finley /

though its budget depends on the decision of the Országgyűlés (Hungarian Parliament). If a body is supposed to be 2) proficient, then it should have legally binding competences. The Hungarian Commissioner is the only body with legally binding tools. It may be added that the Israeli Commission enjoyed a *de facto* veto power: it could use the right to deliver statements in a tactical way, so that decisions could be postponed and eventually dropped, when the parliamentary schedule allowed no delays.⁴⁸ But this power is risky to use, since it is likely to destroy the trust-based cooperation between deputies and the Parliamentary Commission. If a body is supposed to be 3) transparent, it needs a clear and direct mandate and should report regularly about its results. While all examined bodies provide regular reports, the Hungarian Commissioner has the most direct mandate for action. The influence of the other bodies' mandates depends on the activity of third, either executive or legislative, bodies. If a body is supposed to be 4) legitimate, it should enjoy large public support or even have emerged as a response to citizen action. While the Israeli Commission was established top-down, the results of its work were communicated widely through good relationships with the media.⁴⁹ The Hungarian Commis-

sioner was established after a grassroots initiative by the Civil Society Organisation Védegylet (Protect the Future).⁵⁰ The Parliamentary Committees, on the other hand, have most impact on political actors.⁵¹ If a body is supposed to have 5) the necessary access to compile information, it needs extensive authority to request the information. The mandate of the Hungarian Commissioner is most generous, in this sense. Finally, if a body is supposed to be 6) accessible, it should allow for institutionalised and inclusive input. Again, given that the Hungarian Commissioner may be petitioned like an ombudsman, its mandate seems the most developed in comparison.

Second, we need to be clear about the heuristic value of this comparison: while there is some evidence that the model of the Hungarian Parliamentary Commissioner can be effective in protecting future generations from present abuse of power, this article does not suggest that the Hungarian model is a blueprint to be transposed to the European level. Rather, it suggests that if our objective is to establish an effective mechanism of temporal checks and balances at the European level, the Hungarian case can serve as the most notable precedent. Yet, its mandate is limited to the protection of the environment, while the Israeli Commissioner oversaw twelve policy areas, therefore being closer to a holistic protection of living conditions for future generations, similar to the UNESCO Declaration cited above.

Since the fundamental rights adopted with the Lisbon Treaty do not include the right to a healthy environment anyway, the mandate for a European body could be to build on the aim of the European Union as defined in Article 3 of the Treaty: "to promote peace, its values and the well-being of its peoples."⁵² The objectives listed in Article 3 to reach this aim range across many issue areas from economics to security and culture and could provide the lens to decide which policy decisions need to be scrutinized regarding their impact on future peoples' wellbeing. Such a mandate would directly support the commitments made on sustainable development, as it would improve coherence and efficacy of European policies drafted in single-issue departments and would provide the principle of intergenerational solidarity with teeth. In addition, it would be helpful to avoid the term 'Commissioner' in order to avoid confusion with existing European commissioners. A 'European Guardian for Future Generations' could be a solution.



Dear Reader, Your opinion matters!

We want to improve the Intergenerational Justice Review with your input. Send us your comments to:

IGJR-Editors
Postfach 5115
61422 Oberursel
GERMANY
Phone +49 6171 982 367
Fax +49 6171 952 566
E-Mail: editors@igjr.org

Please tell us of any friends to whom we can send a trial issue free of cost.

Initiatives for a European representation of future generations

This final section will discuss past initiatives for establishing an institutional representation of future generations and indicate some strategies for further action. During the past decade, all of these initiatives originated from civil society.⁵³

The most important initiative was once again organised by Védegylet. When the law establishing the Hungarian Commissioner for Future Generations was adopted in Hungary in 2006, Védegylet decided to move onto the European level.⁵⁴ The activists gained support from the conservative Member of the European Parliament (MEP) Kinga Gál, who gathered three other MEPs behind the initiative. In June 2008 the group organised a public event at the European Parliament, and in September it started to collect signatures for the Written Declaration on the need to establish a Representation for Future Generations in the European Union. The text demanded that the Commission and the Council should investigate three possibilities to protect the rights of future generations. Firstly, protection of future generations might become part of the responsibilities of the existing European Ombudsman. Secondly, questions of intergenerational justice could be integrated into the portfolio of a European Commissioner. Thirdly, the European Fundamental Rights Agency might be charged with the enforcement of future generations' rights.⁵⁵ However, without civil society support in Brussels and at the end of the legislative period, the necessary number of signatures for adoption of the declaration was not achieved.

Yet, the new legislative period provides a new opportunity to reinvigorate the initiative for future generations' rights and this article sought to investigate characteristics that would promise the highest effectiveness. The options proposed in the 2008 Declaration of MEPs may seem to be politically easier and economically cheaper solutions, but only a Guardian with the explicit mandate to defend the rights of future genera-

tions will operate without the conflict of short- versus long-term interests within it. It would provide a solid mechanism of temporal checks and balances in decisions on infrastructure, energy, ecosystem protection, production technologies and materials, conflict resolution strategies and investment priorities that will significantly impact the quality of life in the century to come.

Notes

1. We are indebted to Benedek Jávor. Furthermore we would like to thank Peter Roderick, Alice Vincent and several anonymous referees.
2. The debate on this question has become too extensive to be listed. See, for example: Schwartz 1978: 11-12; Parfit 1984: 351-361. For an overview of recent arguments, see: Tremmel 2010: 43-46.
3. On the legal situation in the United States, see: Bach/Weston 2009: 28-53.
4. United Nations General Assembly 1987: 54.
5. The concept of 'future generations' figures prominently not only in the preamble, but also in principles 1 and 2, see: United Nations Conference on the Human Environment 1972: 3.
6. European Communities 1973: 1-2.
7. European Commission 1975: 24-25.
8. European Communities 1975: 39-41.
9. European Communities 1976: 1-7.
10. European Communities 1979: 1-18.
11. European Communities 1985: 40-48.
12. European Communities 1982: 10-22.
13. European Union 1993: 1-20.
14. European Union 1993: 1-20.
15. UNESCO 1997.
16. UNECE 1998: 2.
17. UNECE 1998: 2.
18. European Union 2006: 13.
19. European Communities 1988: 11.
20. European Communities 1990: 24.
21. European Union 1998: 1.
22. European Union 1997: 7, 24.
23. European Union 2000: 8.
24. European Union 2008: 15, 17, 29.
25. European Commission 2001.

26. European Commission 2005.
27. European Commission 2009.
28. European Commission 2004.
29. An overview, including the wording of the respective passages, may be found in: Earthjustice 2007: 126-147; Tremmel 2006: 192-196.
30. European Union 2008: 196.
31. For example, we shall not discuss the strictly consultative French Council for the Rights of Future Generations, established by République Française (1993) and abolished by République Française (2003) after the council stopped functioning when its president stepped down as a reaction to renewed French nuclear testing. See: Mathieu 1999.
32. Dobson 1996: 133-134.
33. Ekelo 2009: 449-451.
34. Stein 1998: 439-441.
35. Tiihonen 2006: 79.
36. Deutscher Bundestag 2009: 2.
37. Deutscher Bundestag 2009: 3.
38. An unofficial translation of the Knesset law and its initial bill may be found in: Jávor/Rácz 2006: 197.
39. Jávor/Rácz 2006: 193.
40. Jávor/Rácz 2006: 192.
41. Jávor/Rácz 2006: 195-196.
42. Jávor/Rácz 2006: 197. Compare with Shlomo/Lamay 2006 92-93.
43. Shlomo/Lamay 2006: 109.
44. Magyar Köztársaság 1993.
45. Magyar Köztársaság 1993.
46. Magyar Köztársaság 1993.
47. Magyar Köztársaság 1993.
48. Shlomo/Lamay 2006: 95.
49. Shlomo/Lamay 2006: 96-98.
50. Gosseries/Jávor 2008.
51. Tiihonen 2006: 87.
52. European Union 2008: 17.
53. See also: Collins 2009: 323.
54. Gosseries/Jávor 2008.
55. Gál/Alvaro/Vigenin et al. 2008.

References

Bach, Tracy and Weston, Burns (2009): Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice.

- http://international.uiowa.edu/centers/human-rights/documents/CLI_Policy_Paper.pdf. Viewed 5 June 2010.
- Collins, Lynda (2007): Environmental Rights for the Future? Intergenerational Equity in the EU. In: *Review of European Community and International Environmental Law*, Vol. 16 (3/2007), 321-331.
- Deutscher Bundestag (2009): Antrag der Fraktionen CDU/CSU, SPD, FDP und BÜNDNIS 90/DIE GRÜNEN. Einrichtung eines Parlamentarischen Beirats für nachhaltige Entwicklung. Drucksache 17/245, 17.9.2010.
- Dobson, Andrew (1996): Representative Democracy and the Environment. In: Lafferty, William M. and Meadowcroft, James (eds.): *Democracy and the Environment*. Cheltenham, Edward Elgar, 124-139.
- Earthjustice (2007): Environmental Rights Report 2007. <http://www.earthjustice.org/library/references/2007-environmental-rights-report.pdf>. Viewed 27 March 2010.
- Ekeli, Kristian (2009): Constitutional Experiments: Representing Future Generations through Submajority Rules. In: *The Journal of Political Philosophy*, Vol. 17 (4/2009), 440-461.
- European Commission (2010): Europe 2020. A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final.
- European Commission (2009): Mainstreaming sustainable development into EU policies, COM (2009) 400 final.
- European Commission (2005): On the review of the Sustainable Development Strategy, A platform for action, COM (2005) 658 final.
- European Commission (2004): Stimulating Technologies for Sustainable Development: An Environmental Technologies Action Plan for the European Union, COM (2004) 38 final.
- European Commission (2001): A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development, COM (2001) 264 final.
- European Commission (1975): Commission Recommendation of 20 December 1974 to Member States concerning the protection of birds and their habitats (75/66/EEC). In: OJ L 021, 28 January 1975.
- European Communities (1990): Conclusions of the Council, Dublin, 25-26 June 1990, SN/60/1/90.
- European Communities (1988): Conclusions of the Council, Rhodes, 2-3 December 1988, SN/4443/1/88.
- European Communities (1985): Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC). In: OJ L 175, 05 July 1985.
- European Communities (1982): Council Decision of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals (82/461/EEC). In: OJ L 210, 19 July 1982.
- European Communities (1979): Council Directive of 2 April 1979 on the conservation of wild birds (79/409/EEC). In: OJ L 103, 25 April 1979.
- European Communities (1976): Council Directive of 8 December 1975 concerning the quality of bathing water (76/160/EEC). In: OJ L 031, 05 February 1976.
- European Communities (1975): Council Directive of 15 July 1975 on waste (75/442/EEC). In: OJ L 194, 25 July 1975.
- European Communities (1973): Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment. In: OJ C 112, 20 December 1973.
- European Parliament/ European Council/ European Commission (2000): Charter of Fundamental Rights, JO C 364 of 18 December 2000.
- European Parliament (2000): European Parliament resolution on the conclusions of the European Council meeting in Feira on 19 and 20 June 2000 (B5 0590/2000).
- European Union (2009): Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (EC 1367/2006). JO L 264, 25 September 2009.
- European Union (2008): Treaty of Lisbon. In: JO C 115/01 of 9 May 2008.
- European Union (1998): Decision of 24 September 1998 on the review of the European Community programme of policy and action in relation to the environment and sustainable development 'Towards sustainability' (2179/98/EC). In: JO L 275, 10 October 1998.
- European Union (1997): Treaty of Amsterdam. In: OJ C 340 of 10 November 1997.
- European Union (1993): Council Decision of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (93/626/EEC). In: OJ L 309, 13 December 1993.
- Gál, Kinga / Alvaro, Alexander / Vigenin, Kristian et al. (2008): Written Declaration on the need to establish a Representation for Future Generations in the European Union (0070/2008), 1.9.2008.
- Gosseries, Axel / Jávör, Benedek (15 July 2008): Un ombudsman pour les générations futures. In: *Le Soir* (163/2008), 12.
- Jávör, Benedek / Rácz, Judit (eds.) (2006): Do we owe them a future? The opportunities of a representation for future generations in Europe. Budapest: Védegylet - Protect the Future.
- Magyar Köztársaság (1993): Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman). Unofficial Translation. http://jno.hu/en/?menu=legisl_t&doc=LIX_of_1993. Viewed 28 March 2010.
- Mathieu, Serge (1999): Question écrite n° 17086 de M. Serge Mathieu, Journal Officiel du Sénat, 15 July 1999, 2407.
- Parfit, Derek (1984): *Reasons and Persons*. Oxford: Oxford University Press.
- République Française (2003): Décret 2003-758 du 30 juillet 2003 abrogeant le décret 93-298 du 8 mars 1993, portant création du

Conseil pour les droits des générations futures, Journal Officiel 6 August 2003.

République Française (1993): Décret 93-298 du 8 mars 1993 portant création du Conseil pour les droits des générations futures, Journal Officiel 8 March 1993.

Schwartz, Thomas (1978): Obligations to Posterity. In Sikora, R. I. and Barry, Brian (eds.): Obligations to Future Generations. Philadelphia: Temple University Press, 3-13.

Shoham, Shlomo / Lamay, Nira (2006): Commission for Future Generations in the Knesset: lessons learnt. In: Jávör, Benedek/Rácz, Judit (eds.), Do we owe them a future? The opportunities of a representation for future generations in Europe. Budapest: Védegyelet - Protect the Future, 89-113.

Stein, Tine (1998): Does the Constitutional and Democratic System Work? The Ecological Crisis as a Challenge to the Political Order of constitutional Democracy. In: Constellations Vol. 4 (3/1998), 420-449.

Tiihonen, Paula (2006): Committee for the Future - a new institution to discuss the Future in Finland. In: Jávör, Benedek / Rácz, Judit (eds.), Do we owe them a future? The opportunities of a representation for future generations in Europe. Budapest: Védegyelet - Protect the Future, 72-88.

Tremmel, Joerg Chet (2009): A Theory of Intergenerational Justice. London: Earthscan.
Tremmel, Joerg Chet (2006): Establishing

intergenerational justice in national constitutions. In: Tremmel, Joerg Chet (ed.): Handbook of Intergenerational Justice. Cheltenham/ Northampton, MA: Edward Elgar, 187-214.

United Nations Conference on the Human Environment (1972): Only One Earth. Geneva: Centre for Economic and Social Information at United Nations European Headquarters.

UNESCO (1997): Declaration on the Responsibilities of the Present Generations Towards Future Generations. http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html. Viewed 3 June 2010.

United Nations Economic Commission for Europe (1998): Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998. 38 ILM (1999).

United Nations Environmental Program (2003): Convention on the Conservation of Migratory Species of Wild Animals. http://www.cms.int/pdf/convtxt/cms_convtxt_english.pdf. Viewed 3 June 2010.

United Nations General Assembly, 42nd session (1987): Report of the World Commission on Environment and Development: Our Common Future (A/427/42), 4 August 1987.

Submitted: 14 April 2010

Accepted: 11 June 2010



Maja Göpel is a political economist with a focus on institutionalism. Since November 2006 Maja works for World Future Council Foundation as Director Future Justice.

Contact details:

World Future Council, Bei den Mühren 70, 20457 Hamburg, Germany

Email: maja.goepel@worldfuturecouncil.org

Web: <http://www.worldfuturecouncil.org/>



Malte Arhelger is a political philosopher interested in questions of intergenerational ethics. He is currently working for the World Future Council as a Policy Advisor.

Contact details:

Head Office, Bei den Mühren 70, 20457 Hamburg, Germany

Email: malte.arhelger@worldfuturecouncil.org

Web: <http://www.worldfuturecouncil.org/>

Crimes against Future Generations: Implementing Intergenerational Justice through International Criminal Law

by Sébastien Jodoin

*I*ntergenerational justice not only requires the adoption of best practices and policies, but also the prevention and repression of deleterious and morally blameworthy human behaviour which has severe impacts on the long-term health, safety and means of survival of groups of individuals. While many international crimes have indirect consequences on the well-being of present and future generations, it cannot be said that existing international criminal law is currently

well-placed to directly and clearly protect intergenerational rights. As such, the development of a new type of international crime, crimes against future generations, may be a promising avenue for implementing intergenerational justice. Such a crime would penalise acts or conduct that amount to serious violations of existing international law regarding economic, social and cultural rights or the environment.¹

Introduction

Intergenerational justice remains a largely abstract concept in international policy – it is not recognised in any binding instrument of international law. Although the notions of the rights or interests of future generations are referenced in a few non-binding international instruments, the legal means for directly enforcing or protecting these rights are non-existent. Given that international law tends to develop in an incremental and