

National institutions for the protection of the
interests of future generations

Instituições nacionais para a protecção
dos interesses das gerações futuras

MARCEL SZABÓ

VOL. 2 Nº 2 JULHO 2015

WWW.E-PUBLICA.PT

NATIONAL INSTITUTIONS FOR THE PROTECTION OF THE INTERESTS OF FUTURE GENERATIONS

INSTITUIÇÕES NACIONAIS PARA A PROTECÇÃO DOS INTERESSES DAS GERAÇÕES FUTURAS

MARCEL SZABÓ¹

Office of the Commissioner for Fundamental Rights

Nádor u 22.

H-1051, Budapest

Hungary

marcel.szabo@jak.ppke.hu

Abstract: Drawing from the persistent challenges related to sustainable development, the Rio+20 Summit invited the Secretary General of the United Nations to provide a report on the need for promoting intergenerational solidarity for the achievement of sustainable development, taking into account the needs of future generations. The Secretary General released his Report entitled “Intergenerational Solidarity and the Needs of Future Generations” in 2013, in which he established that intergenerational solidarity is embedded in the concept of sustainable development, and is a universal value of humanity. The Report named eight national institutions that have launched effective programs for the representation and protection of the needs of future generations and can serve as models for the further promotion of intergenerational solidarity. Furthermore, the Secretary General invited the UN High Level Political Forum to consider the most suitable mechanisms to promote intergenerational equity and sustainable development at the UN level. The present article seeks to explore the diverse solutions presented in the Secretary General’s Report for the institutional protection of the human and natural environment, with the aim to delineate options for possible models to institutionalise concern for future generations at the national level, as well as to suggest options towards international cooperation to foster intergenerational equity and sustainable development at the regional and the global level.

Keywords: sustainable development, intergenerational solidarity, representation of future generations, institutional solutions, international cooperation and network

Palavras-chave: desenvolvimento sustentável, solidariedade entre gerações, representação das gerações futuras, soluções institucionais, cooperação internacional e network

1. Ombudsman for Future Generations in Hungary

Editor-in-Chief of the *Hungarian Yearbook of International Law and European Law*

Chair of the Department for European Law at the Pázmány Péter Catholic University of Budapest, Faculty of Law.

marcel.szabo@jak.ppke.hu

Summary: 1. Introductory words – Challenges for the Global Process of Sustainable Development; 2. The International Legal Foundations of Inter-generational and Intragenerational solidarity; 3. National Institutions for Future Generations – the Way Towards International Cooperation?; 3.1. Wales Commissioner for Sustainable Futures; 3.2. Ombudsman for Children, Norway; 3.3. Commissioner of the Environment and Sustainable Development, Canada; 3.4. Knesset Commissioner of Future Generations in Israel; 3.5. Committee for the Future – Parliament of Finland; 3.6. New Zealand Parliamentary Commissioner for the Environment; 3.7. German Parliamentary Advisory Council on Sustainable Development; 3.8. Ombudsman for Future Generations of Hungary; 3.9. Comparison of the Model Institutions; 4. International Network Between National Human Rights Institutions; 5. Conclusion.

1. Introductory Words – Challenges For The Global Process Of Sustainable Development

There is a deep concern over the de facto collapse of both the international treaty based protection of biological diversity and the prevention mechanisms against climate change at the international level.² The United Nations Conference on Environment and Development, which was held in Rio de Janeiro in 1992 with the participation of 172 countries, aimed at facilitating the creation of a new global partnership between states and nations primarily in order to tackle environmentrelated global issues and to promote development under the aegis of the UN.³ The Rio Earth Summit was a major advance for the cause of sustainable development and the participants hoped that, through adopting two international treaties of paramount importance, the Convention on Biological Diversity⁴ and the United Nations Framework Convention on Climate Change (UNFCCC),⁵ they had given a significant impetus to the global cause of environmental protection. Unfortunately, the hopeful expectations regarding the Rio Conventions had turned out ungrounded.⁶ Greenhouse gas emission increased at a faster pace between 2000 and 2010 than at any time over the previous three decades, catalysing extremely harmful environmental processes.⁷ The adverse changes related to biological diversity are well exemplified by the fact that since 1965, the territory of national parks and other terrestrial protected areas increased by 600 percent, while at the same time humanity faced a 40 percent loss of biological diversity in non-maritime areas, and 20 percent in the world oceans.⁸ Furthermore, the world's vertebrate populations have halved in the last 40 years as humans put unsustainable demands on Earth.⁹

Although there is a growing literacy about worldwide environmental problems,

2. See among others ANDERS WIJMAN / JOHAN ROCKSTROM, *Bankrupting Nature: Denying Our Planetary Boundaries*, London, Routledge, 2012, p. 185; T. PRUGH, Getting to True Sustainability, in L. STARKE (Ed.), *State of the World 2013: Is Sustainability Still Possible?*, Washington, Island Press, 2013, p. 111; BRENDAN MONTAGUE, Analysis: Rio+20 – epic failure, Bureau Stories, 2012, available at: <http://www.thebureauinvestigates.com/2012/06/22/analysis-rio-20-epic-fail/>

3. VED P. NANDA, Environment, in OSCAR SCHACHTER / CHRISTOPHER C. JOYNER (Eds.), *United Nations Legal Order*, II, New York, The American Society of International Law, 1995, p. 660.

4. United Nations Convention on Biological Diversity, 5 June 1992, 31 ILM 818 (1992).

5. United Nations Framework Convention on Climate Change, 4 June 1992, 31 ILM 849 (1992).

6. KAL RAUSTIALA / DAVID G. VICTOR, Biodiversity Since Rio: The Future of the Convention on Biological Diversity, *Environment*, XXXVIII, 4, 1996, pp. 17 ff.; GERALD KUTNEY, *Carbon Politics and the Failure of the Kyoto Protocol*, New York, Routledge, 2014, pp. 192 ff.

7. OTTMAR EDENHOFER et al. (Eds.), IPCC, Climate Change (2014), *Mitigation of Climate Change – Summary for Policymakers, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2014, p. 6.

8. CAMILO MORA / PETER SALE, Ongoing Global Biodiversity Loss and the Need to Move Beyond Protected Areas: a Review of the Technical and Practical Shortcomings of Protected Areas on Land and Sea, *Marine Ecology Progress Series*, 434, 2011, pp. 251-255.

9. R. McLELLAN et al., *Living Planet Report 2014: Species and Spaces, People and Places*, WWF, Gland, Switzerland, 2014, p. 16.

global protection seems to remain a too remote concept for states and citizens.¹⁰ However, institutions serving as watchdogs on the state of the environment and long-term governance, which take into account the needs of future generations, proved to be efficient tools in challenging the current political and economic status quo at the national level.

In this paper, I argue that the development of such national institutions working in an internationally coordinated manner, can better serve the aim of global protection of nature. Sharing experience and best practices proven themselves at the state level could be channeled into a coordinating body operating under the auspices of the United Nations, to collaborate efforts and strengthen the roles of national institutions in the advancement, promotion and protection of the interests of future generations. To his end, the aim of the present paper is to analyse the institutional characteristics, competences and procedures of those national institutions which play a pioneering role in the national implementation of sustainable development and intergenerational solidarity, in order to delineate options for possible models of institutionalising concern for future generations at the national level, as well as to suggest possible solutions towards international cooperation to foster intergenerational equity and sustainable development at the regional and the global level.

2. The International Legal Foundations Of Intergenerational And Intragenerational Solidarity

Nowadays it is gradually gaining recognition that the principle of intergenerational solidarity is embedded in the concept of sustainable development and existing treaties.¹¹ The first, generally recognised definition of the notion of sustainable development was given in the report entitled “Our Common Future”,¹² issued by the Brundtland Commission in 1987,¹³ according to which sustainable development is a type of “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Sustainable development therefore entails the integration of economic, social and environmental objectives for safeguarding the human well-being of the present generation without compromising that of future generations. Three fundamental conventions, the Convention on Biological Diversity,¹⁴ the UNFCCC¹⁵ and the

10. PHILLIP J. COOPER / CLAUDIA MARIA VARGAS, *Implementing Sustainable Development: From Global Policy to Local Action*, Lanham, Rowman & Littlefield, 2004, pp. 147 ff.

11. EDITH BROWN WEISS, Our Rights and Obligations to Future Generations for the Environment, *American Journal of International Law*, LXXXIV, 1990, p. 198; EDITH BROWN WEISS, Intergenerational Equity, Toward and International Legal Framework, in NAZLI CHOUCRI (Ed.), *Global Accord: Environmental Challenges and International Responses*, Cambridge, Mass., MIT Press, 1993, p. 333.

12. A/42/427, *Our Common Future*: Report of the World Commission on Environment and Development.

13. The Brundtland Report was incorporated by Resolution 42/187 of the UN Assembly.

14. Article 2 of the United Nations Convention on Biological Diversity, 5 June 1992, 31 ILM 818 (1992).

15. Article 3 (1) of the United Nations Framework Convention on Climate Change, 4 June

World Heritage Convention¹⁶ introduced to international law the legal concept of intergenerational solidarity as forming part of sustainable development. These universally accepted conventions laid down the legal framework and models to ensure the enforcement of intergenerational justice through coordinated efforts.¹⁷ For the signatory states a legal duty arises to undertake domestic action aiming to protect and conserve natural heritage for the benefit of present and future generations, which is supplemented by the duty of international cooperation and assistance for the effective implementation of treaty obligations.

In the course of the evolution of international law, the concept of sustainable development has established itself in international treaty law,¹⁸ and the evolution of the latter has, in turn, also clarified the concept's content.¹⁹ In some treaties sustainable development is but a fashionable catchphrase of our times emerging in the text without specific content (as in the case of the Energy Charter Treaty²⁰), in others economic activities conducted with special regard to the interests of future generations embody the *raison d'être* of the treaty, substantiating cooperation (as in the case of the Statute of the International Renewable Energy Agency²¹). In some cases sustainable development serves as an expression of protectable natural values, human existence and the urge to develop associated therewith. For example, in connection with the Agreement on the Conservation of Gorillas and their Habitats,²² the parties made it clear that in the course of conserving the gorillas' habitat the sustainable development needs of the local communities should also be taken into consideration.²³ In the case of the most significant environment-related international treaties, however, sustainable development manifests itself as follows: the parties usually seek to conduct and coordinate their economic activities as regards to a shared natural resource, e.g. a shared river delta, in a way that would allow them to respect the interests of the other parties concerned and the interests and needs of future generations as well. Examples of such treaties are the Convention on the Sustainable Development of Lake Tanganyika²⁴ and the Agreement on the Cooperation for the Sustainable Development

1992, 31 ILM 849 (1992).

16. Article 4 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, 1037 UNTS 151; 27 UST 37; 11 ILM 1358 (1972).

17. NICO J. SCHRIJVER, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 102 ff.

18. ALAN E. BOYLE / DAVID FREESTONE, *International Law and Sustainable Development: Past Achievements and Future Challenges*, Oxford/New York, Oxford University Press, 1999, pp. 5-8.

19. DIRE TLADI, *Sustainable Development in International Law: An Analysis of Key Enviro-Economic Instruments*, Pretoria, Pretoria University Law, 2007, pp. 93 ff. See in detail also DUNCAN FRENCH, *International Law and Policy of Sustainable Development*, Manchester, Manchester University Press: Melland Schill Studies in International Law, 2005.

20. Energy Charter Treaty, Lisbon, 17 December 1994, 2080 UNTS 95, 33 ILM 360 (1995).

21. Statute of the International Renewable Energy Agency (IRENA), 26 January 2009, L 178, 13/07/2010, p. 18.

22. Agreement on the Conservation of Gorillas and their Habitats (Gorilla Agreement), 26 October 2007, 2544 UNTS I-45400.

23. See Section 1 (6) paragraph (h) of the action plan provided for under Article 8 of the Agreement.

24. The Convention on Sustainable Management of Lake Tanganyika, 12 June 2003, Dar

of the Mekong River Basin²⁵, in whose cases compliance with the criteria of sustainable development is a prerequisite of the realisation of the investment; therefore, natural resources may be utilised in a way that takes into account the interests of future generations. Special focus should be placed on the Tanganyika Convention, which offered the most comprehensive definition of the concept of sustainable development, and alluded to the aspect of intergenerational justice as part and parcel of the concept of sustainable development. Pursuant to Article 5 paragraph 2 of the Convention “[t]he natural resources of Lake Tanganyika shall be protected, conserved, managed, and used for sustainable development to meet the needs of present and future generations in an equitable manner.”²⁶

By taking a closer look at international legal literature we may see that, rather unfortunately, provisions have relatively little effect on the actual situation even if the given treaty defines the notion of sustainable development in a very precise and detailed manner. In support of this we may argue that even in the case of the Convention on the Sustainable Development of Lake Tanganyika and the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, both representing the legal pinnacle of defining sustainable development, the actual environmental processes under way in those regions are destructive and disappointing, irrespective of the exemplary character of the treaties themselves.²⁷ As Philip Hirsch and Kurt Jensen observe, the Mekong Agreement “lacks the legal ‘teeth’ to enforce its provisions and is therefore unable to bring about the realisation of its aspirations.”²⁸

The vast majority of the states of the world, particularly those playing a leading role in emitting greenhouse gases, have unambiguously committed themselves – through their national legislations – to protecting human rights. Regrettably enough, even those nations who are at the forefront of enforcing human rights within territories under their jurisdiction fail to pay due attention to the extraterritorial effects of their climate changerelated activities. The Global Humanitarian Forum, established upon the initiative of Kofi Annan, is conducting, in cooperation with the UN, an indepth international analysis of the effects of state activities resulting in climate change on the lives and human rights of the citizens of other states. According to the study’s forecast, in the poorer regions of the world, annually the death of 300 thousand people may be directly linked to the effects of climate change, and another 325 million people are directly affected by climate change, e.g., by the epidemics associated therewith or by extreme weather

es Salaam.

25. Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, 5 April 1995, Chiang Rai, Thailand.

26. The Convention on Sustainable Management of Lake Tanganyika, 12 June 2003, Dar es Salaam.

27. ANDREW HUDSON, *UNDP-GEF International Waters Programme – Delivering Results*, New York, UNDP, 2007, pp. 16-17; QI GAO, *A Procedural Framework for Transboundary Water Management in the Mekong River Basin*, Leiden, Koninklijke Brill, 2014, p. 27.

28. PHILIP HIRSCH / KURT MØRCK JENSEN *et al.*: *National Interests and Transboundary Water Governance in the Mekong*, Australian Mekong Resource Centre in collaboration with Danish International Development Assistance, 2006, p. 69. Available at http://sydney.edu.au/mekong/documents/mekwatgov_mainreport.pdf

phenomena.²⁹ These effects are the results of greenhouse gases emitted by a relatively small number of countries. The main emitters of greenhouse gases are the United States, China, the Member States of the European Union, Russia, India, Japan and Brazil; they account for two-thirds of the total emission, thus they bear special responsibility for the adverse effects of climate change.³⁰ The majority of the largest emitters of the world are countries with highly developed legal systems and human rights guarantees, which are internationally active in the fight against human rights violations; however, they keep on conducting their own unlawful activities. Unfortunately, even such prominent advocates of human rights as the United States and the European Union do not monitor the implementation of their own policy as to what adverse effect their activities have on the fundamental rights of people outside their jurisdiction, thus infringing the internationally recognised fundamental principle of equal human dignity. It seems clear that the fundamental documents of international law, including, among others, the Universal Declaration of Human Rights³¹ and the Charter of the UN³² are based on the principle of universal and indivisible human dignity. Several states are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR),³³ adopted in 1966 under the auspices of the UN, promoting, for the first time, universal respect for social and cultural rights irrespective of territorial jurisdiction.³⁴ This stipulation is infringed upon by those states, which have no regard to their activities affecting people outside their jurisdiction, constituting an infringement of human rights. Based on the above, we may state that the notion of sustainable development and the universal character of human rights make it quite clear that both intergenerational solidarity and intragenerational solidarity in a global context constitute an obligation of the states which haven't made but the first steps towards their realisation.

3. National Institutions for Future Generations – the Way Towards International Cooperation?

The Rio+20 Summit raised the possibility of creating the posts of a global level Ombudsman or a High Commissioner for Future Generations within the frameworks of the UN.³⁵ Several international environmental NGOs supported

29. Global Humanitarian Forum, *Human Impact Report: Climate Change – The Anatomy of a Silent Crisis*, Geneva, 2009, p. 1.

30. JOHN H. KNOX, Linking Human Rights and Climate Change at the United Nations, *Harvard Environmental Law Review*, XXXIII, 2009, p. 489.

31. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

32. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

33. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, Vol. 993, p. 3.

34. SUSANNAH WILLCOX, A Rising Tide: the Implications of Climate Change Inundation for Human Rights and State Sovereignty, *Essex Human Rights Law Review*, IX, 1, 2012, p. 5; JOHN H. KNOX, Linking Human Rights and Climate Change at the United Nations, pp. 492-494.

35. CATHERINE PEARCE, Ombudspersons for Future Generations: A proposal for Rio+20, UNEP, *Perspectives*, VI, 2012, pp.1-3. Available at: <http://www.unep.org/civil-society/Portals/24105/documents/perspectives/>

this idea hoping that the creation of such an institution would facilitate global assumption of environmental responsibility.³⁶ The difference between the two posts could be explained as follows: the function of the UN High Commissioner for Future Generations could be compared to that of the UN High Commissioner for Human Rights. Consequently, this institution could have rendered assistance to the groups of the most deprived and the most vulnerable persons, possibly even in the form of financial aid. At the same time, the High Commissioner could have become the initiator of various cooperation agreements aimed at preserving our natural resources for future generations. In contrast, the current practices of the national ombudsman institutions lead us to believe that the states could have authorised the independent UN Ombudsman to exercise a kind of ethical control: the Ombudsman's opinion, moral weight could have steered UN Member States towards sustainable practices and long-term solutions. However, it appears that the Member States supported neither an Ombudsman exercising moral control, nor a High Commissioner for Future Generations institutionally assisting the most vulnerable.

Nevertheless, the Rio+20 Summit gave mandate to the UN Secretary General (UNSG) to present a report on "the need for promoting intergenerational solidarity for the achievement of sustainable development, taking into account the needs of future generations."³⁷ The Secretary General released his report entitled "Intergenerational Solidarity and the Needs of Future Generations"³⁸ in 2013, in which he established that intergenerational solidarity is embedded in the concept of sustainable development, and is a universal value of humanity.³⁹ In the wake of the UNSG's report, a High Level Political Forum on Sustainable Development was convened in 2014 in order to discuss the most suitable mechanisms for the implementation of intergenerational equality and sustainable development at the UN level. The report itself also highlights the controversies arising from the implementation of intergenerational solidarity, and identifies eight national institutions which have been established for the institutional representation of the needs of future generations and may play the role of model institutions in globally spreading the notion of intergenerational equity.⁴⁰

ENVIRONMENT PAPERS DISCUSSION 6.pdf

36. See e.g. the proposal of the World Future Council calling for the establishment of a High Commissioner for Future Generations. World Future Council, *The High Commissioner for Future Generations: The Future We Want*, June 2012. Available at http://www.worldfuturecouncil.org/fileadmin/user_upload/Future_Justice/High_Commissioner_for_Future_Generations.pdf

37. Resolution 66/288, The Future We Want, adopted by the UN General Assembly at its Sixty-sixth session on 27 July 2012, para. 86.

38. BAN KI-MOON, *Intergenerational solidarity and the needs of future generations* – Report of the Secretary-General, 5 August 2013, A/68/322. Available at: <https://sustainabledevelopment.un.org/content/documents/2006future.pdf>

39. *Ibid.*, pp. 5-13.

40. The Report of the Secretary-General emphasises that Canada, Finland, Hungary, Israel, New Zealand and Wales either have or have had a national institution for the protection of the needs of future generations, with further developments in other countries, such as Norway and Germany. *Ibid.*, pp. 27-32.

It is worth reviewing hereunder what kind of national institutions have been established worldwide for the protection of the interests of future generations. All the institutions mentioned in the UNSG's report serve the institutional implementation of sustainable development and longterm thinking, however, they all use different organisational and jurisdictional solutions to that end.

3.1. *Wales Commissioner for Sustainable Futures*

The work of the Wales Commissioner for Sustainable Futures is connected to the activities of the Welsh Government. The task of the Commissioner is to work out basic principles and methods for national implementation, taking into account UN activities and recommendations related to sustainable development. In addition, he or she is also mandated to establish social partnership through creating an alliance between and unifying the forces of the Government, business circles and civil society.⁴¹

Through his or her activities, the Wales Commissioner, on the one hand, contributes to properly informing the members of society on various objectives and programs aimed at preserving natural and cultural resources and transferring them to future generations. On the other hand, he or she has to render support to the representatives of business circles in their efforts aimed at promoting longterm regional development through applying selfrestraint in their business activities and setting economic objectives contributing to a sustainable future.

3.2. *Ombudsman for Children, Norway*

The activities of the Norwegian Ombudsman for Children are mainly aimed at ensuring that the opinions of children and young people are heard and their rights are respected under any circumstances.⁴² The Ombudsman is in direct contact with the children and the educational and other institutions dealing with them, and propagates his or her experiences also through the press and media. He or she may inquire into individual complaints and act as a consultant in connection with the activities of the legislation and the Government.⁴³ The Norwegian Ombudsman for Children is completely independent, and may formulate his or her positions and specify those fields of action where the protection and implementation of the rights of future generations should be facilitated.⁴⁴

41. PETER DAVIES, A crucial step in Wales' devolution journey, in ANNA NICHOLL / JOHN OS-MOND (Eds.), *Wales' Central Organising Principle: Legislating for Sustainable Development*, Cardiff, IWA – Institute of Welsh Affairs, 2012, pp. 45-49.

42. G.B. MELTON, Lessons from Norway: The Children's Ombudsman as a Voice for Children, *Case Western Reserve Journal of International Law*, XXIII, 1991, p. 197.

43. M.G. FLEKKØY, Working for the Rights of Children: The Experience of the Norwegian Ombudsman for Children, *Innocenti Essays*, I, Florence, UNICEF International Child Development Centre, 1990, p. 129.

44. Tasks and duties of the Ombudsman for Children are stipulated by Act No. 5 of March 6, 1981 relating to the Ombudsman for Children as well as by the "Instructions for the Ombudsman for Children" laid down by Royal Decree of September 11, 1981 with later amendments by Royal Decree of July 17, 1998. Available at <http://barneombudet.no/english/act-and-instructions-for-the-ombudsman/>

It is common knowledge that the ombudsman institution has Scandinavian roots, and the institution of ombudsman for children is of Norwegian origin: the Norwegian example⁴⁵ was followed later on by dozens of countries.⁴⁶ The scope of activities of ombudsmen for children is typically focused on general children's rights issues; however, it is worth exploring whether such institutions are capable of not only investigating children's rights from the aspects of infringements related to *inter alia* school education or parental supervision, but also representing the rights of those who may not participate yet in formulating the political decisions of a given country. Among the numerous concepts related to future generations there is one according to which all those who do not have yet the active right to participate in political decisionmaking should be included in the notion of future generations.⁴⁷ Decisions concerning children's interests in preserving natural and cultural resources are made on their behalf by others, thus rendering children vulnerable and defenseless. Consequently, the institution of ombudsman for children is capable of acting on behalf and in the interest of children still lacking political power or still unborn, in order to safeguard the preservation of natural and cultural resources for them.

3.3. *Commissioner of the Environment and Sustainable Development, Canada*

The Commissioner of the Environment and Sustainable Development is an Assistant Auditor General appointed by the Auditor General of Canada,⁴⁸ who leads a group of auditors specialised in environment and sustainable development. Besides playing an active role in the Working Group established for environmental auditing, the Commissioner also has the obligation to submit reports to the Office of the Auditor General in order to monitor the procedures of implementing the country's sustainable development strategy and the incidental improprieties related thereto. The activities of the Commissioner provide a special aspect for the analysis of issues related to sustainable development since, uniquely among national institutions responsible for the protection of the interests of future generations, he or she monitors the proper utilisation of public funds allocated to sustainable development from the aspects of lawfulness, expediency and effectiveness. Another main task of the Commissioner is to prepare reports on various environmental issues, including biodiversity, quality of air, water and soil. In the course of inquiring into petitions, the Commissioner forwards all submissions related to a given environmental measure to the competent authorities and prepares his or her reports on the basis of the answers received. These reports are published on the website of the Office of the Auditor General.⁴⁹

45. LINDA C. REIF, *The Ombudsman, Good Governance and the International Human Rights System*, Leiden/Boston, Martinus Nijhoff Publishers, 2004, pp. 316-318.

46. For instance, the European Network of Ombudspersons for Children (ENOC) established in 1997, links 43 independent offices for children from 35 countries in Europe.

47. See e.g. DENNIS F. THOMPSON, *Representing Future Generations: Political Presentism and Democratic Trusteeship*, *Critical Review of International and Political Philosophy*, XIII, 1, 2010, pp. 21-27.

48. See Section 15.1 of the Auditor General Act R.S.C., 1985, c. A-17.

49. The environmental reports of the Commissioner of the Environment and Sustainable Development are available at http://www.oag-bvg.gc.ca/internet/English/parl_lp_e_901.html

Therefore, the activities of the Commissioner,⁵⁰ on the one hand, ensure that citizens' complaints are properly considered in the environmental decisionmaking process and, on the other hand, aim at monitoring the proper utilisation of funds allocated to environmental protection.⁵¹ Thus, the Commissioner has no decisionmaking powers in matters of sustainable development; however, he or she may assure that the utilisation of funds allocated by the legislative and executive branches of state power to objectives related to the interests of future generations be monitored also from the point of view of expediency, and the uncovered controversies become known to the decisionmakers.

3.4. Knesset Commissioner of Future Generations in Israel

The Commissioner of Future Generations was nominated by the Speaker of the Knesset, the Israeli Parliament, in 2001, and his activities expressly bore upon legislative issues related to future generations. Unfortunately in 2006, after a short period of operation, the Israeli Parliament abolished this institution. While functional, the primary task of the Commissioner of Future Generations was to inquire into any issues related to future generations and falling under the competence of the Parliament if the Knesset was about to adopt legislation in connection therewith. The Commissioner could review the draft legislation and draw up a report on its expected effects on future generations.⁵² No legislation in connection with future generations could have been adopted until the Commissioner submitted his report.⁵³

The establishment of the institution had major significance, since its activities could affect a broad spectrum of legislative proposals: its competence covered the review of all legislative proposals related to natural resources as well as technology and education.⁵⁴ The Commissioner's right to withhold any legislation until his report would be submitted also included the possibility of a kind of "pocket veto", since withholding a legislative proposal could lead, in many cases, to the given proposal's having become obsolete due to the ever changing political circumstances. While active, the Israeli Ombudsman considered children as a part of future generations; therefore, he used to act as their spokesman in the Israeli Parliament.⁵⁵

50. See Sections 21.1 and 23 of the Auditor General Act R.S.C., 1985, c. A-17

51. PIERRE ANDRÉ / CLAUDE E. DELISLE / JEAN-PIERRE REVÉRET, *Environmental Assessment for Sustainable Development: Processes, Actors and Practice*, Montréal, Presses Inter Polytechnique, 2004, pp. 24-25.

52. RICHARD LASTER / DAN LIVNEY, *Environmental Law in Israel*, Alphen aan den Rijn, Kluwer Law International, 2011, pp. 37-38.

53. For detailed information about the objectives, scope of activities and roles of the former Knesset Commission for Future Generations, see http://www.worldfuturecouncil.org/fileadmin/user_upload/Maja/Future_Justice_Library/Knesset_Paper.pdf

54. EDITH BROWN WEISS, Implementing intergenerational equity, in MALGOSIA FITZMAURICE, *Research Handbook on International Environmental Law*, Cheltenham, Edward Elgar Publishing, 2010, pp. 110-111.

55. SHLOMO SHOHAM / NIRA LAMAY, Commission for Future Generations in the Knesset: Lessons Learnt, in JOERG CHET TREMMEL (Ed.), *The Handbook of Intergenerational Justice*,

3.5. *Committee for the Future – Parliament of Finland*

In the case of institutions and prominent officials responsible for the protection of future generations, one may often raise the critical question whether and how a person or a body can predict the needs and interests of future generations, and on what moral grounds can they take action even against the institutions of state power. In most cases, it is difficult to answer this question. However, the Finnish model can preclude such critical remarks. The Finnish Committee for the Future is only one among the sixteen committees of the Finnish Parliament; its competences do not exceed those of any other committee. The significance of the Committee lies in the fact that it comprises almost 10 percent of the representatives of the Parliament, and its members hold consultations twice a week, for three hours altogether, on issues related to the future of Finland and the Finnish people. The representatives are entitled to submit reports that could be adopted by the Committee, provided there is consent thereto.⁵⁶ Reports may touch upon any and all issues of science and technology or environmental protection, from climate change to energy security and development factors; topics depend, to a great extent, on the personal interests of the representatives in the Committee. The Committee for the Future maintains direct contact with the most prominent experts in the country, organises professional conferences and prepares forum reports. The Committee submits its findings in the form of position papers to the Parliament.

In most parliaments of the world the directions of political actions are determined mainly by shortterm thinking, adjusted to the fouryear election cycles. The influence of the Finnish Parliamentary Committee is substantiated by the fact that it strives to implement longterm thinking in political decision-making directly through the representatives, and it tries to ensure that this approach could have a beneficial effect on the activities of the entire Parliament.⁵⁷ According to its members, political partisanship does not affect the work of the Committee for the Future; as a result, its activities have a positive and constructive influence on the overall operation of the Finnish Parliament.

3.6. *New Zealand Parliamentary Commissioner for the Environment*

The activities of the New Zealand Parliamentary Commissioner for the Environment are, above all, researchoriented. His or her main task is to prepare reports on those acts adopted by the Parliament which have a significant impact on the environment.⁵⁸ Other tasks of the Commissioner include monitoring the effec-

Cheltenham, Edward Elgar Publishing, 2006, pp. 244-281.

56. Committee Reports and Submissions can be found at [http://www.eduskunta.fi/triphome/bin/thw.cgi/trip?\\${base}=ermielau_e&\\${html}=crx/crx4000&\\${ccl}=define+rev&\\${freetext}=aktyy-ppi=tuv&\\${maxpage}=51&\\${snhtml}=crx/akxeiloydy&\\${savehtml}=triphome/bin/akxhaku.sh&\\${lyh}=COMREP&\\${kieli}=en&\\${lomake}=mielau_e/crx/crx3000](http://www.eduskunta.fi/triphome/bin/thw.cgi/trip?${base}=ermielau_e&${html}=crx/crx4000&${ccl}=define+rev&${freetext}=aktyy-ppi=tuv&${maxpage}=51&${snhtml}=crx/akxeiloydy&${savehtml}=triphome/bin/akxhaku.sh&${lyh}=COMREP&${kieli}=en&${lomake}=mielau_e/crx/crx3000)

57. PAULA TIHONEN, The Right of Future Generations, in LÁSZLÓ ZSOLNAI (Ed.), *Ethical Prospects: Economy, Society and Environment*, Dordrecht, Springer, 2009, pp. 239-240.

58. Publications of the New Zealand Parliamentary Commissioner for the Environment are available at <http://www.pce.parliament.nz/publications/all-publications/>

tiveness of environmental planning and management by the competent authorities of New Zealand. Therefore, the Commissioner for Environment may not, in any way, prevent acts from taking effect or conduct preliminary legal analyses of draft bills. His or her competence is more scientific in character, aimed at collecting and submitting to the Parliament, in a systematic manner, all scientific knowledge available in connection with the implementation of a given act.⁵⁹ Thus the Commissioner facilitates the amendment, if necessary, of environment-related acts by the Parliament, and the adjustment of the rules of management or environmental planning at the level of the authorities implementing those acts.⁶⁰

3.7. German Parliamentary Advisory Council on Sustainable Development

The Parliamentary Advisory Council on Sustainable Development (PACSD) is a special body of the German Parliament which, unlike the committees of the Parliament, operates on the principle of consensus. While the Finnish Parliamentary Committee for the Future is not tied in any way to the legislative schedule of the Finnish Parliament, the German institution functions as a *de facto* parliamentary advisory body: its activities are partly concerned with legislative acts discussed in the German Parliament, partly with other issues unrelated to the former.⁶¹

One of the most important tasks of the Parliamentary Advisory Council is related to the national strategy for sustainable development adopted by the German Council for Sustainable Development: PACSD monitors its implementation in the course of legislation. Its comprehensive task is to facilitate the strategy's enforceability within the German parliamentary system. It monitors sustainability in four areas, namely, in the fields of intergenerational equality, social cohesion, quality of life and international responsibility.⁶² PACSD maintains constructive dialogue with other parliamentary bodies within the European Union and promotes the participation of social actors in decision-making, thus facilitating the wider public debate of sustainability-related parliamentary initiatives and questions and the establishment of civil dialogue.⁶³

The strength of this body derives from its consensual character. Although the

59. CHRIS DE FREITAS / MARTIN PERRY, *New Environmentalism: Managing New Zealand's Environmental Diversity*, Dordrecht, Springer, 2012, p. 68.

60. Functions and powers of the Commissioner are laid down in Sections 16-27 of the Environment Act 1986, 18 December 1986, Public Act 1986 No 127.

61. JOERG CHET TREMMEL, Establishing intergenerational justice in national constitutions, in JOERG CHET TREMMEL (Ed.), *The Handbook of Intergenerational Justice*, Cheltenham, Edward Elgar Publishing, 2006, p. 196.

62. BARRY DALAL-CLAYTON / STEVE BASS, A Review of Monitoring Mechanisms for National Sustainable Development Strategies, *Environmental Planning Issues*, XXVII, 2006, pp. 16-17. Available at: <http://pubs.iied.org/pdfs/G02190.pdf>

63. For further information on the functions and organisational structure of the Parliamentary Advisory Council on Sustainable Development, see Motion 18/559: Establishment of the Parliamentary Advisory Council on Sustainable Development tabled by the parliamentary groups of the CDU/CSU, SPD, the Left Party and Alliance 90/The Greens. Available at https://www.bundestag.de/blob/286956/0c46e2e6e4ce2cac7d7422acd1675494/18_559-pdf-data.pdf

German Parliament is not bound by rules requiring the participation of the Parliamentary Advisory Council in the legislative process, this special body, weighing and monitoring the longterm effects of issues debated in the Parliament on future generations, is a major means of intraparlimentary control.⁶⁴

3.8. Ombudsman for Future Generations of Hungary

The Hungarian Ombudsman for Future Generations has an autonomous position within the Office of the general Ombudsman (the Commissioner for Fundamental Rights). In Hungary, the general Ombudsman has two Deputies, and all three of them are elected by the Parliament. One of the Deputies, the Ombudsman for the Rights of National Minorities, is responsible for the protection of the rights of nationalities living in Hungary, and the other, the Ombudsman for Future Generations, is responsible for the protection and realisation of the interests of future generations.⁶⁵ In the Hungarian constitutional system, the protection of future generations is based on the provisions of the Fundamental Law, describing the Hungarian nation as an alliance among Hungarians of the past, present and the future.⁶⁶ Article P of the Fundamental Law stipulates that natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural assets shall comprise the nation's common heritage that should be protected and preserved for future generations.⁶⁷ The protection of future generations is carried out on two planes. The Ombudsman for Future Generations monitors the realisation of the interests of future generations, and draws the attention to those legal situations where the laws in effect do not serve properly the interests of future generations, related mainly to the preservation of natural resources.⁶⁸

Since the Ombudsman for Future Generations is entitled to express his or her opinion in any and all issues related to the interests of future generations, the Ombudsman does not have to restrict his or her activities to cases where there is a breach of constitution.⁶⁹ Therefore, he or she may speak out against the implementation of such environmental policies which, albeit not in breach of the constitution, would have an adverse effect on the living conditions of the children and grandchildren of those living in the country.⁷⁰

64. OECD, *Institutionalising Sustainable Development*, OECD Sustainable Development Studies, Paris, OECD Publishing, 2007, pp. 109-110.

65. Section (3) of the Act CXI of 2011 on the Commissioner for Fundamental Rights.

66. See the Preamble of the Fundamental Law of Hungary (25 April 2011).

67. Section (1) of Article P of the Fundamental Law of Hungary reads as follows: "Natural 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."

68. SÁNDOR FÜLÖP, The Hungarian experience, in ANNA NICHOLL / JOHN OSMOND (Eds.), *Wales' Central Organising Principle: Legislating for Sustainable Development*, Cardiff, IWA – Institute of Welsh Affairs, 2012, pp. 72-79.

69. AXEL GOSSERIES, Generations, in CATRIONA MCKINNON (Ed.), *Issues in Political Theory*, Oxford, Oxford University Press, 2015, p. 286.

70. MAJA GÖPEL / CATHERINE PEARCE, *Guarding our Future – How to Include Future Gene-*

In connection with the activities of the Ombudsman for Future Generations, one might raise the question whether and how a private person may speak out against the policies of the Parliament or the Government, adopted with significant social support. The answer to this question has been elaborated by the practices of those who used to hold this position. Damage to the interests of future generations could be established mainly in those cases where the adopted legal regulations could adversely affect the future generations' equitable rights to the utilisation of natural resources.⁷¹ The Ombudsmen for Future Generations always tried to adjust their positions to the strict standards of science and sought close cooperation with the Academy of Sciences, as well as its competent specialised committees.

Resolutions of the Ombudsman for Future Generations are not binding upon either the Parliament or the Government; however, when an infringement also constitutes a violation of the constitution, i.e., the adopted Hungarian legal regulations are not only harmful to the interests of future generations but, on their own merit, also constitute a breach of constitution, the Ombudsman for Future Generations may turn to the general Ombudsman and recommend that the general Ombudsman submit a petition to the Constitutional Court requesting the annulment of the regulations concerned.⁷²

3.9. Comparison of the Model Institutions

Due to the lack of effective enforcement mechanisms under international law, the efforts of the national institutions in promoting sustainability and implementing international norms on the domestic level gain outstanding significance. The above examined eight national institutions represent different models of the institutional protection of the interests of future generations, however, they all share the common objective of integrating sustainability aspects into national policy.

Among others, the diverse institutional solutions differ in the focus of their activities. The main focus of their work falls on environmental protection and sustainable development. Nevertheless, the activities of most institutions cover a wide range of future-related issues, including climate policy, technology, cultural heritage protection, demography, education, health and information society policy.⁷³

As regards the structure of the institutions, many of them relate directly to the national parliament (e.g. the Finnish, the German and the Israeli institutions),

rations in Policy Making, London, World Future Council Foundation, 2014, pp. 8-9. Available at http://www.worldfuturecouncil.org/fileadmin/user_upload/Future_Justice/Guarding_our_Future_Brochures/brochure_guarding_en_final_links2.pdf

71. BENEDEK JÁVOR, Institutional Protection of Succeeding Generations – Ombudsman for Future Generations in Hungary, in JOERG CHET TREMMEL (Ed.), *The Handbook of Intergenerational Justice*, Cheltenham, Edward Elgar Publishing, 2006, pp. 282-298.

72. See Section (2) paragraph (3) of the Act CXI of 2011 on the Commissioner for Fundamental Rights.

73. EDITH BROWN WEISS, Implementing intergenerational equity, pp. 110-112.

while e.g. the Norwegian Ombudsman is administratively under the jurisdiction of the Ministry for Children and Family Affairs.⁷⁴ The Hungarian Ombudsman for Future Generations serves as deputy commissioner for fundamental rights within the Office of the general Ombudsman, whereas the Canadian institution is situated within the body of the Auditor General of Canada, and the Commissioner holds the rank of Assistant Auditor General.

Almost all of the institutions analysed above perform multifold functions, such as monitoring legislation and policy, reporting, advising the parliament or the government on sustainable development issues, undertaking analyses pertaining to future-related research, and investigating the effectiveness of environmental planning and management.⁷⁵ Some institutions (e.g. the Norwegian and the Hungarian Ombudspersons) may investigate individual complaints as well. Two of the institutions (the Israeli and the Norwegian) are entrusted with the role of protecting the current generation of children.

In general, national institutions cannot make any binding rules, or reverse decisions made by public authorities. At the same time, they can serve as the advocate of long-term responsibility⁷⁶ and put pressure on the government by raising awareness to sustainability issues.

With the exception of the German and the Hungarian institutions, future generations are not expressly mentioned in their mandates, however, all of the institutions foster the practice of long-term thinking and promote sustainable policies for maintaining the life-conditions of future generations.

4. International Network Between National Human Rights Institutions

Since global protection has failed to deliver the desired results, a deeper cooperation between national human rights institutions entrusted with the protection of the interests of future generations could potentially contribute to the effective implementation of global commitments. In this spirit, the representatives of the seven still functioning institutions mentioned in the UN Secretary General's report and the former head of the already defunct Israeli Commission for Future Generations participated in the international conference entitled "Model Institutions for a Sustainable Future", held in Budapest between 24-26 April, 2014. Convened upon the initiative of the Ombudsman for Future Generations of Hungary, the participants of the conference adopted the Budapest Memo-

74. www.barneombudet.no

75. THE INTERNATIONAL HUMAN RIGHTS CLINIC AT HARVARD LAW SCHOOL, *Models for Protecting the Environment for Future Generations*, October 2008, pp. 2-3. Available at http://hrp.law.harvard.edu/wp-content/uploads/2013/02/Models_Future_Generations.pdf

76. PETER RODERICK, Taking the longer view, in ANNA NICHOLL / JOHN OSMOND (Eds.), *Wales' Central Organising Principle: Legislating for Sustainable Development*, Cardiff, IWA – Institute of Welsh Affairs, 2012, pp. 8-11.

randum,⁷⁷ in which they confirmed their commitment to lend a helping hand, through collecting and sharing best state practices within the frameworks of an international cooperation network, to those nongovernmental organisations that strive to establish similar national institutions in other countries.⁷⁸ For instance, the conference was also attended by the representatives of Dutch and Norwegian civil society organisations, working for the establishment of their respective national institutions for the representation of the interests of future generations.⁷⁹

The Budapest Memorandum aimed at creating and maintaining a continuous consultative relationship between the bodies referred by the Secretary General as model institutions for future generations, and international environmental NGOs fighting for similar purposes, as well as the most prominent environmental and human rights experts. Through their cooperation, the participants of this network of institutions shall facilitate the establishment of further national institutions supporting the realisation of the interests of future generations, and assist the establishment of such institutions at the regional level, as well. This initiative has already raised the prospect of cooperation between national institutions, NGOs and experts in Europe in order to establish the institutional representation of future generations at the level of the European Union.⁸⁰ At international level, these institutions may further promote the creation of the post of an Ombudsman or High Commissioner for Future Generations within the UN's organisational structure⁸¹ or, at least, the establishment of an international umbrella organisation which would group together, under the aegis of the UN, national institutions responsible for future generations operating in the UN Member States.

5. Conclusion

Considering that the international trends of environmental protection have taken a particular turn in recent years, preventing the forces fighting for intra and inter-generational solidarity from strongly asserting their positions within the frameworks of international law, a more prominent role may be given in the future to

77. The proposal for such memorandum also gained support by the UN Secretary General Ban Ki-moon, who addressed the aforementioned conference and called upon the participants to deliver "a powerful message to all countries about the need to create effective institutions that will maintain a robust focus on our common future."

78. Budapest Memorandum adopted at the Conference of Model Institutions for a Sustainable Future held in Budapest, 24-26 April 2014. Available at http://www.ajbh.hu/documents/14315/121663/Budapest_Memorandum.pdf/29f4b867-0afa-4d15-b3c4-4383ad732f73

79. These non-governmental organisations striving for the establishment of national ombudspersons include Worldconnectors from the Netherlands and Spire - Norwegian Development Fund's Youth from Norway.

80. On the possible institutional representation of future generations at the European Union level, see in detail BENEDEK JÁVOR / JUDIT RÁCZ, *Do we owe them a future? The opportunities of a representation for future generations in Europe*, Budapest, Védegylet, 2006.

81. CLAIRE MOLINARI, Principle 3: From a Right to Development to Intergenerational Equity, JORGE E. VÍÑALES, *The Rio Declaration on Environment and Development: A Commentary*, Oxford, Oxford University Press, 2015, p. 148.

institutions protecting the interests of future generations or to their cooperation that could lead to new results at regional or global levels. These institutions with very different national characteristics serve as examples of intergenerational equality. Certain institutions, for instance the Finnish model, lay emphasis on the implementation of long-term thinking in political decision-making. Others, e.g., the Hungarian Ombudsman for Future Generations, try to establish a kind of legal standard against which the effects of legislation on the interests of future generations can be judged. There are models based on the scientific analysis of the environmental impacts of various acts of law, such as the New Zealand model, while others, like the Commissioner of the Environment and Sustainable Development of Canada, monitor the proper utilisation of public funds allocated to the preservation of natural resources.

Each model is worth further elaboration. However, they all have a common feature: each national institution is capable of creating a publicity which can prevent environmentally detrimental measures from being implemented. Effective enforcement of publicity at the international level is still lagging behind. Nevertheless, publicity is a value whose application within the frameworks of international decisionmaking and cooperation, through regional and global spreading and further development of national examples, may successfully contribute to the efficient protection of the interests of future generations.
