

17. Representing the Interests of Present and Future Generations at the Same Time – A Case Study of the Hungarian Ombudsman for Future Generations

Marcel Szabó*

Abstract: *In human history, the moral responsibility for future generations was linked relatively early to the idea that we must pass on our Earth in good shape (as unchanged as possible) to the generations of our children, grandchildren, and other descendants. Section I of this chapter presents how the Hungarian law protects the rights and interests of future generations – through the institution of the Hungarian Ombudsman for Future Generations (historical background, powers, the legal relationship between the Ombudsman and the Hungarian Constitutional Court). Sections II and III deal with the theoretical considerations regarding the legal personality of future generations and the presence of the interests of future generations at the level of international law, respectively. Section IV introduces the ethical, economic and legal aspects of the protection of interests of future generations. As a conclusion (Section V), the chapter argues that the activities of future generation institutions should mainly focus on the ‘conservation of options’.*

Introduction

The responsibility of humankind for their descendants is one of the most ancient moral norms. In human history, the moral responsibility for future generations was linked relatively early to the idea that we must pass on our Earth in good shape (as unchanged as possible) to the generations of our children, grandchildren, and other descendants. Dinah Shelton and Alexandre Kiss trace this moral command directly back to the Old Testament’s story of Noah.¹ According to that story, the Lord entrusts humanity with the Earth after the flood and enters a covenant with humans and other living beings. Based on specific interpretations, this command creates a form of guardianship over the Earth’s natural resources, defined by the Old Testament as a religious precept. Therefore, the rights of future generations initially prevailed in the form of human responsibility for protecting the

* Marcel Szabó is a Professor of Law (Pázmány Péter Catholic University, Budapest), a Justice (Constitutional Court of Hungary), and a former Hungarian Ombudsman for Future Generations (2012–2016).

1 Alexandre Kiss and Dinah Shelton, *Guide to International Environmental Law* (Martinus Nijhoff Publishers 2007).

natural environment. At the end of the 18th century, a new concept further extended the scope of intergenerational equity to cover the State's obligation to prevent the unfair transfer of debt to subsequent generations. Just days following the adoption of the Declaration of Human and Civil Rights, Thomas Jefferson wrote to James Madison to draw his attention to the fact that members of the present generation have no right to take on more debt than they can repay in their own lifetime. Otherwise, the present generation would restrict the right of future generations to self-determination.² This study examines the institutional interpretation and implementation of the interests of future generations, with particular consideration to the institution of the Hungarian Deputy Commissioner Responsible for the Protection of the Interests of Future Generations.

1. Protecting the Interests of Future Generations in Hungarian Law

1.1. The Constitutional Framework Established by the Hungarian Fundamental Law

The Hungarian Fundamental Law, which entered into force in 2012, enshrines not only the right to a healthy environment (in Article XXI) but also contains several key provisions for the protection of the interests of future generations. According to the National Avowal:

[w]e commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore, we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.

In this context, the National Avowal also declares that the Fundamental Law 'shall be an alliance among Hungarians of the past, present and future'. Thus, even the National Avowal shows that the decisions adopted by incumbent governments also affect future generations. Therefore, any incumbent government and legislature's decisions shall also consider future generations' interests. This also means that the cited provision of the Na-

2 Thomas Jefferson, *To James Madison From Thomas Jefferson, 6 September 1789* <<https://perma.cc/7VRP-AYUA>>.

tional Avowal sets out a framework for interpreting the Fundamental Law and, thus, the Hungarian legal system. According to such a framework of interpretation, the interests of future generations shall generally be taken into account with the same weight as, and simultaneously with, current needs.

According to Article P(1) of the Fundamental Law:

[n]atural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.

Article P(1) identifies, in the case of the natural and cultural resources of the nation's common heritage,³ the behaviour expected of 'the State and everyone': (i) protection, (ii) maintenance, and (iii) preservation for future generations. In preserving natural resources for future generations, the present generation is responsible for preserving choice, quality, and access.⁴ These principles help to assess the interests of present and future generations from the same point of view and to strike a balance between them. Article P(1) of the Fundamental Law is a forward-looking provision in several respects. On the one hand, based on the concept of the common heritage of humankind, it has created the category of 'common heritage of the nation', which includes both natural and cultural values.

On the other hand, it also stated that protecting these values is 'the responsibility of the State and everyone', including civil society and every citizen.⁵ However, while this obligation only requires natural and legal persons to comply with the legislation in force, the State may already be expected to clearly define the legal obligations that both the State and private parties must comply with for the values referred to in Article P(1) to be effectively protected⁶ and that these, if necessary, be enforced. 'Thus, Article P of the Fundamental Law also implies an absolute and substantive

3 Decision No. 3104/2017 (V. 8.) AB of the Hungarian Constitutional Court, Reasoning [37]-[39].

4 Decision No. 28/2017 (X. 25.) AB of the Hungarian Constitutional Court, Reasoning [33].

5 Decision No. 16/2015 (VI. 5.) AB of the Hungarian Constitutional Court, Reasoning [92].

6 Decision No. 28/2017 (X. 25.) AB of the Hungarian Constitutional Court, Reasoning [30].

measure concerning the State of natural resources which imposes objective requirements on the current activities of the State.⁷ In decision No 14/2020. (VII. 6.) AB, the Constitutional Court also confirmed that:

Article P(1) of the Fundamental Law is based on the constitutional formulation of the concept of public trust about environmental and natural values, the essence of which is that the State treats the natural and cultural treasures entrusted to it as a kind of trustee for future generations as beneficiaries and allows present generations to use and exploit these treasures only to the extent that it does not jeopardize the long-term survival of natural and cultural values as assets to be protected for themselves. The State must consider the interests of present and future generations when regulating these treasures and adopting the applicable laws and regulations. The rule of preservation of natural and cultural resources for future generations in the Hungarian Fundamental Law may thus be considered part of the newly formed and consolidated universal customary law and expresses the constitutional commitment to the importance and preservation of environmental, natural, and cultural values.⁸

Article P provides a robust constitutional mandate to the Ombudsman for Future Generations (one of the very few national institutions dealing with the rights and interests of future generations at national level) to take action for the benefit of future generations and the protection of Hungary's natural and cultural resources. Generally speaking, the Fundamental Law entrusts the Deputy Commissioner⁹ with the protection of the interests of future generations. At the same time, the Act on the Commissioner for Fundamental Rights refers to the rights of future generations as the object of protection.

7 Decision No. 28/2017 (X. 25.) AB of the Hungarian Constitutional Court, Reasoning [32].

8 Decision No. 14/2020 (VII. 6.) AB of the Hungarian Constitutional Court, Reasoning [22].

9 The first Hungarian ombudsman for future generations was Sándor Fülöp (2008–2011). Between 2012 and 2016, Marcel Szabó (the author of the present article) served as ombudsman for future generations. The current ombudsman is Gyula Bándi (2017-present), Professor of Environmental Law at Pázmány Péter Catholic University, Budapest.

1.2. The Hungarian Deputy Commissioner for Fundamental Rights and Ombudsman for Future Generations

The Hungarian Ombudsman institution came into being during the democratisation process of the late 1980s and early 1990s. The Hungarian Parliament adopted the first Ombudsman Act in 1993,¹⁰ and the first Ombudsmen were elected in 1995.¹¹ The former Constitution adopted a model of the ombudsman system in which separate Commissioners could be elected to protect individual constitutional rights. Although the former Ombudsman Act directly referred to the Commissioner for Civil Rights and the Commissioner for the Rights of National and Ethnic Minorities only, Section 32/B(4) allowed for the election of additional ombudspersons for the protection of other fundamental rights. Applying this Section, in 1995, the Ombudsman for Data Protection and later, in 2007, the Ombudsman for Future Generations were elected. All the Ombudsmen were nominated by the President of Hungary and subsequently elected by the Parliament for a 6-year term. Before the establishment of the Ombudsman for Future Generations, it was the Commissioner for Civil Rights in Hungary who was responsible for the protection of the right to a healthy environment.

The Fundamental Law (which entered into force in 2012) represented a paradigm shift in the Hungarian Ombudsman system, changing the status and constitutional role of the Ombudsman for Future Generations. Since 1 January 2012, the independent Ombudsman Offices have been merged into one, creating a new institution: the Office of the Commissioner for Fundamental Rights.¹² Under the new structure, the Commissioner is responsible for protecting human rights in general. At the same time, the two Deputies are entrusted with protecting the rights of national minorities and future generations, respectively. In questions concerning the natural envir-

10 Hungarian Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

11 Hungarian Parliament Decree No. 84/1995 (VII. 6.).

12 According to Gabriele Kucsko-Stadlmayer's classification of various powers, the Hungarian Ombudsman's Office belongs to the institutional 'Human Rights Model', where powers related to fundamental rights protection dominate the mandate of the Ombudsman. Based on the Ombudsman's powers, Kucsko-Stadlmayer differentiates between 'Basic Models', 'Rule of Law Models', and 'Human Rights Models'. The first is characterised by wide investigative powers, while the second's main priority is to monitor the lawful and proper operation of authorities. The protection of fundamental rights is prioritised in the third, Human Rights Model. Gabriele Kucsko-Stadlmayer (ed), *European Ombudsman-Institutions – A Comparative Legal Analysis Regarding the Multifaceted Realisation of An Idea* (Springer 2008) 59–66.

onment and the interests of future generations, the Ombudsman for Future Generations (Deputy Commissioner) has the right to act independently from the Commissioner. Although his office is structurally incorporated under the Office of the Commissioner for Fundamental Rights and may serve as Deputy when necessary, his unit is procedurally autonomous in its area of expertise. This is also reflected in the institution's designation: the Ombudsman for Future Generations (*a jövő nemzedékek szószólója*), an office with the power to carry out activities in its own right.¹³ In this regard, the Ombudsman is most similar to institutions entrusted with protecting children's rights,¹⁴ which are either part of the general ombudsman system or its function identity of it.¹⁵ The critical question is not necessarily the institutional structure but the legislative background that determines and circumscribes the powers and responsibilities of the Ombudsman.

The current framework of functions of the Ombudsman for Future Generations is laid down in Article 30(3) of the Fundamental Law. Pursuant to that law, the Ombudsman for Future Generations 'shall protect the interests of future generations'. At the time of its establishment, the mandate of the Ombudsman was primarily geared toward protecting the right to a healthy environment, leaving the institution with a narrower focus and authority.¹⁶ However, as of 2012, the mandate of the Ombudsman for Future Generations is not only restricted to the enforcement of this right. Institutional protection is extended to all fundamental rights which can, directly or indirectly, affect the interests of future generations. Since the Fundamental Law considers the protection of the nation's common heritage to be part of the interest of future generations, the Ombudsman can undertake action in all questions concerning the nation's common heritage. This way, the Fundamental Law provides real power to the Ombudsman, for, in practice, nearly all decisions may impact the interests of the unborn. The economy, education, health care, or State debt are all issues that inevitably affect the

13 Section 3(4) of the Hungarian Act CXI of 2011 on the Commissioner for Fundamental Rights.

14 As an example, the European Network of Ombudspersons for Children (ENOC) established in 1997, links 43 offices for children from 34 states in Europe <<http://enoc.eu>> accessed 24 November 2021.

15 For instance, ENOC works together with independent children's rights institutions: children's ombudspersons, commissioners for children, or focal points on children's rights in national human rights institutions or general ombudsman offices <http://enoc.eu/?page_id=8> accessed 24 November 2021.

16 Section 27/B(1) of the Hungarian Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

conditions, financial burden, and well-being of future generations and are, therefore, in need of institutional protection. Hence, according to Article P, consideration for future generations should become a part of every decision taken by the Hungarian legislature and enforcement bodies. There are no conceptual obstacles to prevent the Ombudsman from taking action on any of the aforementioned questions. However, acting upon such a broad interpretation of its mandate will only be possible after the institution's further consolidation into the Hungarian political and institutional system.

One of the most powerful features of the Office of the Commissioner for Fundamental Rights is its publicity and transparent operation. Every year, the Commissioner and the two Ombudsmen (the Ombudsman for Future Generations and the Ombudsman for National Minorities) report on and prepare a statistical analysis of the cases and petitions they have handled. These reports serve as important indicators of environmental policy-making and are highly relevant for the future work of the Office.

Pursuant to the new Act on the Ombudsman adopted in 2011,¹⁷ the Ombudsman for Future Generations can draw the attention of the Commissioner, other affected institutions, and the public to any suspected infringement of the interests of future generations.¹⁸ This direct channel to the public can help influence public perception of risks and long-term consequences. To enhance the efficiency of its work, the Ombudsman can use various communication tools, including patronage of noble causes, operation of an official Facebook page,¹⁹ and extensive media coverage that can reach broad segments of the population. A successful example of the latter was raising public awareness of air quality standards through the Ombudsman's cooperation with civil society organisations, governmental bodies, and local municipalities.

According to the Ombudsman Act, only the Commissioner for Fundamental Rights has the right to carry out investigations (based on *ex officio* proceedings, public complaints, or individual petitions) but the Ombudsman for Future Generations can also initiate and partake in the inspections.²⁰ If the Commissioner rejects an investigation requested by

17 Hungarian Act CXI of 2011 on the Commissioner for Fundamental Rights.

18 *ibid.*, section 3(1)(a).

19 See Jövő Nemzedékek Szószólója <www.facebook.com/J%C3%B6v%C5%91-Nemzed%C3%A9kek-Sz%C3%B3sz%C3%B3l%C3%B3ja-885959088173953/?fref=ts> accessed 24 November 2021.

20 Section 3(1)(c)-(d) of the Hungarian Act CXI of 2011 on the Commissioner for Fundamental Rights.

the Ombudsman, he must note the refusal and explain it in his annual Parliamentary report. This provides an important safeguard mechanism for *ex officio* proceedings of the Ombudsman for Future Generations. The excellent professional and institutional relationship between the Ombudsman and the Commissioner is reflected in the fact that the Commissioner has never rejected any investigations initiated by the Ombudsman to date.

Should the Commissioner and the Ombudsman for Future Generations find an instance of maladministration, they issue a *joint report*. The joint reports present the results of the investigation, reveal any noted maladministration, and, if necessary, formulate general or specific recommendations to the legislator or law enforcement authorities to remedy the harm done. Reports by the Commissioner for Fundamental Rights and the Ombudsman for Future Generations are not binding upon the Parliament, the Government, or any other addressee. However, when an infringement constitutes a violation of the Fundamental Law, i.e., the adopted regulation is not only harmful to the interests of future generations but also constitutes a breach of the Fundamental Law, the Ombudsman for Future Generations may turn to the Commissioner for Fundamental Rights to propose the submission of a petition to the Constitutional Court, requesting the annulment of the legal provision in question.²¹ Joint reports are critical when the remedy of the cases concerned can ensure the realisation of both inter-generational and intra-generational justice. In 2020, the Ombudsman and the Commissioner published 13 joint reports that concerned, in particular, the issue of noise pollution, waste management, air quality control, and environmental damage.²²

21 Decision No. 14/2020 (VII. 6.) AB of the Hungarian Constitutional Court, in which the Constitutional Court stated that several elements of the 2017 amendment of the Act on Forests is unconstitutional. The case was initiated by the Commissioner for Fundamental Rights, in agreement with the Ombudsman.

22 Joint Reports No. 540/2019, 94/2020, 385/2020, 642/2020, 669/2020, 1025/2020, 1026/2020, 1073/2020, 1100/2020, 1365/2020, 1371/2020, 2037/2020, 4642/2020. All the Joint Reports are available (in Hungarian) at the website of the Office of the Commissioner for Fundamental Rights.

1.3. The Legal Relationship between the Ombudsman for Future Generations and the Constitutional Court

The Ombudsman for Future Generations turned to the Constitutional Court in several cases *via* the Commissioner for Fundamental Rights to contribute to the protection of Hungary's natural resources. For example, in *Decision No. 14/2020. (VII. 6.) AB*, the Constitutional Court stated that several elements of the 2017 amendment of the Act on Forests are unconstitutional. The Commissioner for Fundamental Rights initiated the case in agreement with the Ombudsman for Future Generations. The Constitutional Court fully agreed with the petition that the amendment to the Forest Act primarily served the interests of forest owners by overshadowing key environmental considerations.²³

The Ombudsman for Future Generations also assists the Constitutional Court by filing *amicus curiae* briefs. *Amici curiae* may help the Constitutional Court develop its interpretation regarding the environmental provisions of the Fundamental Law. The Ombudsman can act as a guardian for future generations representing their long-term interests and influencing the decisions of the Constitutional Court by providing important legal interpretations and reasoning. In a landmark decision in 2015, the Constitutional Court annulled certain clauses of an Act which had not been promulgated at the time. The clauses in question would have made it possible for government-run authorities, whose primary responsibility was not environmental protection, to take over the management of nature conservation areas from national park directorates. Following an extensive investigation, the Ombudsman for Future Generations issued an independent Statement entitled 'National Parks as safeguards of natural and cultural values for future generations'.²⁴ His Statement concluded that pursuant to the Fundamental Law, the protection and maintenance of biodiversity and its preservation for future generations was, among others, the obligation of the State, and that the responsibility for this was best fulfilled by the exist-

23 Regarding the decision see eg Katalin Sulyok, 'The Public Trust Doctrine, The Non-Derogation Principle and the Protection of Future Generations' (2021) 1 *Hungarian Yearbook of International Law and European Law* 359; Attila Pánovics, 'Decision No. 14/2020 (VII. 6.) of the Hungarian Constitutional Court on the Protection of Forests' (2021) 1 *Hungarian Yearbook of International Law and European Law* 376.

24 *National Parks as safeguards of natural and cultural values for future generations*, Statement of the Ombudsman for Future Generations (in Hungarian), issued on 16 December 2014, 2.

ing national park directorates. The Ombudsman highlighted that the land management activities of national parks are characterised by the highest standards of preservation, stemming from their primary task to protect the natural environment. Deviating from this arrangement, therefore, would be unconstitutional.²⁵ This Statement influenced the decision of the Constitutional Court, which referred to the Ombudsman's brief as a persuasive source on the constitutional protection of the environment.

Besides *amici curiae*, based on Section 57(3) of the Act on the Constitutional Court, the Constitutional Court has the right to invite State bodies and authorities to make a declaration, send documents or give an opinion in pending cases. In 2017, the Hungarian Constitutional Court took a huge step towards the general recognition of the protection of the interests of future generations in the Hungarian legal system in an *ex post* review case initiated by Members of Parliament. In this case, the Constitutional Court had to evaluate whether the privatisation of certain Natura 2000 sites without sufficient environmental guarantees may be considered a violation of the core obligation of the State under the Fundamental Law to preserve natural resources, including biodiversity. Applying Section 57(3) of the Act on the Constitutional Court, this was the very first case in which *the Constitutional Court invited the Ombudsman to submit his detailed opinion*.²⁶ In its landmark decision, the Constitutional Court stated that:

the core obligation to protect biodiversity as the UN Convention on Biological Diversity (ratified by 196 parties, including Hungary) prescribes, is a peremptory norm of general international law accepted and recognized by the international community of States as a whole from which no derogation is permitted.²⁷

25 *ibid.*

26 In 2018 the Constitutional Court again invited the Ombudsman to submit his opinion in a preliminary norm control case, in which the President of Hungary stated that an adopted but not yet promulgated Act on groundwater is unconstitutional. See Decision No. 13/2018 (IX. 4.) AB of the Hungarian Constitutional Court. About the Decision: Marcel Szabó, 'The Precautionary Principle in the Fundamental Law of Hungary – Judicial Activism or an Inherent Fundamental Principle? An Evaluation of Constitutional Court Decision No. 13/2018 (IX. 4.) AB on the Protection of Groundwater' (2019) 1 *Hungarian Yearbook of International Law and European Law* 67–83; Gábor Kecskés, 'The Hungarian Constitutional Court's Decision on the Protection of Groundwater – Decision No. 13/2018 (IX. 4.) AB of the Constitutional Court of Hungary' (2020) 1 *Hungarian Yearbook of International Law and European Law* 371.

27 Decision No. 28/2017 (X. 25.) AB of the Hungarian Constitutional Court, Reasoning [38].

2. Behind the Institution – Theoretical Considerations Regarding the Legal Personality of Future Generations

While the representation of the interests of future generations is gaining clout in both international law and the national laws of different States, the question may nevertheless be raised whether, today, we can speak about the rights of future generations in a legal sense or merely about their interests.²⁸ The answer depends in no small part on what exactly is meant by ‘rights’ in the theoretical approach. According to the will theory of rights approach,²⁹ rights provide freedom of choice between different options. In this framework, even the rights of the child may be questioned (due to their limited judgment), just like the fact that there is no separate legal entity for future generations, which is independent of that of the present generations, could be a justification for negating next generations’ rights. This is because members of the present generation must merely preserve freedom of choice for future generations. However, were we to adopt an interest-based approach to rights, it may correctly be assumed that there are fundamental interests, the safeguarding of which is desirable since these may coincide with future generations’ likely choice of values. Therefore, maintaining such freedom of choice coincides with future generations’ interests and, at the same time, protects their rights.

In this context, the question of who precisely the members of future generations cannot be avoided. Are we to understand the members of future generations as specific individuals who may have rights? Or do they make up a group that has collective rights instead? Or, on the contrary, are future generations a general concept most characterised by potential advocacy? While many authors reject the application of collective rights to future generations, I am convinced that the rights or interests of future generations may only be perceived as group rights or collective interests. Of course, we may never be sure whether a specific member of the present generation shall have descendants or not. However, the birth and future existence of an entire next generation, at least at the level of our current scientific knowledge, is near certain. Thus, by recognising the collective

28 By way of example, Beckerman and Pasek deny the recognition of the rights of future generations in the present, but at the same time, they recognise that there is a moral obligation to take into account the interests of future generations. Wilfred Beckerman and Joanna Pasek, *Justice, Posterity and the Environment* (OUP 2001) 28.

29 Bernhard Windscheid, *Lehrbuch des Pandektenrechts I-III* (Rütten und Loening 1906).

nature of future generations' interests or rights, we do not have to consider the individual and varied decisions of specific members of the present generation. Instead, the interests or rights of future generations may be protected by relying on predictable average human behaviour based on rational situational awareness and decision-making.

The relevant literature reveals that future generations may have different rights in relation to each other. Therefore, the issue that their rights may conflict must also be addressed.³⁰ To solve this conundrum, some suggest we only owe a duty of care to the generation following us. Otherwise, the future is uncertain; we do not influence the fate of further generations. In my opinion, however, the present and the future are separated by this exact moment when this paper was written, which is the only certainty in the relationship between the present and the future. I am convinced that the members of this current generation should recognise future generations' fundamental interests, with the ensuing ethical conclusions to be drawn by humanity.

3. *The Interests of Future Generations in International Law*

Issues related to future generations appeared in the system of international law quite early on, with the emergence of international environmental law. For example, the first principle of the Declaration adopted at the 1972 UN Conference on the Human Environment³¹ states that humanity must take responsibility for protecting and improving the environment for present and future generations. Twenty years on, in 1992, the Rio Declaration³² reaffirmed this concept in its third principle stating that '[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.' A similar example in international law is the obligation enshrined in the Framework Convention on Climate Change,³³ according to which parties must preserve the climate system for the benefit of present and future generations of humankind.³⁴

30 László Sólyom, 'A jövő nemzedékek jogai és ezek képviselője a jelenben' in Benedek Jávör (ed), *A jövő nemzedékek jogai* (Védegylet, Budapest 2000) 38.

31 United Nations Conference on the Human Environment, Stockholm, 15–16 June 1972.

32 1992 Rio Declaration on Environment and Development.

33 United Nations Framework Convention on Climate Change, UNFCCC. The Convention was adopted on 9 May 1992 in New York.

34 Article 3(1) of the Convention.

On 26 February 1994, experts from UNESCO and the Cousteau Society adopted the Universal Declaration of the Human Rights of Future Generations in Laguna. This is, of course, not an interstate declaration but a mere scientific expert background document, a tool to influence legal development.³⁵ Then, on 12 November 1997, UNESCO's General Conference adopted the Declaration on the Responsibility of the Present Generation Towards Future Generations.³⁶ The first article of the Declaration states that present generations are responsible for ensuring that the needs and interests of present and future generations are fully safeguarded. According to Article 4 on the Preservation of life on Earth, the present generation inherited the Earth temporarily. It should take care to use natural resources reasonably and ensure that harmful modifications of the ecosystems do not prejudice life and that scientific and technological progress in all fields does not harm life on Earth. According to Article 5 on the Protection of the environment, present generations should preserve the quality of the environment, natural resources, and living conditions. They should ensure that future generations are not exposed to pollution, which may endanger their health or even survival. Before any changes are carried out, present generations should consider the possible consequences of major projects for future generations. The declaration adopted within the framework of UNESCO may only be regarded as a soft law norm in the international law sense. Still, at the same time, it expresses the position of the States and the direction of international law development.

In international law, talking about the rights of future generations is problematic – even compared to national law. According to the traditional international law approach, the primary subjects of international law are States. Legal personality has been extended to international organisations only after the gradual development of international law. Meanwhile, in certain cases, individuals may only be subjects of international law. According to relevant jurisprudence, in particular situations, the concepts of 'common heritage of mankind' and 'common cause of humanity' may confer legal personality on the whole of humanity. In this respect, future generations, i.e., humanity on Earth, may even be considered a special subject of international law. Still, this approach is far from being generally accepted

35 La Laguna declaration on human rights by the 1st International Colloquium on Human Rights, La Laguna, Tenerife (Spain), 1–4 Nov. 1992. A/CONF.157/LACRM/7.

36 The General Conference of the United Nations Educational, Scientific and Cultural Organization: Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997.

in international law. In light of the foregoing, it is understandable why UNESCO has chosen humanity's responsibility in the present as the basis for their approach towards future generations and why they were silent on rights and obligations.

4. *Some Aspects of Taking the Interests of Future Generations into Account*

I am convinced that the (legal and political) representatives of the present generations shall (or, at least, may) also consider future generations' interests within the framework of ethics, economics, and law.

4.1. Ethical Aspects

For centuries, the main driving force behind human history was the idea that the world is gradually developing and improving the standard of living. Technical means are constantly being refined, the environment surrounding us is continuously enhanced, and the quality of life is improving, with the result that everyone will live a better life and have more to consume. This approach, however, is only valid until it is assumed that resources are endless and can be exploited without limits.

The climate change phenomenon shows that this assumption does not hold water. Future generations will hardly be able to increase the use of resources and consume more than today's generations. On the contrary, a significant decrease in available resources and consumption is expected in terms of both their absolute value and their value *pro capite*. However, it follows from our responsibility towards future generations that we raise the question: if it is already certain that we cannot improve our lives and living conditions, what sacrifice should we make in order not to impair the living conditions of our children, grandchildren, and other members of the future generations and to provide them with the opportunity of free choice? Even though today's generation's responsibility for future generations is set out in an increasing number of legal documents, this responsibility is considered an ethical problem.

Responsibility for future generations sheds light on a further issue. The next generations belong to specific societies instead of specific individuals. Therefore, responsibility for future generations can be understood at the level of the whole society rather than that of particular individuals. How-

ever, the question may be raised whether preserving the living conditions for future generations requires the same level, or at least the same proportion, of sacrifice from all members of today's generations – regardless of whether they are citizens of an industrialised or a developing country. Regarding the fact that today's countries' financial and other opportunities differ significantly, I believe that such differences between actual living conditions should also be considered when determining our scope of responsibility for the next generations. Intra-generational equity requires each country to ensure the survival of its descendants. This is in the knowledge and hopes that other countries also undertake a similar responsibility and sacrifice towards their future generations. While from an ethical point of view, we may expect everyone to take all necessary measures in the interest of their descendants, the approach requiring action from today's generations in the interest of future generations in other parts of the world is already doomed to fail, on account of overriding economic, geographical, political and other objective differences.

The cornerstone of thinking about our responsibility for future generations is that the members of a nation can give a uniform answer to the question of who we are, what cultural and ethical values we subscribe to, what we want to leave to our children, grandchildren, and other members of the future generations, and how should we change our current consumption and everyday life to achieve this end. In his encyclical letter 'Laudato si', Pope Francis underlines that the sense of today's generations' life may be questioned if they leave an uninhabitable world to subsequent generations.³⁷

In general, we may say those countries are willing to make a more significant sacrifice where for certain reasons (like belonging to the same country), there is already a direct and institutionalised link between today's generation and future generations. Although international law introduced *inter alia* the category of inter-generational equity, it still lacks any actual means to affect the implementation of such equity. By contrast, the national law of certain States already contains institutions (mostly falling within the scope of the social care system) that are aimed at achieving inter-generational cooperation. Such institutions include, for example, old-age pensions or childbirth allowances, although these institutions only tangentially address the long-term framework for cooperation between present and future

37 Encyclical Letter *Laudato si'* of the Holy Father Francis on Care for Our Common Home, 2015, para. 206.

generations. Therefore, we may conclude that while the institutions of international law are suitable for designating the scope of inter-generational equity, it is up to the States to determine its content.

4.2. Economic Aspects

The current economic model is based on increasing consumption and production and the idea that their continuous development can satisfy the needs of a growing world population. The greatest weakness of this model is that our Earth's resources are limited. While the citizens of industrialised States already exploit natural resources intensively to ensure their well-being and quality of life, citizens in developing countries also seek to reach such a level of well-being. This effort, however, will result in an unsustainable situation, already in the short term (by 2050, according to certain pessimistic forecasts).³⁸

According to Principle 8 of the 1992 Rio Declaration, 'to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.'

This means that due consideration of the interests of future generations and the responsible management of the Earth's resources requires revisiting our basic economic approach. In my opinion, a key element may be decoupling,³⁹ that is, separating the economic concept of growth from natural growth (in terms of consumption). While statistically, growth is virtually unlimited (at least in theory), our Earth's limited resources constitute an absolute limit for physical growth. The institution of decoupling is not unprecedented in economic history. For example, the quantity of cash issued by national banks no longer corresponds to the quantity and value of gold, serving initially as a coverage for the money issued.

In my view, the implementation of decoupling, in this case, is by no means impossible. Decoupling would be supported, for example, by making public administration eco-friendly, by prescribing the obligatory

38 See eg the 2022 Report of the UN FCCC titled 'Nationally determined contributions under the Paris Agreement'. FCCC/PA/CMA/2022/4.

39 The OECD Environment Programme, Indicators to measure decoupling of environmental pressure from economic growth. Executive Summary <<https://perma.cc/2Z9V-PMSD>>.

recycling of raw materials in the construction of infrastructure, or by the mandatory consideration of calculations regarding the efficiency of certain investments and their proper accounting. However, the issue in this respect (similar to carbon dioxide emissions) is obtaining stakeholders' joint support. Market players will refrain from adopting a different market practice if they consider its introduction a competitive disadvantage; otherwise, they would threaten their own market position.⁴⁰

On a smaller scale, institutions following the concept of sustainable development already exist. Such institutions include community banks that support and finance specific green activities (even from their profits).⁴¹

According to this thinking, we should not consider ecological services as externalities when establishing product value.⁴² For example, when developing countries make their raw materials available to industrialised countries today, economic calculations almost ignore the extent to which the ecological service value in the State concerned decreases as a result of the production of the specific raw material (for example, in case of exhaustion of mines or excessive use of soils, etc). While economic thinking is based on the law of supply and demand, States (or the community of States) may establish a legal framework that duly considers the costs of production, which should also be reflected in pricing. These costs include the destruction of important ecological services to support restoration and the reasonable use of such ecological services. In addition to the legal framework, ethical considerations should not be ignored either. The laws of supply and demand (that is, a more advantageous offer) shall not undermine ecological aspects, even exceptionally, not only because it is prohibited by law but also because such offers are unacceptable from an ethical point of view. Considering the different weights of market players, the world's leading economic powers should cooperate in imposing such an approach on the market as a whole. This holds true because the long-term interests of States are the same in this respect (even though this may not always be obvious, when one considers short-term political interests).

40 *Decoupling Natural Resource Use and Environmental Impacts from Economic Growth* (UNEP 2011).

41 *Green Investment Banks – Policy Perspectives* (OECD 2015); *Greening the Banking System – Taking Stock of G20 Green Banking Market Practice* (2016) 12(16) UNEP Inquiry Working Paper 1.

42 TEEB, 'The Economics of Ecosystems and Biodiversity' (2010) TEB Reports for Business <<https://perma.cc/FB2S-4SB2>>.

Furthermore, discounting also plays an essential role in today's economic thinking. By recognising future damage at a smaller current value, discounting creates a link between (ecological) damage arising in the distant future and a financial advantage that may be realised in the immediate future.⁴³ However, this approach prioritises current economic advantage over mid-term and long-term damage.⁴⁴

Meanwhile, the concept of so-called green economics⁴⁵ already exists. Green economics also considers ecological services and assigns a value to them, including them in the analysis of economic processes. While today this approach is pushed into the background by mainstream economic thinking, it is clear that reform ideas that would be suitable for applying the concept of sustainable development and the responsible management of environmental resources against the unconditional achievement of short-term economic advantages also exist in the field of economics.

4.3. Legal Aspects Flowing from the Ethical and Economic Aspects

Our responsibility for future generations may primarily be assessed at the national (Member State) level. Nevertheless, we must apply an approach that reaches beyond the Member State level when protecting human rights, particularly the so-called second and third generation of human rights.⁴⁶ Article 1 of the International Covenant on Economic, Social and Cultural Rights sets out that '[a]ll peoples may [...] freely dispose of their natural wealth and resources [...]. In no case may a people be deprived of its means of subsistence.' Although each State ensures the enforcement of fundamental human rights within their territories (with due regard also to their legal systems and cultures), they typically fail to take into account whether economic operators (including, in particular, multinational companies)

43 Cedric Philibert, 'Discounting the Future' (*Internet Encyclopaedia of Ecological Economics*, June 2003) <<https://perma.cc/MN5C-779M>>.

44 Joseph H Guth, 'Resolving the Paradoxes of Discounting in Environmental Decisions' (1995) 18(95) *Transnational Law & Contemporary Problems* 95.

45 Cameron Allen and Stuart Clouth (eds), *A Guidebook to the Green Economy* (UN Division for Sustainable Development 2012).

46 Regarding the current concept of the development and possible categories of human rights, see eg Spasimir Domaraczki and Margaryta Khvostova, 'Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse' (2019) 20 *Human Rights Review* 423.

within their jurisdiction respect fundamental human rights in their foreign operations. The reason may be that such regulation does not consider the global processes it may trigger. Such a direct link exists where rules on water resources impact neighbouring countries using the water base⁴⁷ or where emissions of pollutants affect the territory of neighbouring States (transboundary effect). An indirect link exists, however, when the said effect on other States and their citizens can only be construed indirectly. I believe that an (international) legal environment that allows for establishing legal responsibility not only in the case of direct links but also in the case of scientifically substantiated indirect links would also be suitable for enforcing responsibility for future generations and promoting responsible management of resources.⁴⁸ Taking into account the 2001 Articles on the international legal responsibility of States for wrongful acts,⁴⁹ State responsibility would be based on non-compliance with the so-called due diligence obligation.⁵⁰

Certain international agreements (primarily those with the environment or human rights as their subject) already apply to monitoring mechanisms and from time to time investigate the Contracting Parties' practice of implementation.⁵¹ Extending this monitoring to all areas related to climate change and the issue of responsibility for future generations may contribute to establishing the foundations of global solidarity and reducing intra-generational inequality.

Furthermore, setting forth legal consequences is a significant element of regulating responsibility for future generations. The current rules of international law, particularly those relating to climate change, are much more directed towards managing damage that has already occurred than

47 See eg *Handbook on water allocation in a transboundary context* (United Nations 2021).

48 Katalin Sulyok, *Science and Judicial Reasoning* (CUP 2020).

49 For completeness, it is worth mentioning that the Trail Smelter arbitration case (16 April 1938, and 11 March 1941) has played an important role in influencing the development of international environmental law, and the (customary) law of state responsibility. *Reports of International Arbitral Awards, Vol. III* (United Nations 2006) 1905–1982. Rebecca M Bratspies and Russell A Miller (eds), *Transboundary Harm in International Law. Lessons from the Trail Smelter Arbitration* (CUP 2006).

50 Timo Koivurova, 'Due diligence' in *Max Planck Encyclopedia of Public International Law* (OUP 2010).

51 Examples of monitoring: regular country visits by elected or appointed experts; *ad hoc* inspections on-site by experts; evaluations based on questionnaires; written reporting, done by the member states (self-assessment).

preventing it or restoring the original condition (where possible). So, for example, receiving persons fleeing from uninhabitable areas requires significant economic and social resources from the States concerned. With careful planning, these resources could also be used to prevent the causes of environmental degradation, solving problems at the source. This is also important because while climate change may render the environment of billions of people uninhabitable, the European Union, a leading economic power of the world, may only be capable of receiving some ten million refugees.

Intra-generational solidarity, as mentioned above, requires that we change our current perspective primarily (and, in many cases, exclusively) based on economic interests. The classic liberal economic policy of Adam Smith and David Ricardo is based on the self-regulating power of the market. It assumes that free market processes, which are free from government intervention, create an economic order yielding ideal outcomes for everyone. While it is unquestionable that the extension of economic cooperation was a success in many areas (for example, the European Union or the WTO was also established and operated based on this idea), intra-generational solidarity requires State (and international legal) intervention and subjecting classic free market processes to legal and ethical limits. In my view, two issues arise in this respect.

On the one hand, legal and ethical limits are not applied. It is hardly justifiable from a legal or ethical point of view that within the framework of the WTO, (mineral) water is considered a commodity just like any other product.⁵² Therefore, according to market processes and interests, the water resources of a developing country may also be used for supplying an industrialised country, allowing the latter to save its own water resources. On the other hand, State legislation (or, as the case may be, the community of States) should be resilient enough to withstand lobbying even when, due to the rationalisation of economic processes and the increased efficiency of production, the business interests of market players come into conflict with legal and ethical rules.

Similar trends also apply where agricultural land (arable land on the territory of the relevant State) is acquired or leased by foreign market players. As both international law and EU law, as well as the national law

52 Mike Muller and Christophe Bellmann, *Trade and Water – How Might Trade Policy Contribute to Sustainable Water Management?* (International Centre for Trade and Sustainable Development 2016) 14–17.

of several countries, allow for the lease and acquisition of arable land by foreigners, certain industrialised countries may satisfy the needs of their citizens by using the resources of other States, sparing the use of their own arable land.⁵³ The relevance of this topic is well demonstrated by the fact that, for example, within the European Union, arable land is considered an investment within the scope of the free movement of capital, which the Member States may only exceptionally restrict. Furthermore, under EU law, Member States allow for the acquisition of their arable land by the citizens of other Member States (and non-EU countries).⁵⁴

Another example of the conflict between legal and ethical aspects is the regulation and practice concerning the prohibition of child labour.⁵⁵ Although, in principle, all States of the world support the ban on child labour, certain States and international organisations have failed to take efficient action against multinational companies that obtain advantages on the market through the indirect use of child labour. Currently, action against such market players is primarily based only on the ethical values of society.⁵⁶

The European Union achieves its most important economic objectives from a budget corresponding to hardly 1% of the Member States' budget. Thus, if we spent only 1% of the world trade turnover to mitigate inter-generational and intra-generational inequalities, significant progress could be achieved in preserving natural resources for future generations and, ultimately, in the fight against climate change.⁵⁷ Given that, I believe that

53 The law of foreign investments deals with this question in detail. Generally speaking, human rights law may support the right of foreigners to acquire property. Within the EU, there are specific rules concerning agricultural land (under the legal regime of the freedom of capital).

54 Case C-52/16, *SEGRO*, Judgment of 6 March 2018, ECLI:EU:C:2018:157.

55 The ILO Conventions and Recommendations concerning child labour are available at <<https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm>> accessed 24 November 2021

56 See eg the class action lawsuit against Nestlé, Hershey, Cargill and other companies, in which the plaintiffs (eight citizens of Mali) alleged that the respondent companies were using child labour on Ivory Coast cocoa farms. The lawsuit was dismissed in 2022 for procedural reasons <<https://www.reuters.com/business/hershey-nestle-cargill-win-dismissal-us-child-slavery-lawsuit-2022-06-28/>> accessed 14 March 2023.

57 On the other hand, one can argue that it is mostly western and colonial states that are responsible for the current (and possible future) environmental crisis. For this reason, according to the above mentioned articles of state responsibility, these states should bear the burden but they are the most reluctant to change the current course of events despite the fact that the priority for many populations is to survive now.

the current regulatory environment should be revisited based on ethical aspects. This also holds true for the obligation to preserve natural resources for future generations. Several natural resources may be fully exhausted within a couple of decades if the current depletion rate is maintained. While a couple of decades is a very short period compared to the history of humanity, in the world of short-term political objectives, it is long enough to be put into the focus of political thinking. For example, in its decision No. 28/2017. (X.25.) AB, the Hungarian Constitutional Court found that the obligation to preserve biological diversity is ‘a necessarily applicable rule of the international law, and it also reflects the intention of the international community as a whole.’⁵⁸ Legal solutions engaging similar, existing legal means to preserve natural resources may be an example for legislators, those applying the law, and (constitutional) courts globally.

Long-term thinking is already used in legislation when adopting professional strategic plans for several years or decades, typically. What is common to such plans is that they are elaborated primarily based on expert aspects instead of political ones. Furthermore, while they are not directly binding, their continuous consideration and application by the legislator are (or would be) desirable. In most countries, such strategies cover the development of road networks, the use of water resources, flood protection or the preservation of biological diversity. While an ideal legislative process would entail full consideration of strategic findings, certain States, as compared to their current practices, would already make significant progress if they specified in their constitutional rules that, in accordance with the precautionary principle, rules jeopardising the achievement of strategic objectives shall not be enacted in legislation. In this vein, in its decision No. 13/2018. (IX.4.) AB concerning the protection of groundwater resources, the Hungarian Constitutional Court pointed out that:

for mid-term and long-term planning and foreseeable legislation, certain strategies [...] are deemed to be professional starting points which should be taken into account also with regard to the precautionary principle and the principle of prevention [...], accordingly, the failure to take into

58 Decision No. 28/2017 (X. 25.) AB of the Hungarian Constitutional Court, Reasoning [38].

account such professional strategies shall be assessed separately during the assessment of unconstitutionality of legislative changes.⁵⁹

Further to strategic documents, several national parliaments have a body that is mainly responsible for taking into account sustainable development (or, in a broader sense, the interests of future generations), such as all the 54 members of the Global Network of the National Councils for Sustainable Development.⁶⁰ What is common to those bodies is that their members come from professional and scientific research institutes, universities, and civil society organisations in addition to politics, and they are responsible for *inter alia* taking a position on whether legislative bills comply with the concept of sustainable development. They may also initiate legislation (where applicable).

Even though such institutions exist in several states, in many cases, legislators do not accept their recommendations (primarily for budgetary reasons). Therefore, it would be desirable to ensure that the legislator does not ignore the experts' position of bodies responsible for enforcing sustainable development. (It is worth noting that adopting the national budget in several countries is subject to a supporting opinion from the court of auditors or the budgetary council).⁶¹ Such strategic bodies may also become entitled to assess the practical implementation of laws already adopted and to propose legislative amendments where necessary.

While certain strategic documents are to be adopted only at the national level, the protection of the interests of future generations may be implemented globally. Several international civil society organisations requested the creation of a position similar to that of an ombudsman or the UN High Commissioner for Human Rights as an element of the UN's reform at the Rio+20 summit. The person filling that position would be specifically responsible for protecting the interests of future generations.⁶² Even though this institution has not been established yet, the UN Secretary-General was

59 Decision No. 13/2018 (IX. 4.) AB of the Hungarian Constitutional Court, Reasoning [40].

60 Global Network of National Councils for Sustainable Development and Similar Bodies, *Country Profiles* <<https://www.ncsds.org/index.php/sustainable-development-councils/country-profiles.html>> accessed 14 March 2023.

61 Within the EU, see eg the research report of the IMF <<https://blog-pfm.imf.org/en/pfmblog/2019/05/how-parliamentary-budgets-are-set-and-managed-in-europe>> accessed 14 March 2023.

62 World Future Council, *Bringing Added Value to the High Level Political Forum: A High Level Representative for Future Generations* <<https://perma.cc/KS46-GQPT>>.

invited to prepare a report on the situation of future generations within the auspices of the UN.⁶³ The report specified that a position responsible for future generations might be set up within the UN, and national institutions specifically responsible for the protection of the interests of future generations were presented as models to be followed by the UN Member States. The UN Secretary-General's report highlighted eight national institutions as examples: the Secretary-General considered the institutions of Canada, Finland, Germany, Israel, Hungary, Norway, New Zealand, and Wales as pioneers in promoting sustainable development and inter-generational solidarity.⁶⁴ Below, among these model institutions, I will describe the framework for the operation of the Ombudsman (and also the Deputy Commissioner for Fundamental Rights) responsible for the protection of the interests of future generations in Hungary, highlighting the elements that may serve as a model for other States in protecting the interests of future generations.

5. Concluding Remarks

Scholars generally agree that the institutional representation of future generations should not be uniform across different countries and regions. It is argued that such efforts must be tailored to the specific characteristics of the inter-generational issues at hand and each country's cultural and legal specificities.⁶⁵ The effectiveness of future generations' institutional representation depends on many factors, only one of which is the institutional framework. This framework can be filled with substance based on the perspectives, available tools, and opportunities for cooperation between individual representatives. The model institutions with the most freedom to interpret their mandate are usually Ombudsman institutions. Therefore, in the case of this establishment, it is essential to how the holder of the office interprets the norms regulating its powers and how it uses the oppor-

63 *Intergenerational Solidarity and the Needs of Future Generations*, Report of the Secretary General, A/68/100, 2013.

64 *ibid.*, para. 39.

65 Boldizsár Nagy, 'Speaking Without a Voice' in Emmanuel Agius and Salvino Busuttill (eds), *Future Generations and International Law* (Earthscan 1998) 62.

tunities afforded to it.⁶⁶ So far, all Ombudsmen for Future Generations have sought to take advantage of the broad spectrum of opportunities, exploiting the potential in this unique institution. They truly aspired ‘to make human responsibility felt in all [areas] of State and civil life, with respect to the conservation of natural values ... for the sake of protecting the next generations.’⁶⁷

One of the most important guarantees of the success of the Hungarian Ombudsman for Future Generations is the public’s support and participation in its activities. Environmental concerns raised by the Ombudsman are often met with a strong response from the crowd, urging decision-makers to re-think the problem and potential solutions. However, it is essential to point out that the intensity of the public response directly connects with the amplification of the Ombudsman’s message by the media. Since long-term thinking is not a typical feature of the press, it is difficult to publicise issues concerning the interests of the unborn. It is primarily issues that have day-to-day relevance that is taken up by the media. In cases where no acute event draws attention to the importance of a cause, the biggest supporter of the Ombudsman is the scientific sphere. If the Ombudsman wants to prove that certain decisions and processes cause permanent environmental damage, it is much easier to achieve progress if the Ombudsman works in close cooperation with the Hungarian Academy of Sciences and professional NGOs. Supported by sufficient scientific evidence, it is harder for the political sphere to disregard the assertions of the Ombudsman.

The change in the institutional set-up of the Office of the Commissioner for Fundamental Rights in 2012 resulted in a number of positive changes. With the adoption of the Fundamental Law of Hungary, the constitutional powers of the institution were considerably widened. The Fundamental Law entrusted the Ombudsman for Future Generations with protecting the interests of future generations, while the Ombudsman Act refers to the rights of future generations as the object of protection. Cooperation with the Commissioner for Fundamental Rights is critical in a number of cases in which the given problem only partially concerns the protection of future generations. Coordinated, joint action can therefore be valuable or may even become an essential source of legal protection. In accordance

66 Bernadette Somody, ‘Jogállami paradoxon – A sikeres ombudsmani jogvédelem sajátosságai’ in Éva Heizerné Hegedűs (ed), *Az ombudsman intézménye és az emberi jogok védelme Magyarországon* (OBH 2008) 101–106.

67 See the Comprehensive Summary of the Parliamentary Commissioner for Future Generations of Hungary <<https://perma.cc/4223-F8TF>>.

with the precautionary principle, the Ombudsman for Future Generations frequently relies on early warnings. He presents his position in the earliest stages of a potentially unlawful activity when the Commissioner is not entitled to act.

The example of the Hungarian Ombudsman for Future Generations shows that while the protection of future generations could potentially affect all policies, their representation cannot be effectively expanded to all fields of legislation and governance. No national institution to protect future generations will ever be mandated to act as a branch of power taking action on behalf of future generations. Therefore, the activities of future generation institutions should mainly focus on the 'conservation of options', as Brown Weiss put it. That is to say, they must concentrate their efforts on helping maintain the quality of the environment and ecology to whatever degree possible, acting for the preservation of biodiversity, clean air, soil, water, and other natural resources.