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SYMPOSIUM FOREWORD

Future Generations Litigation and Transformative Changes in Environmental Governance[Ψ]

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1. Rationale and Aim of the Symposium

The recognition that future generations deserve consideration and representation has formed part of international and domestic law for decades.[1] Concerns for future generations now permeate the 'fabric of international law'.[2] They are not only reflected in overarching concepts and principles such as sustainable development and intergenerational equity, but also find explicit consideration in international climate law – whether in the form of preambular provisions as, for example, in the Paris Agreement,[3] or as a background principle of the United Nations Framework Convention on Climate Change (UNFCCC).[4] Concurrently, an increasing number of domestic constitutions now give legal force to the notion that the interests of future generations are to be taken into account when important decisions are made by governments and other public authorities. Such constitutional provisions engage a range of different themes but often focus on environmental protection (broadly defined), financial and economic matters, or on traditional political rights.[5]

[Ψ] This Foreword introduces a collection of articles growing out of the workshop titled 'Future Generations Litigation and Transformative Changes in Environmental Governance' hosted jointly by ELTE Eötvös Loránd University, Faculty of Law, and Aarhus University, held in Budapest (Hungary) on 8–9 June 2023.

[1] See, e.g., Principle 2 of the 1972 Stockholm Declaration: Declaration of the United Nations Conference on the Human Environment, adopted by the UN Conference on Environment and Development, Stockholm (Sweden), 5–16 June 1972, UN Doc. A/Conf.48/14/Rev. 1, available at: http://www.un-documents.net/aconf48-14r1.pdf. See also E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational, 1989); R. Araújo & L. Koessler, 'The Rise of the Constitutional Protection of Future Generations', 30 Sept. 2021, LPP Working Paper No. 7-2021, available at: https://ssrn.com/abstract=3933683.

[2] A. Boyle & C. Redgwell, *Birnie, Boyle and Redgwell's International Law and the Environment* (Oxford University Press, 2021), pp. 121–2.

[3] Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

[4] New York, NY (United States (US)), 9 May 1992, in force 21 Mar. 1994, Art. 3(1), available at: https://unfccc.int.

[5] E.g., J. Tremmel, 'Establishing Intergenerational Justice in National Constitutions', in J. Tremmel (ed.), *Handbook of Intergenerational Justice* (Edward Elgar, 2006), pp. 187–214.

These developments have triggered a renaissance of scholarly work devoted to the normative position of future generations, illustrated by, among others, the adoption of the non-binding but expert-drawn Maastricht Principles on the Human Rights of Future Generations in 2023,[6] and the United Nations (UN) Summit of the Future (September 2024), which adopted a Declaration on Future Generations.[7]

Until recently, this crescendo of legal recognition of future generations lacked general and consistent judicial endorsement. Internationally, no court had 'endowed [future generations] with justiciable rights'.[8] Domestically, judicial engagement with future generations provisions has for long remained haphazard – in sharp contrast to the judicial endorsement of, for example, the rights of children in the climate context.[9] The last five years, however, have seen a sharp rise in the number of lawsuits relying on intergenerational pleadings – and the number of favourable judgments envisaging some kind of protection for posterity's interests. This Symposium Collection analyzes this emerging trend of judicial engagement with the rights of future generations and the obligations owed to them.

Our interest in the developing space of future generations litigation was driven by a desire to probe this case law and its wider implications, specifically with a view to mapping the extent and nature of future generations litigation and its effects on key legal concepts and doctrines. We wanted to do so in a systematic way in order to explore potential impacts on environmental governance more widely. Moreover, with a view to the future, we wanted to consider whether this new wave of litigation addresses some of the long-standing shortcomings in environmental law and policymaking, including non-inclusivity in representation, and the presentism of decision-making processes.

An important background for the recent change in judicial receptivity to future generations has been climate change, which has dramatic implications for future generations.[10] It is therefore no surprise that many of the recent decisions and judgments of courts and tribunals reference the need to adapt existing legal structures, norms, and rights to the challenges posed by climate change.[11] An important example of this is the UN Human Rights Committee's 2022 decision in *Daniel Billy et al.* v. *Australia*, in which the Committee held that Australia had failed to adopt adequate adaptation measures to protect the applicants' traditional way of life. This failure deprived them of the ability to 'transmit to their children and future generations their culture and traditions',[12] resulting in a violation of the state's positive obligation

[6] Principles on the Human Rights of Future Generations, Maastricht (The Netherlands), 3 Feb. 2023, available at: https://www.rightsoffuturegenerations.org/the-principles.

[7] Available at: https://www.un.org/en/summit-of-the-future.

[8] Boyle & Redgwell, n. 2 above, p. 122.

[9] See, e.g., E. Donger, 'Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization' (2022) 11(2) *Transnational Environmental Law*, pp. 263–89.

[10] See, e.g., R.S. Abate, *Climate Change and the Voiceless* (Cambridge University Press, 2019); and E. Page, 'Intergenerational Justice and Climate Change' (1999) 47(1) *Political Studies*, pp. 53–66.

[11] E. Fisher, E. Scotford & E. Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80(2) *The Modern Law Review*, pp. 173–201.

[12] Views Adopted by the Human Rights Committee under Article 5(4) of the Optional Protocol [of the ICCPR] concerning Communication No. 3624/2019, 21 July 2022, UN Doc. CCPR/C/135/D/3624/2019 (*Billy et al.* v. *Australia*), para. 8.14.

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under Article 27 of the International Covenant on Civil and Political Rights.[13] Such indirect recognition of future generations within existing legal systems seems likely to increase as a growing number of legal regimes recognize their legal position.

A significant development took place in international human rights law almost a year after our workshop. In April 2024, the decision of the European Court of Human Rights (ECtHR) in *KlimaSeniorinnen* signalled an important awareness of intergenerational equity on the side of the court.[14] Even though the Grand Chamber refrained from granting rights of representation to future generations under the Council of Europe's (CoE) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[15] it did note that 'intergenerational burden-sharing assumes particular importance',[16] and that 'the members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct representational disadvantage'.[17] The Court ultimately used this argument as a basis to clarify states' positive obligations to develop, among others, target-setting measures.[18] Importantly, the Grand Chamber did more than just pay hortatory reference to future generations. It went on to impose specific obligations on the respondent state (Switzerland), referencing the need to avoid causing disproportionate harm to posterity.[19]

Domestically, the forcing of intergenerational considerations through existing legal norms via the courts has been even more striking in recent years. Standout cases include the decision by the German Federal Constitutional Court in *Neubauer*, in which the Court held that offloading the burdens of significant greenhouse gas emission reductions onto future generations was unconstitutional.[20] Similarly, the Colombian Supreme Court in recent years has underlined the importance of taking into account the needs and interests of future generations – specifically with regard to the need for regulating environmental impacts arising from mining and deforestation activities.[21]

[13] New York, NY (US), 16 Dec. 1966, in force 23 Mar. 1976, available at: https://www.ohchr.org/sites/default/files/ccpr.pdf.

[14] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others* v. *Switzerland,* App. No. 53600/200, Judgment, 9 Apr. 2024 (*KlimaSeniorinnen*); ECtHR, *Carême* v. *France*, App. No. 7189/21, Judgment, 9 Apr. 2024.

[15] Rome (Italy), 4 Nov. 1950, in force 3 Sept. 1953, available at: https://www.echr.coe.int/documents/d/echr/Convention_ENG.

[16] Ibid., para. 420.

[17] Ibid., para. 484.

[18] Ibid., para. 550. See also A. Nolan, 'Inter-generational Equity, Future Generations and Democracy in the European Court of Human Rights' *Klimaseniorinnen* Decision', *EJIL:Talk!*, 15 Apr. 2024, available at: https://www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision.

[19] *KlimaSeniorinnen,* n. 14 above, para. 548, K. Sulyok, 'What Does the European Court of Human Rights' *KlimaSeniorinnen* Judgment Mean for Future Generations? Some Quick Reflections', Guest Post hosted by University of Auckland (New Zealand), available at: https://www.auckland.ac.nz/en/law/our-research/research-centres/new-zealand-centre-for-environmental-law/opinion-and-analysis/What-does-the-european-court-of-human-rights-klimaseniorinnen-judgment-mean.html.

[20] *Neubauer et al.*, German Federal Constitutional Court, Order of the First Senate, 24 Mar. 2021, 1 BvR 2656/1.

[21] *Demanda Generaciones Futuras* v. *Minambiente*, No. 11001-22-03-000-2018-00319-01, 4 Apr. 2018, and *Tierra Digna y Otros* v. *Presidencia de la República y Otros*, Colombian Constitutional Court, Ruling T-622, 10 Nov. 2016, Expediente T-5.016.242.

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The contributions in this Symposium Collection analyze a range of similar judgments from several jurisdictions, from both global south and global north countries.

These developments are highly significant in their own right, but do they also evince a doctrinal shift towards interpreting existing rights and regulatory obligations as encompassing the interests of future generations? Does it make any difference, doctrinally and empirically, that many of the cases are brought by young claimants? In other words, does invoking future generations yield a strategic advantage or disadvantage? What does it mean for the institutional balance between, for example, international courts and domestic tribunals that domestic courts are called upon to interpret international human rights provisions to include future generations? In what ways does the future generations narrative have an impact on parties' pleadings and the inquiry of courts? Overall, what is the added value of referring to future generations in strategic environmental and climate litigation? These questions stoked our curiosity and led us to gather leading scholars to help to understand the state of play of future generations litigation.

Before summarizing the key findings of each contribution, we provide in Section 2 some conceptual clarifications. Section 3 maps how intergenerational lawsuits may have a lasting impact on the system of environmental and climate laws and governance. Finally, Section 4 briefly presents the contributions and contextualizes their main messages by highlighting interactions between the articles.

2. Definitional Starting Points of Future Generations Litigation

The Symposium consciously adopted a broad definition of future generations litigation as encompassing various types of lawsuit that are brought on behalf of, or with express reference to, future generations. Some of these cases are pursued by children and minors, but our definition also includes legal actions initiated by a host of other actors, such as individuals, non-governmental organizations (NGOs), cities, and Indigenous communities.

We purposefully chose a framing that focuses on future generations, even though these lawsuits are typically discussed under the label of climate change litigation. Our working hypothesis, however, was that the main doctrinal dilemmas and difficulties that arise in future generations lawsuits are not specific to climate change. Rather, the defining challenge lies in the fact that the plaintiffs ask the courts to inject long-term perspectives into the rubric of traditionally myopic decision-making processes of states. Our intention here is to unpack the normative manifestations of the growing tension between short-termism, an engrained feature of democratic decision making, and the long-term perspective, which is mandated by the future generations narrative. As a result, lawsuits of interest for the Symposium Collection include climate lawsuits, biodiversity litigation (such as those cases seeking to halt deforestation), and the more classic forms of environmental litigation. A common structural element, binding all the relevant court proceedings together, lies in the underlying plea for long-term perspectives, which prompts courts to articulate a set of future-oriented, intertemporal obligations towards posterity.

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The Symposium Collection draws on normative developments and case law featuring a range of future generations legal concepts. The most privileged of these is perhaps the principle of intergenerational equity, which has ancient roots and close ties to moral philosophy of justice[22] and traditional legal systems, yet it entered the body of international law only with the 1972 Stockholm Declaration.[23] Later, it was incorporated in various treaty provisions and countless soft law documents, and has been theorized extensively.[24] Since its conceptual contours have been in constant flux,[25] there are several neighbouring concepts, all of which are relevant for the present inquiry. Examples include the rights[26] and interests of future generations, their needs (which lie at the heart of the sustainable development concept),[27] intergenerational justice,[28] solidarity,[29] and the various domestic law doctrines posing future-minding obligations, and other iterations such as intergenerational burden sharing.[30] At the same time, the interests or rights of future generations should be distinguished doctrinally from distinct categories, such as the rights of children and intragenerational equity, as these carry distinct meanings and envisage different correlative state obligations. At present, such a clear distinction, however, is sorely lacking in the judicial practice, as explored by Aoife Nolan in her contribution.[31]

Similarly, the Symposium Collection does not narrow down the temporal configurations of relevant long-term interests. Indeed, different legal systems define the temporal scope of legally protected needs of posterity differently, ranging from several centuries[32] to much shorter time spans, for example, the coming 10 to 25 years.[33] The concept of future generations may include present-day minors[34] or denote only generations not yet born.[35] For our analytical purposes, however, there is no need

[22] E.g., J. Rawls, *A Theory of Justice* (Oxford University Press, 1971).
[23] Stockholm Declaration, n. 1 above, Principle 2.
[24] E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University Press, 1989).
[25] D. Bertram, '"For You Will (Still) Be Here Tomorrow": The Many Lives of Intergenerational Equity' (2023) 12(1) *Transnational Environmental Law*, pp. 121–49, at 123.
[26] Maastricht Principles, n. 6 above.
[27] See the Brundtland Report's definition of sustainable development: World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987), p. 51.
[28] J.C. Tremmel, *Handbook of Intergenerational Justice* (Edward Elgar, 2006).
[29] UN, Report of the Secretary-General, 'Intergenerational Solidarity and the Needs of Future Generations', 15 Aug. 2013, UN Doc. A/68/322, available at: https://digitallibrary.un.org/record/756820/files/A_68_322-EN.pdf.
[30] *KlimaSeniorinnen*, n. 14 above, paras 410, 420.
[31] A. Nolan, 'Children and Future Generations Rights before the Courts: The Vexed Question of Definitions' (2024) 13(3) *Transnational Environmental Law*, pp. 522–46.
[32] See the 7th generation principle adopted by the Confederation of the Six Nations of the Iroquois cited in Report of the Secretary-General, n. 29 above, para. 12.
[33] See Welsh Government, 'Shared Purpose: Shared Future – Statutory Guidance on the Well-being of Future Generations (Wales) Act 2015, Core Guidance', last updated 1 July 2024, para. 68, available at: https://www.gov.wales/sites/default/files/publications/2024-07/spsf-1-core-guidance.pdf (stating that 'public bodies and public services boards will look at least 10 years ahead, although best practice would be to look 25 years ahead').
[34] See examples analyzed by Nolan, n. 31 above.
[35] See, e.g., *Demanda Generaciones Futuras* v. *Minambiente*, n. 21 above.

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to choose any one of these temporal conceptualizations, given that they all seek to counter the presentist focus of the prevailing legal paradigm by expanding the temporal horizons of decision makers. This is the core dynamic this research seeks to unpack.

The competing temporal configurations, coupled with overlaps between long-term needs and the interests of those currently living, beg the question: Is future generations litigation really about the future? Undoubtedly, one should acknowledge that the timing of this palpable shift in the attitude of courts towards judicially enforceable intergenerational obligations may be no coincidence. It comes at a time when the latest scientific evidence no longer projects drastic climate impacts for the distant future, but on a timescale as soon as 15 to 20 years from now[36] – that is, affecting the generation next in line,[37] if not the current generation. This is likely to add considerable weight to the plaintiffs' arguments in the eyes of judges. Nevertheless, it is also apparent that domestic courts, and the ECtHR too, draw directly on the idea of future generations to justify imposing novel types of obligation on states, often placing intergenerational equity at the core of their reasoning.[38] This suggests that such a judicial outcome could not be reached but for using the judicial construct of future generations, which operates as a countervailing factor in the application of presentist legal rules. In short, courts *do* need the future to be able to restrain the present.

3. Transformative Impact: Intergenerational Obligations as Decentralizing, Diversifying, and Expansive Forces

By mapping the doctrinal frontiers of future generations litigation, the Symposium Collection also seeks to trace the potentially lasting impacts of these lawsuits. It is now widely acknowledged that humanity needs novel tools to counter the planetary crisis.[39] Incremental change will not suffice; rather, we are in need of a transformative change, defined as a 'deep, sustained and systemic'[40] alteration of not only the logic of the economy,[41] but also in the legal paradigm that enables and normalizes humanity's

[36] See H.-O. Pörtner et al., 'Summary for Policymakers', in Intergovernmental Panel on Climate Change (IPCC) (H.-O. Pörtner et al. (eds)), *Climate Change 2022: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the IPCC* (IPCC, 2022), pp. 1–33, at 13, para. B.3 (projecting 'unavoidable increases in multiple climate hazards' with very high confidence for the near term (2021–2040) in case the 1.5°C target is exceeded).

[37] This study defines a generation as lasting for circa 20 years, as people gain voting rights typically somewhere between 16 and 21. This also squares with the definition used in generational theories in sociology; see W. Strauss & H. Neil, *Generations: The History of America's Future, 1584 to 2069* (Morrow, 1991).

[38] See *KlimaSeniorinnen*, n. 14 above (where intergenerational burden sharing was mentioned as the first principle, which underpinned the Court's own assessment: para. 410).

[39] See speech of UN Secretary General Antonio Guterres, 'Secretary-General Calls for UN 2.0 to Tackle 21st Century Challenges', 22 Apr. 2024, available at: https://news.un.org/en/story/2024/04/1148806 (acknowledging that 'we cannot solve 21st century problems with 20th century tools').

[40] B.-O. Linnér & V. Wibeck, 'Conceptualising Variations in Societal Transformations towards Sustainability' (2020) 106 *Environmental Science & Policy*, pp. 221–7, at 222.

[41] S. Díaz et al., 'Pervasive Human-driven Decline of Life on Earth Points to the Need for Transformative Change' (2019) 366(6471) *Science*, p. 1327.

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current mode of operation. In search of legal innovations, we have turned to examine how future generations litigation can have such a transformative impact.

What emerges from the contributions is that the idea of intergenerational equity goes against the deeply engrained short-termist bias of the current legal paradigm on several levels and in varied ways. It presents a challenge of constitutional proportions. It aims at fundamentally changing domestic governance structures.[42] It calls for a reinterpretation of the concept of the rule of law at the domestic level,[43] and that of sovereignty at the international level.[44] It transforms plaintiffs' litigation strategies[45] as much as judicial argumentation.[46] More fundamentally, it may help in reimagining the entire legal system and discourse by changing the perceived temporality of obligations, and by revealing relationality and reciprocity with regard to the current generation's relationship with posterity.[47]

Looking at all these developments from a higher analytical vantage point, we argue here that judicially enforcing intergenerational rights and obligations drives transformation in three main directions – viewed here as fault lines that capture the structural impacts of future generations litigation; it exerts (i) decentralizing, (ii) diversifying, and (iii) expansive forces with regard to the system of environmental and climate laws.

Firstly, as to its decentralizing impact, future generations lawsuits empower new voices and legal narratives of non-state actors, such as cities,[48] federal states, and Indigenous peoples.[49] Even though intergenerational equity, situated at the level of international law, is a shared norm operating in the background of all respective lawsuits, the judicialization of future generations takes place in a decentralized system spanning common law and civil law jurisdictions in both developed and developing states.[50] Future generations litigation therefore emerges as a product of iterative domestic (transnational) legal developments, closely tied to national legal doctrines and cultures.

Relatedly, future generations do not emerge as a homogeneous global entity. Rather, they are deeply 'local', as domestic courts often refuse to grant standing to extraterritorial plaintiffs in climate litigation[51] and bundle interests of present and future generations only

[42] See E. Stokes & C. Smyth, 'Hope-Bearing Legislation? The Well-being of Future Generations (Wales) Act 2015' (2024) 13(3) *Transnational Environmental Law*, pp. 569–87.

[43] K. Sulyok, 'Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations' (2024) 13(3) *Transnational Environmental Law*, pp. 475–501.

[44] See C.E. Foster, 'Due Regard for Future Generations? The No Harm Rule and Sovereignty in the Advisory Opinions on Climate Change' (2024) 13(3) *Transnational Environmental Law*, pp. 588–609.

[45] See M. Wewerinke-Singh & A.S.F. Ramsay, 'Echoes Through Time: Transforming Climate Litigation Narratives on Future Generations' (2024) 13(3) *Transnational Environmental Law*, pp. 574–68.

[46] E. Lees & E. Gjaldbæk-Sverdrup, 'Fuzzy Universality in Climate Change Litigation' (2024) 13(3) *Transnational Environmental Law*, pp. 502–21.

[47] See Wewerinke-Singh & Ramsay, n. 45 above.

[48] Conseil d'État: *Commune de Grande-Synthe* v. *France*, N° 427301, Judgment, 19 Nov 2020.

[49] For examples see Wewerinke-Singh & Ramsay, n. 45 above.

[50] M. Wewerinke-Singh, A. Garg & S. Agarwalla, 'In Defence of Future Generations: A Reply to Stephen Humphreys' (2023) 34(3) *European Journal of International Law*, pp. 651–67.

[51] For lack of standing see *Milieudefensie* v. *Royal Dutch Shell Plc*, District Court of The Hague, C/09/571932/HA ZA 19-379, Judgment, 26 May 2021 (*Milieudefensie* v. *Shell*), para. 4.2.5 (where the

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on a local or national scale.[52] Future generations litigation therefore appears to enforce legal protection for a posterity that is closely tied to local imaginaries, in spite of the fact that intergenerational tensions manifest on a planetary scale.

Secondly, future generations litigation exerts a diversifying force, by giving rise to new rights holders, such as future generations or children,[53] in certain jurisdictions. Procedurally speaking, this is reflected in legal systems allowing diverse actors – including youth plaintiffs, civil society organizations, and ombudspersons – to claim standing as proxies representing long-term interests. Furthermore, the future generations narrative opens new legal strategies, and altogether yields 'imaginative' reasoning and a more diverse discourse, which amplifies the voices of various actors and legal traditions.[54]

Finally, future generations litigation operates as an expansive force redrawing the boundaries between soft law and hard law. Courts in several such proceedings are using non-binding standards as a benchmark for defining posterity's interests that ought to be protected by states under their justiciable obligations. This means that soft law aspirations are increasingly turned into binding legal standards in future generations case law.[55] Moreover, intergenerational equity often extends the temporal scope of well-established obligations.[56] In a similar vein, the future generations narrative challenges the traditional understanding of sovereign prerogatives under international law, and thereby extends the scope of future-minding obligations for states.[57] In sum, future generations litigation restricts the room preserved for states' unfettered discretion under both domestic and international law by articulating intertemporal obligations in their stead.

4. Introducing the Symposium Contributions

The six articles in the Symposium Collection each engage with different questions related to future generations litigation. The first article, 'Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations' by Katalin Sulyok, explores emerging transnational trends in the expanding body of lawsuits in which plaintiffs invoke the interests of future generations.[58] While this diverse body of lawsuits relates to a wide range of environmental issues, it gives rise to structurally similar legal safeguards that are derived from the rule of law. Sulyok, drawing on definitions developed by the CoE, identifies the rule of law as a means to guard against the arbitrary exercise of power over the individual in future generations claims. This definition contains five elements:

Court did not allow ActionAid's claim to proceed for not representing Dutch citizens). For a judicial finding where standing was granted to extraterritorial plaintiffs, though it was found that substantive obligations were breached only vis-á-vis territorial plaintiffs, see *Neubauer*, n. 20 above, paras 101, 173–81.

52 For a class action lawsuit where interests were bundled on a local scale see *Milieudefensie* v. *Shell*, ibid., para. 4.2.4.

53 For more details see Nolan, n. 31 above.

54 Wewerinke-Singh, Garg & Agarwalla, n. 50 above.

55 For more details see Sulyok, n. 43 above.

56 Ibid.

57 For more details see Foster, n. 44 above.

58 Sulyok, n. 43 above.

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(i) respect for human rights; (ii) certain quality of law requirements; (iii) prohibition of arbitrary exercise of governmental power; (iv) non-discrimination; and (v) access to justice. Under this framework, Sulyok's analysis reveals that state policies that cause harm to future generations, and are enacted in full awareness of the potentially catastrophic long-term impacts, are increasingly impugned by domestic courts precisely because these policies can be identified as 'arbitrary', and thus unreasonable. Sulyok concludes by suggesting that intergenerational reinterpretations of these rule of law guarantees meet the requirements for a successful legal innovation, as they bring about a transformative result. This is achieved by limiting a state's policy discretion and thereby restricting the room to manoeuvre. Importantly, this is undertaken via incremental steps by adding new dimensions to well-established and widely accepted rule of law obligations.

The cases explored by Sulyok are largely derived from domestic law, which – as Emma Lees and Emilie Gjaldbæk-Sverdrup show in their contribution, 'Fuzzy Universality in Climate Change Litigation'[59] – raises important questions not just about the extent to which the protection of future generations is indeed part of a wider trend or just a patchwork of individual decisions. Lees and Gjaldbæk-Sverdrup argue that the interpreting by domestic courts and their applying international human rights provisions in future generations claims effectively decentralizes human rights adjudication. This decentralization, in turn, carries with it a risk of destabilization, as becomes clear in the relatively narrow types of future generations claim that emerge in domestic law. Lees and Gjaldbæk-Sverdrup identify a prototype 'characterized by youth-led litigation alleging that the actions of national governments breach either international human rights norms or their own national constitutions', coupled with reliance on the scientific findings developed by the Intergovernmental Panel on Climate Change (IPCC).[60] This prototype results in a 'hard wiring' of important elements as these relate to evidence, the types of claim, and the reliance on rights. In turn, such hard-wiring, and the path-dependency to which it necessarily gives rise, ultimately results in a 'fuzzy universality, whereby the boundaries of the rights *as interpreted* exhibit subtle contextualization'.[61]

A further challenge emerging in the growing body of largely domestic case law that engages with future generations is that of attention to definitions. The contributions of both Lees and Gjaldbæk-Sverdrup and Aoife Nolan highlight the tendency of domestic courts and tribunals to cross-reference decisions from other jurisdictions.[62] In this cross-referencing, however, it is not 'always obvious to whom the constitutional rights of "future generations" adhere or who is entitled to assert those rights, whether on their own behalf or on behalf of others'.[63] The lack of clarity is not just doctrinal but also present in scholarly work, as Nolan points out in 'Children and Future Generations Rights before the Courts: The Vexed Question of Definitions'. In some sense, the rush to engage with and recognize the interests of future generations has come at the expense of definitional clarity. This lack of clarity is problematic not just in terms of precisely identifying the rights and

[59] Lees & Gjaldbæk-Sverdrup, n. 46 above.
[60] Ibid., p. 509.
[61] Ibid., p. 521.
[62] Nolan, n. 31 above.
[63] Ibid., p. 529.

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duties flowing from constitutional provisions, as well as the precise interests at play, but also in terms of securing a workable and coherent framework for subsequent cases and regulatory initiatives. Importantly, Nolan does not argue in favour of adopting a universal definition of future generations. Instead, she suggests more modestly that the failure to pay attention to definitions imperils the chances of securing 'convincing and coherent protection for child and [future generations] rights holders'.[64]

One potential way to garner firmer definitions of the rights and duty holders in the context of future generations litigation might lie in harvesting experiences from outside the narrow confines of youth plaintiffs and climate NGOs. Indigenous narratives are a constructive example of such experiences. As Margaretha Wewerinke-Singh and Alofipo So'o alo Fleur Ramsay argue in 'Echoes Through Time: Transforming Climate Litigation Narratives on Future Generations',[65] crafting narratives in the context of climate change litigation and future generations not only has the potential to deliver a broader and more inclusive mobilization, it also challenges classic conceptions of temporality, which, following Sulyok, gives rise to arbitrariness. This is particularly so where such narratives highlight important underlying relationships between spiritual and ecological connections and the environment. The focus on the role and potential of narratives in environmental law is an emerging yet important trend in environmental law scholarship.[66] However, as Wewerinke-Singh and Ramsay point out, at present we lack 'in-depth analysis of its use in climate litigation and its potential to inform approaches to the representation of future generations and their interests'.[67] In starting to fill this gap, Wewerinke-Singh and Ramsay are well aware of the limits inherent in shaping future generations litigation around Indigenous narratives. The latter are not a panacea and it cannot be expected that relying on relational experiences always yields positive outcomes. Drawing on the cases *Montana* v. *Held*[68] and *Billy* v. *Australia*,[69] Wewerinke-Singh and Ramsay illustrate that Indigenous narratives can nevertheless result in important partial victories. By conveying relational narratives anchored in lived realities and personal experiences with the long-term impacts of climate disruption, climate litigators can strengthen their cases while fostering a legal and societal environment conducive to comprehensive and just responses. This important finding yields hope – not just for litigators, but for future generations too.

Although much of the recent attention afforded to future generations has been driven by litigation, recent statutory and regulatory developments have also added significantly to the recognition of future generations. An example of this is found in Wales (United Kingdom), where the Well-being of Future Generations (Wales) Act 2015 represents a significant and highly ambitious initiative. As Elen Stokes and Caer

[64] Ibid., pp. 545–6.
[65] Wewerinke-Singh & Ramsay, n. 45 above.
[66] E.g., C. Hilson, 'The Role of Narrative in Environmental Law: The Nature of Tales and Tales of Nature' (2022) 34(1) *Journal of Environmental Law,* pp. 1–24.
[67] Wewerinke-Singh & Ramsay, n. 45 above, p. 550.
[68] *Rikki Held* v. *State of Montana*, Case No. CDV-2020-307, Montana First Judicial District Court, Case No. CDV-2020-307, Complaint filed 13 Mar. 2020.
[69] N. 12 above.

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Smyth argue,[70] assessments of such aspirational legislation are often limited to highlighting its unenforceability, lack of practical utility, and likely failure. Often, criticism along these lines distracts from other important features and purposes. The analysis of the Welsh law by Stokes and Smyth identifies its potential to provide the structural conditions for hope. Creating hope might not be a purpose ordinarily attached to legislation, but it clearly emerges if, as Stokes and Smyth do, the Act is placed 'not in isolation but rather across time, networked within broader, complementary legislative and policy moves'.[71] Where the Act, and perhaps other legislative examples with it, are viewed in this way, the new potentialities required in order to break the status quo come into sharper focus. Implicit in Stokes and Smyth's argument is also a call for environmental law scholars to consider more widely the hope-bearing potential of legal developments.

Beyond national legislation, the future generations paradigm is exerting a profound effect on international law. Although international law in some respects can be seen as the legal birthplace of future generations concerns, its primary outlet for such concerns has historically been the principle of sustainable development (although, as noted above, commitments to the interests of future generations have now found their way into treaty provisions). As a corollary to this, Caroline Foster, in 'Due Regard for Future Generations? The No Harm Rule and Sovereignty in the Advisory Opinions on Climate Change',[72] probes the connection between well-established pillars of the international legal order (such as the no harm rule and sovereignty) on the one hand and the interests of future generations on the other. In the light of their central role, reconsidering these norms in a way that operationalizes future generations' concerns is potentially transformative. This potential is particularly evident in obligations of due regard, which are emerging as an increasingly important regulatory standard in international law. Given the increased number of cases and advisory opinions pending before international courts and tribunals, Foster's argument for integrating future generations into the core of international law could not be more timely and relevant.

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70 Stokes & Smyth, n. 42 above.
71 Ibid., p. 584.
72 Foster, n. 44 above.

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