

CHAPTER I

SUSTAINABLE DEVELOPMENT, THE INTERESTS OF FUTURE GENERATIONS, AND MORAL AND LEGAL IMPLICATIONS



GYULA BÁNDI

1. The evolution of the principle of sustainable development

1.1. *Introductory words*

According to many scholars, such as Durán and Morgera, the definition of sustainable development is primarily a construction of international law,¹ yet sustainable development is not something artificial; the above statement applies for the definition itself. The different documents and authors provide many different interpretations. As one Hungarian ecologist indicated, there are many different uses of sustainability or sustainable development, and no one claims to hold the holy grail of the perfect definition.²

Judge Weeremantry mentions the oldest historical examples of sustainability³ in his separate opinion attached the *Gabčíkovo-Nagymaros* judgment⁴: “There are some principles of traditional legal systems that can be woven into the fabric of modern environmental law. They are especially pertinent to the concept of sustainable development which was well recognized in those systems. ... In the context of environmental wisdom generally, there is much to be derived from ancient civilizations and

1 Durán and Morgera, 2012, pp. 34–35.

2 Bulla, 2002, p. 105.

3 Weeremantry, 1997, pp. 94–95.

4 ICJ Judgment, 1997.

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traditional legal systems ... This is a rich source which modern environmental law has left largely untapped. ... The concept of reconciling the needs of development with the protection of the environment is thus not new. Millennia ago, these concerns were noted, and their twin demands well reconciled in a manner so meaningful as to carry a message to Our age.” In his opinion, sustainable development is defined as the right to development limited by the need to preserve the environment.

In his famous book,⁵ Dire Tladi argues that the right to sustainable development forms part of collective human rights to which all people are entitled in relation to the long-term maintenance of the environment. He also recalls that Judge Weeramantry referred to the protection of the environment as a *sine qua non* of several human rights.

Bosselmann⁶ also leads us to the origins of sustainability, presenting the German engineer and forestry specialist, Hans Carl von Carlowitz,⁷ as the inventor of the new definition of ‘Nachhaltigkeit.’ Based on his studies, in 1754, Wilhelm Gottfried Moser from Württemberg defined a new system of forestry, the first principle of which is the sustainable use of forests.

1.2. Milestones

The first milestone in the evolution of the principle of sustainable development was the Stockholm Conference on the Human Environment in 1972.⁸ The Stockholm Declaration was one of the main outcomes of the conference, laying down the foundations and covering almost all of the issues that have been raised in similar upcoming UN conferences.⁹ Principle 1 refers to human rights, Principle 2 to current and future generations, while the special responsibility that human beings bear for the conservation of the natural environment is set out in Principle 4 of the Declaration. More importantly, in compliance with Principle 14 of the Declaration, a balance shall be struck by the means of reasonable planning between development needs and the imperative of protecting the natural environment. This is highly reminiscent of the concept of sustainability.

The World Charter for Nature, adopted in 1982 during the 37th session of the UN General Assembly, also included the concept of sustainable development.¹⁰ For example, under Points 7 (integration) and 8 (special care for the capacity of natural systems) of Chapter II on Functions, several elements of the upcoming sustainable development concept can be identified, even if the primary focus is on the natural environment. The UN General Assembly established the World Commission on Environment and

5 Tladi, 2007.

6 Bosselmann, 2008, pp. 17–19.

7 “In his work *Sylvicultura Oeconomica oder Anweisung zur wilden Baum-Zucht* (*Sylvicultura Oeconomica* or the Instructions for Wild Tree Cultivation), Carlowitz formulated ideas for the ‘sustainable use’ of the forest. His view that only so much wood should be cut as could be regrown through planned reforestation projects, became an important guiding principle of modern forestry.”

8 Stockholm, 1972.

9 See above.

10 World Charter for Nature, 1982.

Development,¹¹ better known as the Brundtland Commission, which drafted the report entitled “Our Common Future.”¹² In compliance with the report, “sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” The definition set out in the Brundtland Report stipulates the principle of equality among generations as a cornerstone for sustainable development; that is, no generation has the right to destroy the livelihood of future generations by exploiting resources immoderately and unfairly. Accordingly, sustainable development not only requires states to take into consideration the interests of future generations but also to do their best in satisfying the legitimate needs of the less developed areas of the world. The Brundtland concept of sustainable development strikes a sensitive balance between the need for development and the objective of the preservation of the natural environment.

The legal framework of sustainable development had not been clarified in international law even by the 1990s. This is substantiated by Principle 27 of the Declaration adopted in Rio de Janeiro at the UN Conference on Environment and Development, according to which the states shall cooperate “in the further development of international law in the field of sustainable development.”¹³ The Rio Declaration marks considerable progress regarding the elaboration of the concept of sustainable development. Ten out of the 27 principles refer to this concept, beginning with Principle 1, which emphasizes that the concept is primarily anthropocentric: “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

The other principles affected are Principle 2 on the exploitation of resources; Principle 3 on generational equity: “*The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations*”; Principle 4 on integration; Principle 5 on eradicating poverty; Principle 8 on consumption, production patterns, and appropriate demographic policies; Principle 10 on the theoretical background of public participation; Principle 15 on the precautionary principle; Principle 25 on the correlation of all; and Principle 27, which focuses on the legislative side.

The Biodiversity Convention,¹⁴ adopted in parallel to the Declaration, also refers to the same concept from a special angle: “‘Sustainable use’ means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations” (Art. 2. on terms).

In 2000, the Academies of Sciences of the world also adopted a statement on sustainability,¹⁵ which is merely a concise summary of current trends; at the same

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

12 Our Common Future, 1987.

13 Rio Declaration, 1972.

14 Convention on Biological Diversity, 1993.

15 IAP, 2000.

time, it is the most emblematic of the available definitions: “Sustainability implies meeting current human needs while preserving the environment and natural resources needed by future generations.”

Rather than discussing several other international documents covering sustainable development, we focus on its legal substance. Following the UNCED in 1992, the content of sustainable development was analyzed in the framework of several forums. One such forum was the Commission on Sustainable Development, which identified the Principles of International Law for Sustainable Development.¹⁶ In our categorization, the different constituting elements directly or indirectly connected with sustainable development may be divided into a special set of classes, answering the key dilemma regarding their contribution to improving the concept of sustainability. This categorization reflects a selection from the elements of the Report with the goal of providing a clear picture of our vision of sustainability. The Report does not put forward a homogeneous concept; rather, it is a mix of principles, instruments, special sustainable development-related aspects, and general concepts of international cooperation. It should also be noted that the Report clearly refers to the necessity of recognizing the right to a healthy environment. Point 31 states that “The right to a healthy environment provides a focus to guide the integration of environment and development. Development is sustainable where it advances or realizes the right to a healthy environment.”

First, there are certain elements of the Report that exhibit a strong, direct link to sustainable development; as such, these may be considered specific legal principles and concepts of sustainable development law and, even more precisely, of environmental interests. These are (a) prevention (together with the right to individual or collective self-defense and the duty to cooperate) in a wider meaning, (b) the precautionary principle as well as the principle covering all of the major elements of the concept, that is, (c) integration with a specific additional legal element, (d) the right to environment and, in connect€, (e) the principle of equity, in this case referring to intergenerational equity, (f) the common concern of humanity, (g) the common heritage of mankind, (h) public participation and its three pillars, (i) environmental impact assessment, which has special importance, and finally, (j) rather incidentally, prior informed consent.

The second group of principles and concepts may also have an impact via the reasonable use of resources, with a stronger focus on material interests: (a) the right to development, (b) sovereignty over natural resources and responsibility not to cause damage to the environment in areas falling under the jurisdiction of other states or lying beyond the national jurisdiction, (c) the sustainable use of natural resources, (d) the equitable and reasonable use of transboundary natural resources, (e) common but differentiated responsibilities, closely connected to (f) the special treatment of developing countries, and (g) the eradication of poverty.

Finally, as a third group, there are some principles and concepts that merely exhibit a loose connection with sustainable development and belong more to the general toolbox of international law, such as cooperation, notification and consultation,

16 Expert Group, 1995.

peaceful settlement of disputes, the national implementation of international commitments, and compliance monitoring. Global partnership is also mentioned.

The International Law Association thus began to take a closer look at the interpretation of sustainable development law in 2002, adopting the New Delhi Declaration,¹⁷ which was reinforced 10 years later in Sofia.¹⁸ This Declaration amounts to an attempt to codify this field of law and may be considered a secondary source of international law.¹⁹ The New Delhi Declaration of the ILA distinguishes seven principles that constitute different elements of the concept of sustainable development and that, one by one, oblige the states to act accordingly:

a) The duty of states to ensure the sustainable use of natural resources

This stems from the principle *sic utere tuo ut alienum non laedas*, known from Roman law and referred to in the *Trail Smelter* case.²⁰

b) The principle of equity and the eradication of poverty

The principle of equity is a cornerstone of sustainable development. Solidarity among nations and sustainable development presuppose the enforcement of the principle of equity and the eradication of poverty. The more vulnerable groups of humanity deserve equitable support from the more affluent communities as the right to development is not limited to the peoples or countries enjoying a more beneficial situation.

c) The principle of cooperation and the principle of common but differentiated responsibilities

Principle 7 of the Rio Declaration. Common but differentiated responsibilities play a role not only in soft law but also in the relationships among the states; for example, the UN Framework Convention on Climate Change also refers to this concept.²¹

d) The principle of the precautionary approach

Principle 15 in Rio.

e) The principle of public participation and access to information and justice

See Principle 10 of the Rio Declaration and the Aarhus Convention, which may be considered the most important international convention in relation to public participation.²²

f) The principle of good governance

The principle of good governance commits states to do the following:

- a) adopt democratic and transparent decision-making procedures and ensure financial accountability

17 ILA, 2002.

18 ILA, 2012.

19 Hilderling, 2004, pp. 34–35.

20 *Trail Smelter*, 1941.

21 See Article 3 (1) of the UN Framework Convention on Climate Change.

22 Aarhus Convention, 1998.

- b) take effective measures to combat official or other corruption
- c) respect the principle of due process in their procedures and observe the rule of law and human rights
- d) implement a public procurement approach in line with the WTO Code on Public Procurement.

g) *The principle of integration*

This principle reflects the significance of the interplay and correlation of the economic, financial, environmental, and human rights aspects of relevant international legal principles and rules.

As an additional element to the New-Delhi Declaration, the ILA in Sofia also issued guidance²³ with the aim of bringing principles closer to implementation. The first and most fundamental statement is that sustainable development is “without doubt hardening of the concept itself into a principle of international law.” Moreover, “treaties and rules of customary international law should, as far as possible, be interpreted in the light of principles of sustainable development.”

In 2020, the ILA accepted a new resolution²⁴ in which they again provide a list of the major principles attached to the sustainable use of natural resources and refer to the importance of effective governance and ‘sustainable peace’ for the benefit of future generations, among others. The outcome is the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development.

The best way to summarize the development of international law of sustainable development is via the words of Bosselmann²⁵: “The continued existence of the principle of sustainability has two important consequences. The first is that sustainable development is given meaning and direction. ... The second consequence is that existing treaties, laws and legal principles need to be interpreted in the light of the principle of sustainability.”

We skip the assessment of Johannesburg (2002), and based on the Rio+20 process, our only focus is on green economy, which is also not novel but, rather, a different expression of the same imprecise concept. As a short summary, “The Rio Summit recognized for the first time that a ‘Green Economy’ is an important tool for achieving sustainable development but did not agree on a concise definition of the term ‘Green Economy.’ The declaration states that a Green Economy should contribute to poverty reduction, sustained growth, social cohesion, and employment without compromising the ability of ecosystems to function.” According to some, this lack of reforms indicates a crisis in global management as well as a moral crisis, endangering our well-being.²⁶

23 See fn. 18.

24 ILA, 2020.

25 Bosselmann, 2008, p. 41.

26 Antypas, 2012, p. 92.

We do not enter into the discussion of the United Nations Millennium Development Goals (MDGs) the eight goals²⁷ that UN member states have agreed to attempt to achieve by the year 2015; rather, our next focus is only the 2015 Sustainable Development Goals (SDGs), with a much wider vision and much greater attention: “At their General Assembly end of September 2015, the UN member states have unanimously agreed on a very challenging mission: shifting our world towards a sustainable path. This change requires all nations, countries, all type of economic, social or other entities, and indeed every single person to implement a change in their lifestyle, i.e. way of operation and functioning. Basically, the UN member states have agreed on a voluntary change at the whole system’s level, a global transition to a sustainable world.”²⁸ The introduction of the UN SDG resolution ‘Transforming our world: the 2030 Agenda for Sustainable Development’²⁹ states the following: “The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development Goals and complete what they did not achieve.”



The logo features the United Nations emblem on the left, followed by the text 'SUSTAINABLE DEVELOPMENT' in blue, and 'GOALS' in a large, colorful font where each letter is a different color.



27 These goals are as follows:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

28 Zlinszky, Hidvéginé Pulay, and Szigeti-Bonifert, 2018. pp. 141–155.

29 SDG, 2015.

The 17 goals and 169 targets comprise a very complex system covering several different areas, many of them representing seemingly contradictory or competitive issues. Consequently, different goals serve as priority objectives from the perspective of different interests. For example, the United Nations Office on Drugs and Crime (UNDOC) focuses on 10 goals from among the 17,³⁰ while different goals are mentioned for small businesses, and the priorities are again different for water-related interests.³¹



Perhaps the best manifestation reflecting the original starting point of sustainable development has been presented by the Stockholm Resilience Center,³² which, while returning to the foundations of sustainable development, argued that economies and societies must be seen as embedded parts of the biosphere. The goals are all represented; however, the vital priority order is much more visible:

30 UNODC.

31 Essex & Van Leeuwen, 2020.

32 Stockholm Resilience Center, 2017.



When discussing the core constituent of sustainable development, intergenerational equity, this vision shall be taken as the basis. This means, for example, that those elements of the rights of future generations – diversity of choice, comparable quality and equitable access – which are presented in detail below, shall primarily comprise ecological problems, followed by our place in society, with material wealth coming last. This image might also be easily acceptable from a practical point of view, as is well demonstrated by a recent study on sustainable development and competition law: “While we are aware that social sustainability may also be an important subject in the context of competition law, environmental sustainability appears to be the most often discussed ‘genre’ of sustainability.”³³

1.3. The European integration on sustainable development

In parallel with the growing global interest toward environmental protection, the necessary policy framework for environmental action had also been developed under the auspices of the EEC/EC and officially launched during the Paris summit in October 1972³⁴: “3. Economic expansion which is not an end in itself must as a priority help to attenuate the disparities in living conditions.” This proved to be the beginning of the series of environmental action programs. We do not describe the details of these policy documents; rather, we only refer to major examples. From

³³ Hungarian Competition Authority, 2021, p. 7.

³⁴ Paris Summit, 1972.

among these programs, the implementation of sustainable development became the key concept of the Sixth Environmental Action Program.³⁵ The Program covered material and social issues, linking living standards with sustainable development.

In terms of legal certainty, we refer to Article 2 on principles, through which we can conclude that sustainability and integration mark a bidirectional process: (a) environmental concerns should be integrated into all community policies – paragraph (1), and (b) environmental measures should be coherent with the material and social dimensions of sustainable development – paragraph (4).

As paragraph (4) clearly states, “... measures proposed and adopted in favour of the environment should be coherent with the objectives of the economic and social dimensions of sustainable development and vice versa.”

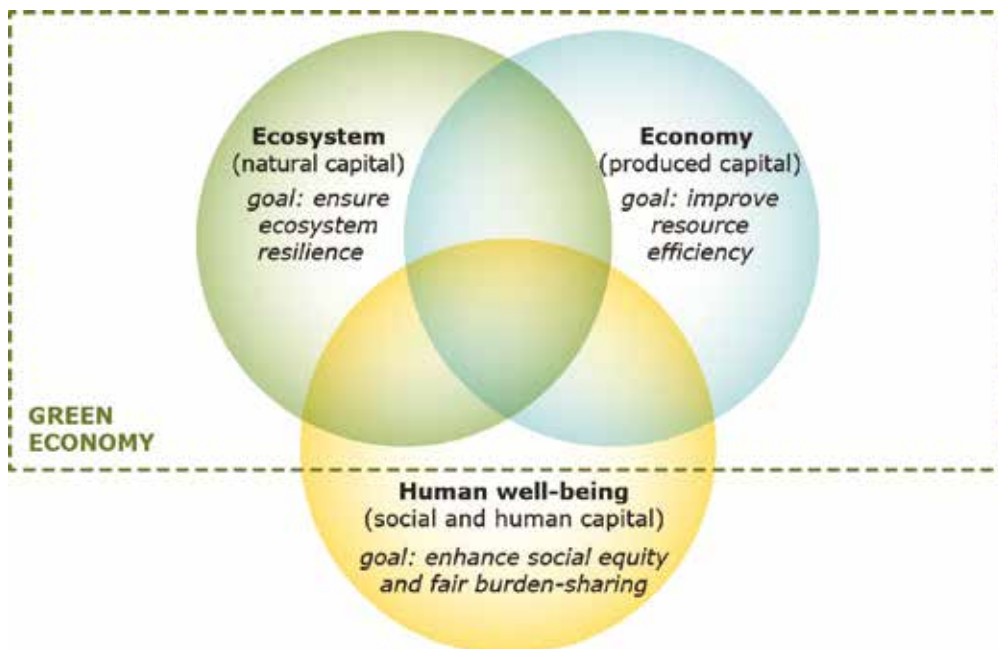
The proposal for the new, seventh environmental action program for the period lasting until 2020 was presented at the end of 2012. Certain elements of the new program will expire in 2050 (“Living well, within the limits of our planet”).³⁶ Again, here, we refer only to the fact that most of its elements had been mentioned before, such as (a) a smart, sustainable, and inclusive economy by 2020; (b) absolute decoupling of economic growth and environmental degradation; (c) the essential nature of environmental integration; (d) transformation of the global economy into an inclusive green economy in the context of sustainable development and the reduction of poverty.

One accompanying document from the many issued together with the proposal is particularly noteworthy. Annex 2 of the impact assessment³⁷ – ‘Linkages of environment policy issues’ – focuses on green economy as a specific response to the debate related to the general problem of weak or strong sustainability. According to Annex 2, ‘green economy’ means the following: “The concept of a green economy recognises that ecosystems, the economy [business] and human well-being (and the respective types of natural, produced, social and human capital) are intrinsically linked.” Although this statement is evidenced to be true, the primary question remains how this link will be presented.

35 Sixth Community Environment Action Program, 2002.

36 Proposal the Seventh EAP, 2012.

37 See above – Commission Staff Working Document, 2012.



The above figure is largely based on the concept of weak sustainability, combining it with strong sustainability under the new title of ‘*green economy*.’ Regarding weak sustainability, sustainable development is limited to the intersection of the three circles representing the three elements of sustainable development. In the above figure, however, green economy embraces most of the three elements, with only a portion of human well-being excluded.

At the same time, the EU focus on the concept of good or better governance is worth mentioning³⁸; this is a complex system usually covering full respect of human rights, the rule of law, effective participation, multiparty cooperation, political pluralism, transparent processes, efficient and conscious public service, access to education and knowledge, equity, sustainability, solidarity, tolerance, etc.

Slightly earlier, though closely linked to the other documents, as a result of the economic crisis, a new concept of development had to be elaborated for the 2020 target year. First, a Commission proposal³⁹ was adopted, followed by the recommendation of the Council.⁴⁰ Three mutually reinforcing priorities have been listed: smart growth, sustainable growth, and inclusive growth. The wording of the Council recommendation – which also clearly demonstrates the relationship with the Lisbon strategy – departs from the previous trends, speaking of ‘sustainable growth’ rather

38 Better Governance, 2012.

39 EC Strategy, 2010.

40 Recommendation, 2010.

than sustainable development. This must be taken as a dangerous message suggesting that in the case of difficulties, we modify even the major messages. It also meant that the 2008 crisis did not further the issue of sustainability but, rather, reorganized its structure and priorities.

It is plausible that the principle of sustainable development is partly an objective and partly a principle – the Treaty itself does not wish to specify its exact content. Of course, traditional components of sustainable development are also present; however, no new elements or development can be discerned. The wording is not sufficiently clear for the purposes of legal clarification and does not serve as a basis for any legal obligation. There have been attempts to provide the exact meaning of the issue, and renewable energy proved to be a cornerstone of sustainability, entering into force in 2012.⁴¹ It is worth emphasizing a real innovation of EU law under Article 17, which develops the sustainability criteria for the relevant energy sources.

The elements of sustainability, which appear in primary legislation or in the different strategies, do not allow us to speak of exact legal content. The concept does not give rise to enforceable obligations toward the EU institutions, nor toward member states or any legal entities or persons. A good example is the case of *Commission v Ireland*,⁴² in which domestic law already referred to sustainability rather than using clear legal requirements, while the Commission found that Ireland infringed on EU law by employing vague requisites. The general attitude of the Court where regards this type of transposition is clear: “46. ... the fact remains that, according to equally settled case law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights ...” Moreover, using such vague terms rather than clear requirements might not be taken as a solid legal basis: “49 It follows that neither the national case-law nor the concepts of ‘proper planning’ and ‘sustainable development’ can be invoked to remedy the failure to transpose into the Irish legal order Article 3 of Directive 85/337.”

Consequently, in the future, sustainability should also be understood less as a principle of a legal nature and, instead, as a policy principle, the actual content of which is subject to change. A good example of this is the emergence of the term sustainable growth. It is likely only the result of the integration of the components of sustainable development that are feasible in practice; however, the available instruments have yet to be clarified. There is no clear legal definition of sustainable development that can be invoked in legislation or in a legal dispute. Sustainability may also be taken as a widely accepted, general concept that is broad enough to accommodate different interpretations.

41 RED Directive, 2009.

42 Case C-50/09.

The next step at the European Union level was the launch of the ‘Circular economy’ program in 2014, which was revised in 2015.⁴³ According to its summary, this “action plan will be instrumental in reaching the Sustainable Development Goals (SDGs) by 2030, in particular Goal 12 of ensuring sustainable consumption and production patterns.” The idea behind the program is “to develop a sustainable, low carbon, resource efficient and competitive economy.” At present, the focus of the program is economy, namely the restructuring of the European economy. The first priority area is waste management, specifically recycling and reuse, and using waste as a secondary raw material; however, there are elements connected with production and consumption as well. A restructuring of the legal system to serve these interests has already begun with waste legislation.

At the end of 2019, the EU Commission presented the European Green Deal,⁴⁴ serving sustainable development objectives as well and providing an action plan to boost the efficient use of resources by moving to a clean, circular economy, with the aim of restoring biodiversity and cutting pollution. The EU aims to be climate neutral in 2050. There are action items for all sectors of the economy, including investing in environmentally friendly technologies, supporting industry to innovate, rolling out cleaner, cheaper, and healthier forms of private and public transport, decarbonizing the energy sector, ensuring buildings are more energy-efficient, and working with international partners to improve global environmental standards.

Among the most recent examples relevant to both a circular economy and the Green Deal is ‘taxonomy’ regulation.⁴⁵ According to its preamble, “(9) Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital into sustainable investments in the internal market and to prevent new obstacles from emerging.” The objective is “(11) Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities.” The whole system is now under construction, among other reasons, “(23) For the purpose of determining the environmental sustainability of a given economic activity, an exhaustive list of environmental objectives should be laid down. The six environmental objectives that this Regulation should cover are: climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems. ... (34) For each environmental objective, uniform criteria for determining whether economic activities contribute substantially to that objective should be laid down.”

43 Circular Economy, 2015.

44 European Green Deal, 2019.

45 Regulation, 2020.

In summary, a circular economy and the Green Deal are essential instruments necessary to support vital sustainability change.

Several days before the finalization of the current paper, the Eighth Environmental Action Program was adopted,⁴⁶ with the UN SDGs and the Green Deal as its most important foundations, in addition to referencing the Seventh Action Program. The 2015 Paris Climate Agreement also has a special role in the coming years. Interestingly, the Program relies on the SDG model mentioned above: “According to a model developed by the Stockholm Resilience Centre, the achievement of the environmental- and climate-related SDGs underpins the social and economic SDGs because our societies and economies depend on a healthy biosphere and because sustainable development can only take place within the safe operating space of a stable and resilient planet” (Preamble No.13). A perfect summary of the overall direction is as follows: “(16) The 8th EAP should accelerate the green transition, in a just and inclusive way, to a climate-neutral, sustainable, non-toxic, resource-efficient, renewable energy-based, resilient and competitive circular economy that gives back to the planet more than it takes. The green transition should take place in the context of a well-being economy where growth is regenerative and which enables systemic change, which recognises that the well-being and prosperity of our societies depend on a stable climate, a healthy environment and thriving ecosystems and which provides a safe operating space within planetary boundaries.”

1.4. A scholarly explanation of sustainable development law

A truly encyclopedic but equally legal summary of the definition is provided by the Max Planck Encyclopedia of Public International Law: “Today, SD is broadly understood as a concept that is characterized by (1) the close linkage between the policy goals of economic and social development and environmental protection; (2) the qualification of environmental protection as an integral part of any developmental measure, and vice versa; and (3) the long-term perspective of both policy goals, that is the States’ inter-generational responsibility.”⁴⁷

Based on their respective attitudes and legal background, different scholars may arrive at different conclusions. Some do not believe that sustainable development can be afforded a legal content, though this does not mean that the problem is underestimated, while others argue for its legal value. There is a wide range of perspectives, from the legally unfathomable to the individual new field or branch of law. Alexander (Sándor) Kiss, the greatest Hungarian scholar of international environmental law, elaborated the details of the concept of sustainable development to their fullest.⁴⁸ Kiss describes sustainable development as a legal concept similar to the constitutional concept of a state. The constitution of a state describes the basic

46 Environment Action Program, 2022.

47 Beyerlin, 2012, point 9.

48 See, for example, Kiss and Shelton, 2007; Kiss and Shelton, 1999.

principles related to the operation of a state, thereby ensuring the legal framework for state operation. The concept of the state set out in the constitution as such is not binding; only the principles that constitute part of the concept of the state are binding. Likewise, the concept of sustainable development is a legal concept that includes the prevailing principles of international environmental law. Without this concept, the international legal means are not available, either, which would impose legal obligations on the state in the interest of preserving the natural condition of our Earth.

The key to the enigma of the law of sustainable development is to determine how far and with what methods we wish to legally manage the subject or whether it is truly necessary to do so. This is equally important in law, public and economic/financial administration, and virtually any field of management. The potential regulatory area of sustainable development law is highly complex, its borderlines are indefinite, and if we wish to find legal clarity, then our best choice is environmental law. It is unlikely that we will obtain a clear and uniform answer to the question of what we mean when we refer to sustainable development law. European environmental law specialists aim for the recognition of the concept⁴⁹: “Being perhaps more a guideline to political action than a normative-legal concept, the political importance of the concept ‘sustainable development’ cannot be underestimated...”

As evidenced by our excursions into international law and European integration, the complexity of the concept of sustainable development, including the factors of development, poverty, social security, public health, indigenous people, natural resources, environmental protection, water, etc., makes it impossible to set up a consistent system: “Sustainable development is not a static concept ... hence inherently varies *ratione temporis*... The contents of sustainable development thus vary *ratione personae*. They also vary *ratione materiae*.”⁵⁰ Moreover, in addition to the different factors listed above, at least two further elements must be identified, namely the variations according to geographical area (*ratione territorii*) and the variations related to the level of development (*ratione progressionis*). Regarding these two categories of variations, the understanding of developing and developed countries is usually different. Contextual changes and the variations of the extent, scope, or coverage of the problem are constant, and this can also be considered the *differentia specifica* of the subject: “As a consequence, the entire concept becomes operable: development is sustainable if it tends to preserve the integrity and continued existence of ecological systems; it is unsustainable if it tends to do otherwise.”⁵¹

The essence of sustainable development can be summarized in a simple way (that we will use to provide a solid basis for the relevant discussion): “A synthesis of these core documents show that the meaning of ‘sustainable development’ can be reduced to the combination of two principles that can be seen as axiomatic to understanding

49 Jans and Vedder, 2012, p. 8.

50 Barral, 2012, p. 382.

51 Bosselmann, 2008, see first p. 62 and then p. 53.

sustainable development: intergenerational and intragenerational equity. ... Development will be sustainable only when both intergenerational (environmental protection) and intragenerational (fair economic and social development) equity are granted, and this is to be achieved through their integration.”⁵²

The same author has a formula for the equation:

$$\text{Sustainable development} = (\text{Intergenerational Equity} + \text{Intragenerational Equity}) \times \text{Integration}$$

It is critical to remember that overemphasizing the economic side (stressing rules of materialistic profit-seeking, as is the case today) leads to a dead end and can easily leave sustainability behind. A Jesuit economist from Leuven Catholic University highlighted⁵³ that the creator of the current business order is neither an ‘invisible hand’ nor the price mechanism of the market; rather, it is man. Business is not governed by blind mechanisms but by man. That is the reason why, per Muzslay, while the laws of the physical world mean absolute force, the laws of business are only relative. Consequently, the laws of business may be transformed to accommodate a more sustainable direction if the necessary motivation is available at all levels of governance.⁵⁴ One should always remember this message when defining the vector of obligations – while most of the international and constitutional duties concentrate on government activities, the pivotal role of businesses should also be considered. One good example, which we examine later, is to couple business with human rights, as is emerging, among others, within the UN programs.

Existing misunderstandings, divergent interpretations, and covert contexts – most of which are intentional or at least knowingly developed – may lead to a change of emphasis in the use of words in sustainable development: “The term ‘sustainable development’ was an oxymoron, which prompted a number of discursive interpretations of the weight to be attached to both ‘development’ and ‘sustainability’. Only by exposing the assumptions, and conclusions, of these discourses could we hope to clarify the choices and trade-offs that beset environmental policy and the environmental social sciences. Today, ‘sustainable development’ needs to be linked to new material realities, the product of our science and technology, and associated shifts in consciousness. We have entered a world in which ‘sustainability’ is understood

⁵² Barral, 2012, p. 380.

⁵³ Muzslay, 1995.

⁵⁴ Muzslay employs the terms ‘economy’ and ‘economic’, but in the present book, we will instead use the terms ‘business’ and ‘material’ development, as these terms give rise to misunderstandings between economists and other social scientists. In modern economics, the demarcation between ‘economy’ and ‘society’ is highly problematic. In the terminology of economics, the economy is not a sphere of the social structure. Every social interaction (‘economic’ or ‘other’) can have economical aspects in which the parties make rational decisions if they see view their relationships as an exchange wherein they transfer something and receive something else in exchange. These rational exchanges do not always exhibit material, financial, or business aspects the way other branches of science would implicitly require from economics.

in terms of new material ‘realities’, as well as epistemological positions.”⁵⁵ In a live presentation (unfortunately no longer available on the Internet) in 2010, Meadows himself suggested turning toward resilience. Does this mean that the era of sustainable development has come to an end before it could really begin? We do not believe so, and we will return to this below to present our view of this process of transformation.

We may also agree with Krämer, who is not highly optimistic regarding the realization of sustainable development within the EU, concluding that (a) there is no manageable definition of sustainable development in EU law – rather, it is used to render programs and measures ‘green’; (b) any type of measure and action can be considered sustainable as there is no clear legal reference; and (c) since the beginning of the 21st century, the political goal has been growth and employment, and there have been no serious attempts to strengthen the concept of sustainable development.

According to the same author, this also means that if, in order to find a political compromise, we wish to collect all of the contradictory interests of environmental protection and economy into one sustainable development concept, as happened in Article 3 of the Treaty on European Union and Article 11 of the Treaty of the Functioning of the European Union, as it will result in a fiasco. Considering the simple fact that the content of sustainable development is designed by politicians, tailored to their current needs, there is also a chance for improvement in this matter.

1.5. Resilience

Article 16 of the Global Pact for the Environment project⁵⁶ reads, “*Resilience* – The Parties shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt.”⁵⁷

In its introductory paper, the Resilience Center of Stockholm University⁵⁸ states, “Resilience is the capacity of a system, be it an individual, a forest, a city or an economy, to deal with change and continue to develop. It is about how humans and nature can use shocks and disturbances like a financial crisis or climate change to spur renewal and innovative thinking. ... Resilience is therefore an attempt to create a new understanding of how humans and nature interact, adapt and impact each other amid change.” The original definition is thus imported from ecology.

The ‘mother’ of resilience in the social sciences is Nobel-prize-winning economist Elinor Ostrom, who, together with her husband, Vincent in their oeuvre,⁵⁹ focuses

55 Redclift, 2005, p. 225.

56 Global Pact for the Environment.

57 Draft Global Pact for the Environment, 2017.

58 What is resilience?, 2015.

59 This opus has been discussed by many authors, e.g., Toonen, 2010, pp. 193–202.

on sustainability of socioecological systems (SES). This science targets the integrated study of ecological, technological, social, economic, and political factors, including their interrelationship, with the objective of understanding being whether the users of resources invest sufficient time and energy into their adaptation to changing circumstances, which is generally called ‘the tragedy of commons.’ According to the researchers, the interaction between individuals and their environment determines whether we safeguard or exploit our natural resources. The SES system is also a manifestation of polycentricism, as the governance system is formulated as the network of government and non-governmental organs, their associations, and their companionships.

Ostrom and others wrote,⁶⁰ “What is a SES? A SES is an ecological system intricately linked to and affected by one or more social systems. ... When social and ecological systems are so linked, the overall SES is a complex, adaptive system involving multiple subsystems, as well as being embedded in multiple larger systems.”

An entirely new field of science is emerging in connection with the social responses to the clear signals of unsustainability. One major characteristic of these scientific reactions is polycentrism, which supports strengthening the adaptive capacity of different systems. Ostrom provides the complete picture⁶¹: “By polycentric, I mean a system where citizens are able to organize not just one but multiple governing authorities at differing scales (see V Ostrom et al 1961; V Ostrom 1987, 1991, 1997). ... Polycentric systems are themselves complex adaptive systems without one dominating central authority.”

Resilience and polycentric systems or the SES system mean somewhat similar things. For example, resilience has been defined as⁶² “The ability of a system and its component parts to anticipate, absorb, accommodate, or recover from the effects of a hazardous event in a timely and efficient manner, including through ensuring the preservation, restoration, or improvement of its essential basic structures and functions.”

The best and easiest way to provide a synopsis is to state in summary that the essence of resilience is the ability to adapt ourselves to different crisis situations or the ability to react in a flexible way. This general definition covers several components, such as the system approach, precaution, risk management, adaptation, flexibility, cooperation, involvement of the public, subsidiarity, integration, complexity, adaptation, adaptation, and adaptation. New concepts also feature in the notion of resilience, such as polycentrism, referring to diversity in the given context. These are all familiar terms, yet the major novelty is that they appear in a certain context and relationship, acquiring a slightly different character in the process. Resilience can be considered an implementation method or variety of sustainable development and arguably the most important among the set of instruments as its objective is something we tend to forget or disregard, namely to be prepared for the unexpected, rendering

60 Anderies, Janssen, and Ostrom, 2004.

61 Ostrom, 1999, p. 528.

62 O'Brien, Pelling, and Patwardhan, 2012, p. 563.

resilience as the science or art of managing such situations. A fine example of such situations is climate change. We can no longer avoid facing the issues of climate change; however, due to the lack of global agreement as well as the physical conditions of the atmosphere, the most viable variation today is to adjust ourselves to the actual situation and develop the ability and modality of adaptation.

There are several legal principles and instruments that may well be included in the toolbox of resilience, as the complex adaptive system requires complex institutional system as well. These instruments and principles differ little from the set of sustainable development tools as only their emphasis may be different.

We agree with van Rijswick that it is indispensable to put the emphasis of resilience on environmental legislation⁶³: “Achieving a sustainable society also assumes a resilient society that can cope with new environmental problems and risks and is able to adapt to new circumstances. ... ‘Resilience’ is concerned with the capacity of the legal system and society to adapt to changing circumstances and the way in which uncertainties are dealt with. ... In turn, this requires flexibility on the part of the legal system and in standard setting. ... The aim is to achieve a balance between flexibility and legal certainty in order to facilitate adaptive governance that safeguards legitimacy. Furthermore, the question arises how to cope with complexity in legal and societal issues.”

2. Legal considerations

We might arrive at the conclusion that sustainable development law cannot be considered a self-evident concept, with a definite meaning and clear-cut instruments. Rather, it is a general concept, which can and should exert influence on different policy fields. Not only is it impossible to provide a clear-cut legal definition of the concept, but references to sustainable development also lack direct legal consequences. Even the wording of the concept is in flux – sustainable growth, green economy, circular economy, etc. It sometimes appears much easier to change the phrase than to clarify the obligations or achieve a meaningful effect. None of these characteristics serve legal certainty or legality, but all components have some normative nature with a diverse set of respective means and methods for enforcement.

It would be impossible to choose several equally important priorities from among the major components of sustainable development. Thus, it is best to focus on the original source of the idea of sustainability – that is, the environmental, ecological aspect – in the same way as it has been presented above, rearranging the 17 SDGs in this direction. We are convinced that there is no such thing as ‘neutral’ sustainability.

63 Rijswick, 2012, point 7.

We now turn to the instruments and components that are indispensable for sustainable development and, as a consequence of our previous choice of focus, that also have environmental protection as their central attribute. In the following, we present an outline of the basic components – or a strict minimum – of all sustainable development schemes. As such, these elements constitute the immanent essentials of the concept.

- The *rights of future generations* or intergenerational equity, which concept, according to current trends, does not have a special set of institutions of its own. Therefore, it would be expedient to attach to it *the right to environment* or other terms to translate this equity into the language of environmental human rights.
- This is coupled with *intragenerational equity*, that is, the rights of current generations, with a clear link to the issue of the right to the environment. At this point, it is worth introducing an important cornerstone of the international legal development of the concept of sustainable development. Attached to the judgment in the Gabčíkovo-Nagymaros (*Hungary/Slovakia*) case on September 25, 1997,⁶⁴ Judge Weeramantry's opinion describes sustainable development as the right of people to the furtherance of their happiness and welfare, which, at the same time, is counterbalanced by the right to the protection and preservation of the environment. According to Judge Weeramantry, the balance between the two opposing principles is created by sustainable development.⁶⁵ The recognition of this concept is also apparent from the literature following the judgment.⁶⁶
- *Public participation* is also fundamental, together with its three major pillars (access to information, participation in decision making, and access to justice). Stemming from the idea of environmental democracy, this principle also covers environmental justice and provides a better chance for the implementation of generational equity.⁶⁷
- *Cooperation* or cooperative instruments play a primary role in all levels in the form of international cooperation, stakeholder cooperation, etc., constituting an additional element of public participation. Most obligations related to the achievement of sustainable development necessitate cooperation, such as the common heritage of mankind, shared natural resources, common and differentiated responsibilities, and eradicating poverty.
- *Integration* is an overarching concept and the institutionalization of sustainability, providing a simplified or accessible version of the major contents of sustainable development. Its main objective is to manage social, material, financial, and environmental interests in one system rather than viewing them

64 ICJ Judgment, 1997, pp. 7–84.

65 Weeramantry, 1997, p. 92.

66 See, for example, Birnie, Boyle, and Redgwell, 2009, p. 115.

67 See, For example, Article 1 of the Aarhus Convention, 1998.

as separate issues. In its Gabčíkovo-Nagymaros judgment,⁶⁸ the ICJ emphasized the following: „140. ... This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.” There are many well-known instruments serving integration, including environmental impact assessment, strategic environmental assessment, and the work of the different sustainable development councils or committees operating in most countries. *Integration and sustainable development are two sides of the same coin.* The essence of integration is to ensure the necessary representation for the environment, so that it has a chance during the reconciliation process. In terms of sustainable development, integration is a real challenge for legislation, as clearly stated in the above judgment and in related assessments.⁶⁹ Integration may be considered a practical path to implementing sustainable development.

- *Precautionary principle* covers among others prevention and risk assessment. It has substantial moral content, covering extended responsibility for different conduct. Principle 15 of the Rio Declaration⁷⁰ covers possible practical solutions and provides the principle with a global character.⁷¹ The CJEU (ECJ) rendered several important judgments⁷² to clarify the content of the principle, including introducing the concept of ‘scientific uncertainty.’
- *Subsidiarity* is also essential, covering not only the effective distribution of competencies and duties but also the involvement of different institutional systems, such as state and local governments, social organs, NGOs, businesses, churches, and small communities. “In this way subsidiarity can be regarded as a principle of distribution of the diverse social functions that together make up the common good.”⁷³
- *Good governance*, the essence of which was presented above based on the ILA New Delhi Declaration of 2002,⁷⁴ covers appropriate democratic and transparent decision-making procedures and financial accountability, combatting corruption, due process in procedures, and observation of the rule of law and human right and special care for public procurement. Otherwise, there are no fixed requirements of good governance. For example, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

68 ICJ Judgment, 1997, p.7.

69 See, for example, Sands, who underlines that the central element of sustainable development is integration: Sands, 1994, pp. 302–303.

70 Rio Declaration, 1992.

71 “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

72 Case C-180/96, First Instance Court, T-13/99, joint cases T-74, 76, 83-85, 132, 137, & 141/00, etc.

73 Carozza, 2003, pp. 45–46.

74 ILA, 2002.

mentions eight principles⁷⁵ – 1. Participation, 2. Rule of law, 3. Transparency, 4. Responsiveness, 5. Consensus-oriented, 6. Equity and inclusiveness, 7. Effectiveness and efficiency, 8. Accountability – while the Council of Europe enumerates 12 principles in connection with local governments,⁷⁶ adding, among others, ethical conduct or innovation to the previous list.

Intergenerational equity, or the concern of future generations' rights, is the most crucial question from among the above list of the vital constituents of the concept of sustainable development – which we might extend to other similar or instrumental aspects such as resilience – and might also be viewed as the most distinct one compared with the others. Intragenerational equity, positioned at the other end of the spectrum of generational problems, is less specific and less novel. The focus on the poor, vulnerable people, and disabled persons forming part of public awareness has always been present in social history. Subsidiarity, cooperation, public participation, integration, and good governance, while equally important for sustainable development and future generations' rights, are less specific; they all might form part of other social and legal disciplines, such as local government issues and many others, and consequently are less appropriate for characterizing the entire scheme of sustainability. The precautionary principle also refers to future uncertainties and primarily to special care for likely consequences, in line with the question of how to deal with the problem of future generations. In summary, from among the list of legal components of sustainable development, which is our wider playground, intergenerational equity likely remains the greatest challenge. Therefore, we will focus on this subject at a later time. Environmental rights, or, in other words, the human right to a certain environment – the qualities and characteristics are discussed below – is strictly connected to future generations, as one should also answer the question of whose rights are in question.

3. Future generations

3.1. Moral background

The 1972 Stockholm Declaration proved to be that which mentioned most of the constituents of the subsequent UN global environmental conferences. Principle 2 reads, “The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning

⁷⁵ Good Governance, 2021.

⁷⁶ Council of Europe 12 principles, 2008.

or management, as appropriate.” Twenty years later, Principle 3 of the Rio Declaration⁷⁷ can be viewed as a clear follow-up and the most important principle in connection with the evolving concept of sustainable development: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”

Five years after Rio, a declaration on the responsibilities of the present generations towards future generations was issued⁷⁸ by UNESCO, covering several commitments presented as moral obligations to formulate behavioral guidelines for the present generations: “Convinced that there is a moral obligation to formulate behavioural guidelines for the present generations within a broad, future-oriented perspective.” This declaration clearly articulated the duties of current generation as its basis, which we discuss later: “Resolved to strive to ensure that the present generations are fully aware of their responsibilities towards future generations.”

The declarations in 11 articles listed what may also be taken today as the most crucial content of the duties: (a) the needs and interests of future generations, (b) freedom of choice – also referring to human rights, (c) the maintenance and perpetuation of humankind “with due respect for the dignity of the human person”, (d) preservation of life on Earth, (e) protection of the environment, (f) protecting the human genome and biodiversity, (g) preservation of cultural diversity and cultural heritage, (h) the common heritage of humankind, (i) peace, (j) development and education, and (k) non-discrimination.

The ideas of the Hungarian sustainable development strategy adopted in 2012, the third progress report of which was completed at the end of 2019, should also be referenced as it aims to better clarify the above thoughts (NFFS, 2012, pp. 9): “Sustainability ... means that the current generations, that want to establish their own wealth, do not deplete the conditions of individual well-being and public good, do not exhaust their resources, but preserve or even expand them for future generations in the essential quantity and quality. The interests of the unborn, consequently of those who do not have the right to vote could be secured, if the current generation sets limits of values, of constitutional and institutional character for their own freedom of movement.”⁷⁹ Again, moral and legal obligations are both mentioned.

Regarding equity toward future generations, equitable behavior is undoubtedly a vital part of international policies and regulations. Understanding of the rights of future generations – as well as understanding of the other foundation of sustainable development, intragenerational equity – is a fascinating moral and legal challenge that several authors have addressed via different approaches on a scale from heartfelt support to total rejection. Edith Brown Weiss, the most prominent

77 Rio Declaration, 1992.

78 UNESCO Declaration, 1997.

79 NFFS, 2012, p. 20.

author on the rights of future generations,⁸⁰ wrote, “This ethical and philosophical commitment acts as a constraint on a natural inclination to take advantage of our temporary control over the earth’s resources and to use them only for our benefit without careful regard for what we leave to our children and their descendants.”

We must agree with the author that “This notion conveys both rights and responsibilities. Most importantly it implies that future generations have rights too.” Weiss classifies three major principles in connection with intergenerational equity, namely (a) to conserve options and the diversity of choice – “Future generations are entitled to diversity comparable to that which has been enjoyed by previous generations.”; (b) to maintain the quality comparable to that which has been enjoyed by previous generations; (c) and equitable access, for example, access to potable water supplies.

Later, the same author presents four general decisive criteria underlying these principles: (a) equality among generations, which does not allow the present generations to exploit resources to the exclusion of future generations, nor does it allow the imposition of unreasonable burdens on present generations to meet indeterminate future needs; (b) we may fail to predict the values and preferences of future generations – therefore, sufficient flexibility is needed to achieve their own goals according to their own values and preferences; (c) clear expectations are needed in the application to foreseeable situations; (d) different cultural traditions and various economic and political systems should be taken into consideration.

From among the many authors who discuss this topic, only Gaba, who focuses on current morality on the basis of the current time, is mentioned here: “Ultimately, it means that the relationship between the present and the future is not derived from what the future demands of us based on their needs, but what we say to the future about our aspirations.”⁸¹ Consequently, when considering the core of the problem, it is more practicable to underline the limitations and obligations of the present.

Many sources and documents refer to the overall dilemma as an essentially moral one, similar to UNESCO in 1997. In his report, via a conceptual framework, the UN Secretary General⁸² mentions the ethical dimensions as a starting point. He quoted the OECD glossary: “Intergenerational equity has been defined as the issue of sustainable development referring, in the environmental context, to fairness in the inter-temporal distribution of the endowment with natural assets or of the rights to their exploitation.” He also discussed “who exactly falls into the scope of discussion”, and the answer may arise from ancient ethical considerations: “For instance, the Confederation of the Six Nations of the Iroquois passed on the principle that decisions take into account the welfare and well-being of the seventh generation. Nearly all human traditions recognize that we, the living are, sojourners on earth and temporary stewards of our resources.”

80 Weiss, 1992, pp. 19, 22, and 23. The major publication of the same author in this respect is Weiss, 1989.

81 Gaba, 1999, p. 288.

82 Report of the Secretary-General, 2013.

If morality is such a crucial issue, at least from a European perspective, the best approach would be to take Christianity and, within this, catholic teachings as the basis. The reason we focus more on catholic teachings is described by the difference between the hierarchy of the church as prescribed by a reckoned Hungarian protestant theological professor.⁸³ He says that the Roman Catholic and Orthodox churches on the one hand and the Protestant on the other have different concepts of the management of the church. While in Protestant churches, the primary and decisive body is the local congregation, which has a wide margin of liberty in defining the outline of their teaching, meaning also that there are no compulsory statements that oblige other congregations, while for the Catholic and Orthodox churches, the strict hierarchy in teaching is their distinctive feature. Finally, several messages, encyclicals, letters, and other documents have been issued on behalf of the Vatican in recent decades, focusing on sustainability and, within this, the concerns of future generations.

It is commonly accepted today that the reference to the dominion of man over nature in the Book of Genesis [1:28] should only be interpreted as trusteeship or acting as a responsible guardian. In 1979, John Paul II clearly stated,⁸⁴ “Yet it was the Creator’s will that man should communicate with nature as an intelligent and noble ‘master’ and ‘guardian’, and not as a heedless ‘exploiter’ and ‘destroyer.’” Several readings of the Bible make it clear that the creation of human beings means, in reality, the creation of mankind and, thereby, the continuity of human generations. Moreover, one can also identify the idea of the two generational visions: the succeeding generations and the list of families of mankind – and thus current generations – at the same time.

*Gaudium et Spes*⁸⁵ offers lucid guidance in this respect: “69. God intended the earth with everything contained in it for the use of all human beings and peoples. ... In using them, therefore, man should regard the external things that he legitimately possesses not only as his own but also as common in the sense that they should be able to benefit not only him but also others.” Future generations have their place in this message.

Populorum progressio, released in 1967,⁸⁶ addresses the real meaning of development: “(14) The development we speak of here cannot be restricted to economic growth alone. To be authentic, it must be well rounded; it must foster the development of each man and of the whole man.” It later states, “(76) [W]e are not just promoting human well-being; we are also furthering man’s spiritual and moral development, and hence we are benefiting the whole human race. Of course, there is a place for solidarity and peace, so instead of ‘prosperity’ I prefer the term ‘well being.’”

83 Béres, 2004, p. 101.

84 *Redemptor hominis*, 1979.

85 *Gaudium et Spes*, 1965.

86 *Populorum Progressio*, 1967.

The Encyclical *Sollicitudo rei socialis* also provides a definite answer to the real values and content of progress: “(34) Nor can the moral character of development exclude respect for the beings which constitute the natural world, which the ancient Greeks – alluding precisely to the order which distinguishes it – called the ‘cosmos’ The dominion granted to man by the Creator is not an absolute power, nor is it a freedom to ‘use and misuse’, or to dispose of things as one pleases. The limitation is imposed from the beginning by the Creator himself and expressed symbolically by the prohibition not to ‘eat of the fruit of the tree’ (cf. Gen 2:16–17).”⁸⁷

In his anniversary encyclical letter,⁸⁸ while suggesting that everyone re-read the *Rerum Novarum*⁸⁹ itself, John Paul II was entirely clear in this regard: “31. . . . God gave the earth to the whole human race for the sustenance of all its members, without excluding or favoring anyone. This is the foundation of the universal destination of the earth’s goods.” Moreover, he directly mentioned future generations: “37. Equally worrying is the ecological question which accompanies the problem of consumerism and which is closely connected to it. . . . Instead of carrying out his role as a co-operator with God in the work of creation, man sets himself up in place of God and thus ends up provoking a rebellion on the part of nature, which is more tyrannized than governed by him. . . . In this regard, humanity today must be conscious of its duties and obligations towards future generations.”

The most important message of Pope Benedict XVI’s encyclical letter⁹⁰ is the following: “48. Today the subject of development is also closely related to the duties arising from our relationship to the natural environment. The environment is God’s gift to everyone, and in our use of it we have a responsibility to the poor, to future generations and to humanity as a whole. . . . Consequently, projects for integral human development cannot ignore coming generations, but need to be marked by solidarity and inter-generational justice, while taking into account a variety of contexts: ecological, juridical, economic, political and cultural.” Our responsibility to future generations is even more heavily emphasized later in the same letter: “50. . . . At the same time we must recognize our grave duty to hand the earth on to future generations in such a condition that they too can worthily inhabit it and continue to cultivate it.” Pope Benedict also did not hide his opinion regarding the selfishness of the current generation: “51. The way humanity treats the environment influences the way it treats itself, and vice versa. . . . Herein lies a grave contradiction in our mentality and practice today: one which demeans the person, disrupts the environment and damages society.”

Environmental protection, the questions in connection with future generations, and the proper direction of development are to be taken as one common, holistic

87 *Sollicitudo rei Socialis*, 1987.

88 *Centesimus Annus*, 1991.

89 *Rerum Novarum*, 1891.

90 *Caritas in Veritate*, 2009.

system. In his message for the World Day of Peace in 2010⁹¹, ‘If You Want to Cultivate Peace, Protect Creation’, which was dedicated entirely to our subject matter, we can learn the following: “7. ... The goods of creation belong to humanity as a whole. Yet the current pace of environmental exploitation is seriously endangering the supply of certain natural resources not only for the present generation, but above all for generations yet to come.” The two types of generational equity, current and future, should be kept in mind: “8. A greater sense of intergenerational solidarity is urgently needed. Future generations cannot be saddled with the cost of our use of common environmental resources. ... in addition to a fairer sense of intergenerational solidarity there is also an urgent moral need for a renewed sense of intragenerational solidarity, especially in relationships between developing countries and highly industrialized countries.”

The suggestion is clear: “(11) It is becoming more and more evident that the issue of environmental degradation challenges us to examine our life-style and the prevailing models of consumption and production, which are often unsustainable from a social, environmental and even economic point of view. ... We are all responsible for the protection and care of the environment.”

The most recent vital document is the encyclical letter of Pope Francis⁹². This encyclical also considers current and future generations as parts of a greater system: “13. The urgent challenge to protect our common home includes a concern to bring the whole human family together to seek a sustainable and integral development, for we know that things can change...”

36. ... We can be silent witnesses to terrible injustices if we think that we can obtain significant benefits by making the rest of humanity, present and future, pay the extremely high costs of environmental deterioration.”

The unity of rights and obligations and the idea of trusteeship are also stressed to a greater extent: “67. We are not God. The earth was here before us and it has been given to us.... This implies a relationship of mutual responsibility between human beings and nature. Each community can take from the bounty of the earth whatever it needs for subsistence, but it also has the duty to protect the earth and to ensure its fruitfulness for coming generations.”

Pope Francis summarizes in one systemic approach the need for environmental protection and the renewed content of public good and common responsibility: “95. The natural environment is a collective good, the patrimony of all humanity and the responsibility of everyone. ...

159. The notion of the common good also extends to future generations. ... We can no longer speak of sustainable development apart from intergenerational solidarity. Once we start to think about the kind of world we are leaving to future generations, we look at things differently; we realize that the world is a gift which we have freely received and must share with others. Since the world has been given

91 World Day of Peace, 2010.

92 *Laudato Si'*, 2015.

to us, we can no longer view reality in a purely utilitarian way, in which efficiency and productivity are entirely geared to our individual benefit. Intergenerational solidarity is not optional, but rather a basic question of justice, since the world we have received also belongs to those who will follow us. ...

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

Human dignity is strictly connected to the concept of future generations from the very beginning. A clear and short summary was offered at an earlier time by the Venice Declaration⁹³: “Respect for creation stems from respect for human life and dignity. It is on the basis of our recognition that the world is created by God that we can discern an objective moral order within which to articulate a code of environmental ethics.”

Our last reference in this respect is also a message for the World Day of Peace in 2020,⁹⁴ in which Pope Francis spoke of the urgent need for ecological conversion: “Indeed, natural resources, the many forms of life and the earth itself have been entrusted to us “to till and keep” (*Gen 1:15*), also for future generations, through the responsible and active participation of everyone. ... The ecological conversion ... must be understood in an integral way, as a transformation of how we relate to our sisters and brothers, to other living beings, to creation in all its rich variety and to the Creator who is the origin and source of all life.”

The Catholic Church also places special focus on human rights, including the right to the environment, for which the starting point is human dignity and common good. In a World Day of Peace message,⁹⁵ Pope Saint John Paul II came to the conclusion that “(7) Respect for life, and above all for the dignity of the human person, is the ultimate guiding norm for any sound economic, industrial or scientific progress. . . . (9) The right to a safe environment is ever more insistently presented today as a right that must be included in an updated Charter of Human Rights.”

Almost a decade after this message, in 1999, Pope Saint John Paul II devoted an entire World Day of Peace message to human rights.⁹⁶ In addition to the prohibition of all forms of discrimination and the right to self-fulfillment, solidarity, and peace, Paragraph 10 concerns responsibility for the environment: “(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving legal form to this right. But legislative measures are not sufficient by themselves. ...”

93 Venice Declaration, 2002.

94 World Day of Peace, 2020.

95 World Day of Peace, 1990.

96 World Day of Peace, 1999.

At the end of this survey, I intend to recommend a much more authentic and beautifully structured source than mine: the Compendium of the social doctrine of the Church,⁹⁷ especially the 10th chapter, which deals with environmental protection.

3.2. Future generations' rights taken as duties of the current generation

I must first emphasize that, similar to my understanding of the essence of sustainable development, taking ecological considerations as the groundwork, regarding intergenerational equity, I hold the same position. On the one hand, if the question of future generations is one of the core – if not the most important – elements of sustainable development, there is no question as to why the two share a destiny. On the other hand, we should somehow delineate what we focus on from among the many opportunities – healthcare, education, social security, etc.; again, the major concern regards resources, mostly natural or environmental, as the primary condition of everything else.

A shocking beginning might be that “62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁹⁸ The answer may be that the “Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”

What should be done, and why does it seem to be so difficult to find the proper answer? We face many difficulties when seeking this answer. As a legal scholar described,⁹⁹ “Democracy’s neglect of future citizens has at least four sources. First, there is the natural human tendency to prefer the immediate to the distant, both in what one fears and what one desires. ... The second reason for neglecting future generations appeals to the oldest and still one of the most influential justifications for the principle, namely that representatives should be responsive to their constituents ... The third source of the neglect of the future stems from the fact that democracy is government pro tempore. The rulers exercise power for a limited period of time, after which they stand for reelection and reappointment, or retire from office. ... They try to pass laws and policies that produce results within the limit of their time in office. ... Finally, there is a tendency in most modern democracies today to favor the older age group. Because this group has more numerous members, and also because some of them exploit spurious age discrimination claims, they are privileged in law and public policy.”

This scholar’s suggestion is as follows: “To protect future’s democratic capacities, we should therefore establish some institutions that create roles that give special

97 Compendium, 2004.

98 UNHCR, 2018.

99 Thompson, 2010, pp. 17-37, A.

attention to democratic potential of individuals or groups who are otherwise not represented, or not adequately represented.”

Is it indeed this difficult to give future generations a chance? Recently, I was able to participate in one more debate on this topic, in which some speakers required that we should first somehow define the content, scope of rights, and needs of future generations. However, in my view, this may be an endless story and a good excuse for doing nothing. Our ideas regarding future generations might differ from region to region, from country to country, from the perspective of living conditions, social background, religious beliefs, etc.

I prefer Bosselmann’s evaluation¹⁰⁰ as a definite message: “For principle reasons we are unable to determine the needs of future generations. Only more or less informed guesses are possible about the options that future generations may justifiably expect. The reasonable choice, therefore, is for a duty to pass on the integrity of the planetary ecosystem as we have inherited it (ecological integrity). Uncertainty requires precaution, and there seems no better precautionary measure than assuming that future generations would like the planetary ecosystem as bountiful as we have found it.”

The central concern here, as mentioned in 2013 by the UN Secretary General,¹⁰¹ is that “5. Future generations are politically powerless, with the representation of their interests limited to the vicarious concern of present generations. As the UN Report of the World Commission on Environment and Development, *Our Common Future* (1987), states: ‘We act as we do because we can get away with it: future generations do not vote, they have no political or financial power; they cannot challenge our decisions.’” We have faced these hindrances from the very beginning. Regarding a similarly difficult problem for many from the same UN paper, “19. Simply put, it is argued that future persons cannot have rights because they do not yet exist – they cannot possess anything, including rights. In legal terms, it is argued that rights go hand-in-hand with duties; legal duties cannot exist absent legal rights, so that present generations cannot have legal obligations to future generations. If the rights-holder does not exist, it is difficult to conceive of anyone being under a corresponding duty.”

In my opinion, the concept of who will belong to the group of future generations is a relatively elusive question, a moving target, both timewise regarding the commencement of the future-generation category and regarding duration. Who might belong to future generations? Only the unborn or others as well? How many generations are covered? These are common questions that are discussed further when an individual wishes to develop a formal and precise answer, usually rather than considering the merits of the case. Our assignment is to provide the virtues, merits, and consequences; it is secondary to define the exact beginning and term. Unborn people will be born soon; thus, this term is in itself flexible. Why, then, do

100 Bosselmann, 2017, p. 119.

101 Report of the Secretary-General, 2013.

we not accept that some members of future generations are already living among us? Current generations consist of older and younger people, representing different generations themselves. My children represent a future generation for me, and my grandchildren a next generation for them. If we accept this practical answer, it may become much easier to postulate needs, interests, rights, and duties and obligations. Moreover, considering seven generations to come is discussed in traditional wisdom and fairy tales. The concept of a generation is generally considered to be 25 years. Therefore, the basis of calculation is not the age of life expectancy but the general age of being parents. Thus, why should we limit our perspective for 175 years only, that is, seven times 25 years? In other words, is it even possible to foresee 175 years into the future? These are inadequate problems, meaning perhaps that the current generation wants to limit its own responsibility. Therefore, it is better to turn toward the practical answer: what the basis of action should be. There are two major options to be considered in connection with the protection of future generations' rights and interests as well as several additional, more minor possibilities or points associated with the main ones:

- 1) One alternative might be to circumscribe the likely rights of future generations or, at a minimum, to somehow refer to these rights. As noted above, this may well lead to an endless story; however, it offers a good basis for long-lasting scholarly discussions, likely leading nowhere. Many authors and documents agree that it would be unnecessary to choose this path; nonetheless, we must consider it as an option. If one wishes to follow the delineation of rights, then I strongly recommend the suggestion of the current UN Secretary General¹⁰² in this respect: "Implementation of the full spectrum of human rights is at the heart of our capacity to recover from the pandemic, renew the social contract and more. Civil, political, economic, social and cultural rights are mutually reinforcing, indivisible and universal, not ordinary services with a market-set price tag but essential factors in building more inclusive societies. Promoting and protecting civic space makes societies stronger and more resilient, building on the right to participate and freedom of expression, association and assembly. While upholding human rights is an obligation for all States, beyond that it is also time to treat rights as problem-solving measures and ways to address grievances, not just for individuals but for communities at large."

Thus, it would not be useful to envisage the interests and rights of future generations, but it would be and must be necessary to expand our concern regarding the accomplishment and proper implementation of the existing complexity of human rights.

An indication of promising progress in the field of human rights law is that on October 8, 2021,¹⁰³ the Human Rights Council adopted four resolutions: on

102 Our Common Agenda, 2021.

103 UNHCR, 2021.

the right to development, on human rights and indigenous peoples, on the human rights implications of the COVID-19 pandemic for young people, and on the human right to a safe, clean, healthy, and sustainable environment. Beginning with sustainable development and ending with the recognition of a safe, clean, healthy, and sustainable environment, several important messages in the preamble should be remembered: “*Recognizing* that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life, ... *Acknowledging* the importance of a safe, clean, healthy and sustainable environment as critical to the enjoyment of all human rights...”

The potential inclusion of this new right in the body of human rights has several – mostly speculative – advantages, such as the chance to refer directly to the right, the need to further develop the constituents, and the chance to open the door for other similar rights, such as the right to water or, in the case of human rights, adjudication offering a concrete right to base certain claims upon. Although it would not mean the enclosure of a distinct right of future generations, this ‘new’ future right may be the appropriate umbrella.

- 2) The other alternative turns toward the current generations and develops duties and obligations for them, an issue that perpetually arises, continuously obliging the then existing current generations to take care of the coming ones. In the *Minors Oposa* case,¹⁰⁴ the court stated, “Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.”

In the decision 28/2017 (X.25.) AB, the Constitutional Court referred to the concepts of legal scholars – such as Edith Brown Weiss – in translating the messages into a constitutional language: “[33] On the basis of Par (1) of Art. P) of the Fundamental Law the current generation has three major responsibilities: to preserve the option of choice, to preserve the quality and to provide access. Option of choice is based upon the consideration that the living conditions of future generations might best be guaranteed if the inherited natural heritage could ensure the freedom of choice for future generations in order to solve their problems, instead of taking the decisions of the present as constraints for the coming generations. On the basis of preserving the quality, we shall take all necessary steps to leave the natural environment at least in the same condition as it had been given to us by the past generations. Access to natural resources would allow current generations access to

104 *Minors Oposa*, 1993.

the available resources as long as they respect the reasonable interests of future generations.” It is also an important message regarding the decision to urge us toward long-term thinking: “[34] The legislator might only meet these principal requirements, if its decisions are based upon a balanced long-term thinking, overarching political phases.”¹⁰⁵

In his Report in 2013, the Secretary General emphasized that “13. ... In fact, as stated in Article 1 of the Universal Declaration of Human Rights ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.’ The basis for our moral obligations towards future people is thus argued to be simply the equal concern and respect we owe to all humans, regardless of where and when they may have been born.” Later, he stated that “25. ... Since we cannot with great certainty ascertain the precise needs and preferences of future generations, we could in devising policies at the very least begin with two considerations: minimizing harm and doing that which benefits both present and future generations.”

Several practical hints, mentioned by Ban Ki-moon as well, were added to the aforementioned one: “26. Second, consideration for the needs of future generations would favour policies that work to the advantage of both present and future generations—and which, other factors being roughly equal, are least burdensome to the present generation. Third, where risks to the interests of future generations are reasonably clear and consequential, present generations should exercise forbearance, foregoing some benefits. This finds its expression in the precautionary principle, which is widely but not universally accepted.”¹⁰⁶

At the end of 2021, the UN Secretary General also emphasized that “54. ... Accounting for the interests of future generations would require two adaptations: strengthening our capacities to understand and assess the future, building long-term thinking into important policies and decision-making; and creating specific forums and instruments to protect the interests of future generations at all levels of governance.”¹⁰⁷

Here, we thus return to the legal considerations and constituents listed under the general discussion of sustainable development and its instruments, for example, the precautionary principle, subsidiarity, public participation, good governance, and others; moreover, we might add other effective legal devices, such as policymaking or planning, environmental impact assessment, and risk assessment. The above institutional mechanisms are also mentioned and will be presented below.

105 AB, 2017/2.

106 Report of the Secretary-General, 2013.

107 Our Common Agenda, 2021.

I believe without doubt that the second alternative, that is, not entering the field of legal imagination but, instead, using existing means and methods or developing new ones based on current realities, is more beneficial.

4. The role of the state and the duty of everyone

4.1. *The state*

Responsibility towards future generations and equitable thinking are the primary requirements of fundamentally and necessarily ecologically (creation) centered sustainable development, alongside intragenerational equity. It is clear that present generations cannot take away from future generations the opportunities of equal access to resources and to an environment of appropriate quality even if they could do so. Among the obligations of present generations, the responsibility of states is of utmost importance through the establishment of institutions that can safeguard the appropriate level of protection in the long-term as well as through ensuring the principles of prevention and precaution.

Every international convention, agreement, protocol, guidance, and recommendation first addresses the states. Human rights documents and jurisdictions also focus on state activities and require states to implement the requirements as well as to enforce human rights obligations. Everybody else is indirectly obliged. The jurisprudence of the European Court of Human Rights¹⁰⁸ clearly demonstrates what states should do to properly implement the given rights, meaning that they have a direct obligation to develop the necessary guarantees: “57. The present case does not concern interference by public authorities with the right to respect for the home, but their failure to take action to put a stop to third-party breaches of the right relied on by the applicant. ... 62. In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant’s right to respect for her home and her private life, in breach of Article 8 of the Convention.”¹⁰⁹

Art. P of the Fundamental Law of Hungary¹¹⁰ refers to the obligation of the state and everyone for the sake of future generations, but this does not mean an equally balanced situation. The comprehensive understanding of responsibilities

108 The environmental practice of which is available with permanent updating on internet at: https://www.echr.coe.int/documents/fs_environment_eng.pdf – European Court of Human Rights: Environment and the European Convention on Human Rights.

109 Case of Moreno Gómez v. Spain 2004.

110 Art. P, Par. 1, reads, “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.”

also raises the question of whether it is possible to make a distinction according to the extent of such responsibilities. Similar to what we can learn from ECHR jurisprudence, The Hungarian Constitutional Court stressed first¹¹¹ that “[39] Constitutional responsibility to the common heritage of the nation is uniform and joint, still, according to the understanding of the Constitutional Court within this general responsibility the state has a primary and leading role, as the coordinated implementation of the system of institutional guarantees of such responsibility, the setting up, correction and enforcement of the structure of institutional protection is directly and primarily a state function.” This was further elaborated some months later¹¹²: “While the duty to protect the environment is equally relevant to the state in its broadest meaning, the natural and legal persons, this duty might not be identical for the different entities. While we may not generally require that natural and legal persons should tailor their behaviour to an abstract objective, which has not been specified by the legislator and this also may not be enforced, it is required that the state should unequivocally define those legal obligations, which both the state and private persons should implement, for among other reasons to provide an effective protection for those interests, appraised in Article P) (1) of Fundamental Law ... all those duties, which the state might implement elsewhere with the protection of fundamental rights, here should be executed via the stipulation of legislative and institutional guarantees” (Reasoning [30]). In short, this refers to the obligation to provide institutional protection.

There is also a shorter version of the same message in Decision of the Constitutional Court No. 3104/2017 (V. 8.) AB, which emphasized that “[39] ... for among the general range of responsibilities the state has a primary role to play, as it is the direct and principal duty of the state to implement a harmonized system of institutional guarantees, to create the system of such institutions, also to make the necessary corrections.” Thus, the obligation side of the implementation of rights is clearly highlighted.

State activity must be open and transparent, and the conditions of good or better¹¹³ governance apply. State actions and institutions are governed by law, and the society requires that states should formulate the conditions of the responsibility of everybody else, as described above by the Hungarian Constitutional Court. States are parties to different international consultations, agreements, and organs and play a central role in every activity. If one considers the usual setting of sustainable development – environment, society, economy – then states must be part of everything. People expect states to take care of everything while not interfering with private issues. A significant portion of the economy is also taken as private, operating in the shadows with numerous grey areas. The economy also requires the protection

111 AB, 2017/1.

112 AB, 2017/2 s.

113 See, for example, https://www.oecd-ilibrary.org/governance/trust-and-public-policy_9789264268920-en.

provided by the state but does not want to allow substantial interference with its operations. The decision-making procedure and conditions of business organizations are not transparent for others; they are only so if the state obliges them to publish some of their figures. Without direct legal pressure, there is a much less chance to be accessible for non-profitable areas and ideas.

The international legal community also emphasizes the primary role of the state in this respect, including in the preamble of the ILA 2020 resolution¹¹⁴: “States must take into account the needs of future generations in determining the rate of use of natural resources.”

Ultimately, understanding the vital regulatory role of the state it would be appropriate to have some reference related to intergenerational equity, most likely at the constitutional level. The exact wording may differ, such as the exact location. The preamble, general provisions, and fundamental rights are all equally useful. Even a provision on sustainable development is satisfactory, as – according to the current general perception – it encompasses both inter- and intragenerational concepts. The fundamental right to a safe, clean, healthy, and sustainable environment might not be assumed without at least an indirect indication to future generations.

4.2. The economy

A good example of this ambivalent situation is the use of indicators of economic output. One has no difficulty searching for the answer to why using GDP is an incorrect approach. In the first academic article on the internet,¹¹⁵ the author clearly described that, “In truth, ‘GDP measures everything’, as Senator Robert Kennedy famously said, ‘except that which makes life worthwhile.’ The number does not measure health, education, equality of opportunity, the state of the environment or many other indicators of the quality of life. It does not even measure crucial aspects of the economy such as its sustainability: whether or not it is headed for a crash.” As I am not an economist, I do not want to enter a detailed discussion on the matter; however, everybody concerned about sustainability agrees that “We need to know whether, when GDP is going up, indebtedness is increasing or natural resources are being depleted; these may indicate that the economic growth is not sustainable. If pollution is rising along with GDP, growth is not environmentally sustainable.” GDP only takes income into account; thus, an environmental catastrophe, as a result of which highly costly clean-up is required, adds to income, while the consequences of the catastrophe are not deducted from the output. Nonetheless, all countries – most likely for the purpose of protecting business interests – use this indicator.

This problem was not touched upon until the Eighth Environmental Action Program.¹¹⁶ As the Preamble reads, “(19) The transition to a well-being economy, where

114 See ILA, 2020.

115 Stiglitz, 2020.

116 Environment Action Program, 2022.

growth is regenerative, is embedded in the 8th EAP and enshrined in both the 2030 and 2050 priority objectives. To ensure that transition, it will be necessary for the Union to develop a more holistic approach to policymaking through, inter alia, the use of a summary dashboard that measures economic, social and environmental progress ‘beyond GDP.’” This may mean that around the 60th anniversary of environmental action programs, the EU might modify the basis of comparison.

Returning to the fundamental requirements of the Eighth Action Program – which is clearly based on the circular economy policy and the current Green Deal, with the new concept of transition to a well-being economy in progress – the main actor is again the state or governance: “(35) As environment policy is highly decentralised, action to attain the priority objectives of the 8th EAP should be taken at different levels of governance, i.e. at Union, national, regional and local levels, with a collaborative approach to multi-level governance. Efficient monitoring, implementation, enforcement and accountability are essential, and effective governance is required in order to ensure coherence between policies.”

Considering the necessary means and methods under Article 3 (Enabling conditions to attain the priority objectives) and avoiding the discussion of numerous others, the first three of the many conditions prove highly traditional, focusing on state responsibility as is typical (with point (e) being the development of a ‘beyond GDP’ dashboard):

- a) ensuring effective, swift and full implementation of Union legislation and strategies ...including by providing sufficient administrative and compliance assurance capacity
- b) prioritising enforcement of Union environmental law where implementation is lacking, including through infringement proceedings...
- c) improving guidance and recommendations, including on effective, dissuasive and proportionate penalties to reduce risks of non-compliance with Union environmental law, as well as stepping up action in the area of environmental liability and responses to non-compliance, and strengthening judicial cooperation in the area of, and law enforcement against, environmental crime as laid down in relevant Union legislation, such as Directive 2008/99/EC of the European Parliament and of the Council (13)...

I believe that environmental legislation – whether national or European – generally does not carry out any overall, systemic intervention in business operations; rather, it uses a piecemeal approach. There are several legal requirements focusing on specific areas – from waste management issues to industrial accidents, from the noise emission of products to environmental impact assessments, and so on – but there is much less effort and regulatory order when the essence of business operations should be affected. While standards – emission limits, monitoring requirements, and using specific appliances – might have very detailed obligations, the structural modification of the entire operation is considered a much more delicate

issue. For example, the BAT under the industrial emissions directive¹¹⁷ has a very limited scope of application “under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.”

Moreover, the entire management system is addressed under the EMAS regime¹¹⁸; entering into the system is voluntary, and only the procedure is obligatory,¹¹⁹ as in case of product and services and applying for an EU ecolabel,¹²⁰ although the idea is promising according the preamble: “(5) The EU Ecolabel scheme is part of the sustainable consumption and production policy of the Community, which aims at reducing the negative impact of consumption and production on the environment, health, climate and natural resources.”

Extended producer responsibility is a major focus area of a circular economy¹²¹ as well as of the Green Deal; however, it is still a prospect and not an actual legal obligation: “(27) The introduction of extended producer responsibility in this Directive is one of the means to support the design and production of goods which take into full account and facilitate the efficient use of resources during their whole life-cycle including their repair, re-use, disassembly and recycling without compromising the free circulation of goods on the internal market.” The phrasing of Article 8 of the directive is very elastic: “Member States may take legislative or non-legislative measures” or “may take appropriate measures to encourage the design of products.” Par. 3 states, “When applying extended producer responsibility, member states shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.” Furthermore, while a circular economy is intended to modify the production system, EPR is covered only within the waste legislation.

Many rudimentary attempts are being made today to expand duties regarding the economy comparable to those held by states. Nonetheless, while doing so is a legal duty of the state, it remains a humble request to business operations. The fate of financial instruments within the EC/EU can be a good example. The Fourth Environmental Action Program provided many details of the financial/economic instruments, and since that time (1987), the upcoming programs have all mentioned the need for such legal tools. However, there was no real progress in this respect. Art. 2 par. 2 of the current (eighth) Program also mentions this: “(h) strengthening environmentally positive incentives as well as phasing out environmentally harmful subsidies, in particular fossil fuel subsidies, at Union, national, regional and local level,

117 Industrial Emission Directive, 2010.

118 EMAS Regulation, 2009.

119 “(8) Organisations should be encouraged to participate in EMAS on a voluntary basis and may gain added value in terms of regulatory control, cost savings and public image provided that they are able to demonstrate an improvement of their environmental performance.”

120 Ecolabel Regulation, 2009.

121 The essence of which is covered by the Waste Directive.

without delay ...” However, the wording of the details coming next also demonstrate the difficulty faced in developing these instruments.

We may refer to the challenge of business and human rights. An open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)¹²² provided a proposal for a “Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”¹²³ as a good example. The current attempts are based on the OHCHR’s 2011 Guiding Principles on Business and Human Rights¹²⁴. It says,

13. The responsibility to respect human rights requires that business enterprises:
- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Additionally, business enterprises may be required to express their commitment to meeting this responsibility through a policy statement as well as to carry out due diligence in regard to human rights.

The 2021 draft text of the above-mentioned proposal for a legally binding instrument, however, leads us back to the state, as becomes apparent when reading the preamble: “(PP7) Stressing that the primary obligation to respect, protect, fulfill and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory, jurisdiction, or otherwise under their control, and ensure respect for and implementation of international human rights law.”

An additional example illustrating this is Responsible Business Conduct (RBC), an alternative term introduced by the OECD in close cooperation with business, trade unions, and non-governmental organizations.¹²⁵ The OECD defines RBC as

- (a) making a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and
- (b) avoiding and addressing adverse impacts related to an enterprise’s direct and indirect operations, products or services.

However, the obligations are again placed on the state: “Governments adhering to these guidelines have made a legally-binding commitment to set up dedicated

122 UNHCR, 2014.

123 UNHCR, 2022.

124 Guiding Principles on Business and Human Rights, 2011.

125 OECD, 2018.

authorities (so-called National Contact Points) to promote RBC, respond to enquiries, and provide mediation and conciliation platform to help resolve cases of alleged non-observance of the OECD MNE Guidelines (known as ‘specific instance’).”

There are useful examples dating back to the 1930s of CSR (corporate social responsibility) becoming a social responsibility of company management in the 1950s to facilitate the adoption of decisions that meet the objectives and values of the respective society. Furthermore, the 1964 Civil Rights Act in the USA contains references to management responsibility in a wider context. CSR is a complex issue covering responsible company management from the perspectives of social, ecological, and economical contexts. The primary goal is sustainability, and its regulation is sporadic and fragmented, partly because it is taken as a voluntary action that goes beyond legal compliance.

Without ethical and responsible behaviour, the legislation is not able to solve the deficiencies of the market. It is a legitimate but not sole purpose of the company to enhance the capital of the owners. At the same time, they take the responsibility to all those stakeholders, who are in touch with the company.¹²⁶

The UN 2000 Global Compact¹²⁷ is an enormous sustainability challenge of companies worldwide, requiring them to harmonize their strategies and operations in connection with the major guiding principles related to human rights, labor rights, environmental protection, and anticorruption movement to improve the steps toward societal objectives.

In 2001, the EU Commission published the Green Paper “Promoting a European Framework for Corporate Social Responsibility” (EU Commission 2001)¹²⁸ aiming “to launch a wide debate on how the European Union could promote corporate social responsibility at both the European and international level.” In the Green Paper, the Commission described the following: “24. There is no unique definition of corporate social responsibility. Most definitions describe it as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Corporate social responsibility provides the foundations of an integrated approach that combines economic, environmental and social interests to their mutual benefit. It opens a way of managing change and of reconciling social development with improved competitiveness.”

In 2011, the Commission put forward a new definition of CSR as “the responsibility of enterprises for their impacts on society.”¹²⁹ It stated that respect for applicable legislation and for collective agreements between social partners is a prerequisite for meeting that responsibility: “To fully meet their corporate social

126 Katona, 2019, p. 45.

127 <https://www.unglobalcompact.org/>.

128 CSR Green Paper, 2001.

129 CSR Strategy, 2011.

responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

- maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- identifying, preventing and mitigating their possible adverse impacts.”

According to these principles and guidelines, CSR covers the following items at a minimum: (a) human rights, (b) labor and employment practices (such as training, diversity, gender equality, and employee health and well-being), (c) environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment, and pollution prevention), and (d) combating bribery and corruption.

On February 23, 2022, the European Commission published a proposal for a Directive on corporate sustainability due diligence, the European Union’s corporate social responsibility legislation.¹³⁰ The objective of EU-level CSR regulation is to promote respect for human rights and the transition toward a carbon-neutral economy. Another objective is to provide a level playing field and legal certainty for businesses operating in the European Union.

Within the EU system, the financial sector has a wide area of regulation, including in connection with sustainability issues. I mention only one example, the regulation related to the investment sector in connection with sustainability,¹³¹ as a follow up to the 2018 Commission Action Plan ‘Financing Sustainable Growth’, setting up an ambitious and comprehensive strategy on sustainable finance and addressing the problem of greenwashing, among others. This sector has also different prudential requirements,¹³² which have been expanded to include sustainable development as well.

Thus, the proposal for a ‘legally binding instrument’ is also binding for the state and the government. In case of business activities, we rely on either robust state implementation or the self-regulatory attitude of the businesses. As the many EMAS or ecolabel activities – including the parallel ISO standards in the case of environmental management – and the growing number of CSR examples prove, this attitude might also be successful. Nonetheless, it would rely more on the proper ethical conduct of the given business organization than on legally enforceable conditions. Knowing that there are several multinational companies that are economically more powerful than states¹³³ – in 2018, 157 of top 200 economic entities by revenue were corporations and not countries – it is clear why it is difficult to use similar duties for companies compared with for states.

130 CSR Proposal, 2022.

131 Commission Regulation, 2021.

132 See Prudential Regulation, 2019.

133 See as an example <https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/>.

There are emerging new fields combining sustainable development and business activities within the wider scope of governance. This can be presented by a recent report on sustainable development and competition law¹³⁴: “Sustainability and competition law is an emerging topic for competition agencies and other stakeholders, representing an area where there is great potential for further exploration.” These attempts may illustrate how the necessity to turn increasingly toward a manifold approach to responsible business conduct is becoming visible and demanding.

Recently, the international legal community has also become increasingly interested in stakeholder engagement. The ILA 2020 Guidance¹³⁵ has specific text on this topic – 5.1 Sustainable Resources Management through Transparency and Stakeholder Engagement – including the need for transparency, the development of compliance assessment structures, public information and raising awareness raising, and promoting corporate social responsibility.

There is, however, promising news in connection with the general legal and public requirements concerning business activities. A year ago, a Dutch court adopted a judgment in connection with climate change and the role of a large company, Shell.¹³⁶ This is considered a watershed moment in climate litigation, together with other landmark rulings around the world redefining stakeholder responsibility for climate change. The rulings suggest that courts are increasingly viewing climate change as a human rights issue and that judges are willing to require states and even corporations to enact ambitious climate policies. In 2021, courts around the world clarified governments’ and companies’ climate change duty of care as well as governments’ extraterritorial responsibility for climate harm.

In April 2019, seven environmental foundations in the Netherlands – Milieudefensie, Greenpeace, Fossielvrij, Waddenvereniging, Both ENDS, Jongeren Milieu Actief, and ActionAid – and 17,379 individual claimants filed a class-action lawsuit against Shell, claiming that Shell could change its business model to invest more in renewable energy and meet a 45% reduction target by 2030. The court confirmed that NGOs representing Dutch public interests have standing interests (paragraph 4.2.2). It further determined that Royal Dutch Shell (RDS) must reduce emissions by net 45% by 2030 compared with current levels (paragraph 5.3). In addition, it drew this responsibility from the unwritten standard of care, as mentioned in 6:162 Dutch Civil Code, which requires RDS to use caution when drafting Shell Group policies. It claimed that the relevant facts and circumstances of the case, the best available climate science, and broad international consensus on the protective effect of human rights against hazardous climate change were considered.

The court acknowledged that RDS has a policy in place as well as that it is changing and adapting its policy. However, the court also concluded that the policy is vague, with weak wording regarding intent, is non-binding, and has no emission

134 Hungarian Competition Authority, 2021, p. 7.

135 ILA, 2020.

136 Shell Case, 2021.

reduction targets for 2030. Therefore, the current RDS policy does not preclude emission reduction obligations. Moreover, the court asserts the aptitude of the injunctive relief as the current situation indicates imminent violation of the emission reduction obligation.

4.2. Intergenerational equity and possible institutional arrangements

Do we really need institutional arrangements related to the representation of the interests of future generations? If so, what form should they take? There are no exact and uniform answers to these questions. It is decidedly true that neither the environment nor future generations have a voice of their own; both need transmitting. Having some institutions nominated to serve as amplifiers is preferable, but it is far from a necessity. The state – which bears the responsibility of safeguarding both generational equities – might undertake this job with or without exact representation if it is a vital part of the political direction. Moreover, the reverse is also true: any well-structured institutional apparatus may be meaningless if there is no political will. Nonetheless, it is worthwhile to nominate one or more delegates to monitor the progress and to raise a voice if necessary. There are several options, including a council, committee, ombudsperson, or spokesperson, and the capacities should have substantial diversity from a mere message or proclamation to a direct interference as their two extremes. Nothing is settled yet, and there are available examples today.

There may be different possible institutional arrangements mentioned in the 2013 and 2021 papers of the UN Secretary Generals, among others. Many years ago, Weiss also referred to the need for the institutional representation of future generations, and legal and policy scholars analyzed the problem in many respects to clarify the most general features of a proper institutional representation of future generations.¹³⁷ In Part III of his 2013 report, the UN Secretary General introduced the existing arrangements and the lessons learned (“39. Canada, Finland, Hungary, Israel, New Zealand, and Wales either have or have had an office that serves to protect the needs of future generations.”). He also mentioned the earlier proposal raised during the preparatory process of Rio-20 related to establishing a High Commissioner for Future Generations, which ultimately did not reach the negotiation stage.

Several other proposals have also been provided. Here, I refer only to the World Future Council, a think-tank of several professions with environmental relevance. The Council has formed a Future Justice subcommission and working group dealing extensively with this issue. According to the World Future Council (WFC), the major features of such an institution are long-termism, integration, bringing authority to agreed sustainability goals and holding governments and private actors accountable

137 Among the various papers, a comprehensive one is Szabó, 2015. Additionally, a recent book was published on the same topic: Cordonier Segger-Szabó-Harrington, 2021. We might also mention the website of the Network of Institutions for Future Generations (NIFG), <https://futureroundtable.org/web/network-of-institutions-for-future-generations>.

for not delivering on them, and connecting citizens with national and even international level decision-making procedures.¹³⁸ The WFC issued a leaflet¹³⁹ in 2018 on this issue and further broke down the main branches of the responsibilities related to a Guardian:

The Guardian (a) as an ombudsperson conveys citizen concerns to the legislating units; (b) as an interface creates incentives for integration and prevents policy incoherence; (c) as an advisory body recommends solutions, (d) as an auditing body traces conflicts of interests and road-blocks to implementation.

In the 2021 Our Common Agenda, the current UN Secretary General stated, “I am also making proposals, such as a repurposed Trusteeship Council, a Futures Lab, a Declaration on Future Generations and a United Nations Special Envoy to ensure that policy and budget decisions take into account their impact on future generations.” The following provides an explanation: “57. Future generations are, by definition, unrepresented in today’s decision-making and unable to articulate their needs. To translate the principle of intergenerational equity into practice, consideration could be given to forums to act on their behalf, as their trustees, as well as instruments to further protect their interests.” There are already several existing arrangements: “58. At the national level, some countries have established committees for the future or future generations commissioners who advise governments and public bodies on the effects of present decisions on people in the future. Other States could establish similar mechanisms, building on these good practices.”

These existing and proposed institutions certainly have a great deal to accomplish. One specific aspect, which has not been mentioned up to this point, is reflected in the aforementioned decision No. 28/2017 (X. 25.) AB, within which the Constitutional Court, turning to the theoretical structures of the protection of future generations’ interests, pointed to a new subject: “[31] On the basis of Par. (1) of Art. P) one might conclude to the autonomous contextual requirements related to state obligations. Par. (1) of Art P) provides a quasi-hypothetical heritage for future generations.” This can be considered the source of the specific protective duty of the state [32], in the framework of which the state must take into consideration “the status of heritage of future generations”, which also includes objective requirements covering the prohibition of non-retrogression among others. This concept of heritage goes beyond state property and can also be connected to the *public trust doctrine*. Landmark decision No. 14/2020 (VII. 6.) of the Constitutional Court concerning the amendment of the Forest Act proved to be a major success in nature conservation. The Constitutional Court once again recognized and highlighted the importance of preserving biodiversity as a value belonging to the nation’s common heritage, and it emphasized the duty of the State to act as a type of public trust and manage

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

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

the natural and cultural treasures constituting the shared heritage of the nation for future generations as beneficiaries. This common interest cannot be overridden by any current economic interests of the present generations.

5. Concluding remarks

The essence of sustainable development from the very beginning of the universally accepted definition is to focus on intergenerational and intragenerational equity, meaning, in practice, how to integrate the different aspects (as the minimum; in other words, ‘weak’ sustainability also includes environmental, social, and economic aspects) into one system of long-term decision making. This is reflected in a much more sophisticated and detailed manner within the UN SDGs from 2015, but the core of the question remains the same. We must learn that within sustainable development, the direction or priorities must be clarified, and this clearly points in the direction of an ecologically based and centered type of building, incorporating awareness of the fact that the natural environment (or Creation) is the primary asset of human life and we – current and future generations – are part of the biosphere, cooperators in the work of Creation.

The most difficult task is to specify the legal consequences, in other words, to turn the general dream into a practical answer or a set of practical answers. Many possible elements can be listed; these vary in terms of international consequences, institutional or legal concerns, etc. Some are more characteristic of the problem of sustainable development itself, and some are less specific. Intergenerational equity, namely the interests of future generations, represents a paramount challenge among the many important legal instruments, concepts, and means. It should also be considered together with the human rights perspective, taking future generations as an inclusive part of the environmental rights framework. Even without delving into the details of this human rights discussion, it is evident that the right to the environment should be considered not an individual right but a collective right; the right-bearer – as the Hungarian Constitutional Court stated as early as 1994 – is humanity or the natural environment (or even the created world), and this clearly encompasses future generations as well. Therefore, we should always consider environmental human rights when discussing equity in terms of future generations.

Both sustainable development and the interests of future generations – as two sides of the same coin – have a deep moral background that is more straightforward than the legal content. Moral responsibility to the natural (created) and manmade environment is essentially very simple: not causing harm, considering the consequences of one’s behavior, and loving (interestingly enough, this is the final important message of the Meadows couple at the end of the 30s anniversary book of Limits to Growth: “The sustainability revolution will have to be, above all, a collective

transformation that permits the best of human nature, rather than the worst, to be expressed and nurtured¹⁴⁰). Several years ago, Saint John Paul II claimed that an ethical crisis lies at the roots of the entire environmental dilemma. In his encyclical as well as later, Pope Francis pointed to the need for an ecological conversion. The Eighth Environmental Action Plan of the EU aims to appear somewhat more pragmatic and emphasizes the need for a green transition. International and national organizations alike are discussing business ethics. It must be remembered that the decisions are made by individuals or groups of individuals, whose personal ethical conduct can also be addressed. When discussing globalization, this should not mean that the individuals, families, and local communities have no role to play; on the contrary, positive ethical conduct is an absolute necessity. Moral background teaches us how to be guardians, how states should act as public trustees, and that every individual decision, every single step, counts. Considering the difficulties of regulating business activities, our ethical dream may be even more valuable. GDP does not reflect true economic output, and the expressions for alternative economic indicators, which should replace it sooner rather than later, are telling word choices: Well-being Index, Gross National Happiness Index, etc.

The required general moral attitude, behavioral changes, and conversion of business operations in the direction of green transition are not self-evident and do not happen overnight. State intervention – long-term policymaking, regulation, setting up the necessary institutions, continuous monitoring, and the use of many indirect methods – is needed. This is the primary, though not the sole, responsibility of the state: to create the playground for other actors – individuals, society, and businesses – to play the game according to the agreed-upon conditions. We may add to this development and safeguarding function the responsibility regarding state property as well as the trustee function for the heritage of the nation or, in a wider context, of mankind. These are managerial functions. When discussing business activities, we must remember the special responsibility of consumers in shaping business attitudes, beginning with the state as one of the largest consumers via its procurement policies and ending with the individual consumer, whose single choices can also have a great impact.

Ecological conversion, green transition, and any other similar catch phrase clearly focus on attitude, the activities of current generations, and the necessity to admit our responsibilities regarding the future. Changing the economic indicators is not a right of the coming generations but a task of the present. Providing access to natural resources equates to setting limits on exploiting them. Imagining what future mankind might require is of no use; rather, an immediate, concrete action is needed. Heritage means that we are leaving assets for the others to come. Mankind is not restricted to the current generations but extended to those that are coming – that is what ‘humanity’ really means: “Nor is there any doubt in the Book of Genesis,

140 Meadows, Randers, and Meadows, 2005, p. 281.

and elsewhere in the Old Testament, that the responsible guardian in question is all mankind, along with all generations and clans."¹⁴¹

If we agree that the best method would be to focus on the responsibilities of the current generations, an expected upcoming problem is how to supervise the implementation of these duties. In addition to providing guidance – on an international level, on a constitutional level, or simply in codes of conduct – is it necessary to look for a supervisor or a guardian? In other words, is it necessary to institutionalize this task? If so, how should this be done? Some countries already have a type of guardian within the state system – a committee, commissioner, ombudsperson, etc. – with a special function of their own or attached to other, similar control functions of a general nature rather than a specific institution. Public participatory rights might also be utilized in this respect. Nonetheless, it is not a crucial problem, as these functions are typically rather symbolic, with no direct actions, and intervention options are attached. These existing institutions function instead as a self-conscience, a spokesperson, sending signs to the decision-makers and the current generations, as their scope of authority is generally not well defined.

Some type of representation or assistance is certainly beneficial, balancing the handicaps of current political, legal, and institutional establishments, which are not designed to properly respond to long-term interests. Numerous interesting ideas may be attached to the concept of future generations, such as long-termism, duties toward unborn people, the idea of responsibility to the natural environment, a precautionary approach, risk assessment, and necessary changes in business indicators. All of these ideas should be channeled into the general structure of governance, but the existing framework is not necessarily receptive.

141 *Redemptor hominis*, 1979.

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