

**Practicing intergenerational justice and  
protecting the rights of future generations in the United Nations**

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*Gracias*

## Index

Introduction	3
Background	5
Literature Review	8
Case Selection	14
Case Study: Welsh Commissioner for Future Generations	16
Case Study: Commission for Future Generations of the Knesset	17
Findings	18
Implications	22
Recommendations	23
Conclusion	26
References	28

## I. Introduction

The United Nations Charter from 1945 promised to “save succeeding generations” from war.<sup>1</sup> Today, the United Nations (UN) reconsiders and broadens the threats against next generations and humankind. The menace of climate change and ongoing demographic changes have created a need to renew the institution’s social contract. The UN is tasked to implement intergenerational justice and strengthen its solidarity with future generations.<sup>2</sup>

Scholars and policymakers have not reached an agreement on what intergenerational justice looks like in practice. Countries around the world have adopted diverse representation models for future generations such as commissioners, committees, and ombudspersons. In 2021, United Nations Secretary-General (UNSG) Antonio Guterres suggested in his landmark report *Our Common Agenda* (2021) to appoint a Special Envoy for Future Generations (SEFG) in order to explore the viability of a UN commissioner or ombudsperson for future generations.<sup>3</sup>

There are multiple philosophical and ethical considerations in the protection of the rights of future generations. One of the principal concerns is that young people and future generations will live with the consequences of the action and inaction of decision-makers who will not live to see them realized. This capstone project examines this issue in an effort to answer the question: how can the UN practice intergenerational justice through the protection of the rights of future generations? This paper argues that the UN is responsible for enforcing intergenerational justice and can protect the rights of future generations by appointing a commissioner who promotes future-oriented negotiation, long-term thinking, and accountability mechanisms. The variables

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<sup>1</sup> United Nations, “United Nations Charter,” (1945)

<sup>2</sup> Agius (2013) defines the term future generations as the representation of “a collectivity ad infinitum of all human beings who succeed the present or living generation.” Agius, “Obligations of Justice Towards Future Generations,” *Future Generations and International Law / Edited by Emmanuel Agius and Salvino Busuttil with Tae-Chang Kim and Katsuhiko Yazaki*. London: Routledge, (2013), p. 3-4

<sup>3</sup> United Nations, “Our Common Agenda- Report of the Secretary-General,” New York, NY 10017, USA

studied regarding the appointment of a commissioner include: i) top-down processes; ii) intergenerational diversity; iii) funding; iv) political environments; v) legal voids; and vi) responsibilities and authorities.

The pursuit of assessing and contributing knowledge to the field of intergenerational justice is of utmost importance due to the rising concerns on the climate emergency's effect on future generations. This capstone project aims to contribute to the discussion and dissemination of humankind's shared responsibility to future generations. As well, it seeks to advance the study of non-democratic representation of future peoples. Answering the research question will provide UN decision-makers with informed considerations for the implementation of a Future Generations Commissioner (FGC).

Besides addressing present generations' responsibility to protect the rights of future generations, this project serves to provide insight to the existing initiatives to give a "voice to the unborn." First, it provides background information on the planetary environmental emergency and intergovernmental efforts to protect the Earth and humankind. Moreover, it overviews conferences, agreements, reports, policies and programs relevant in the field of intergenerational justice. This project reviews existing literature on the rights of future generations, including the work of Meyer (2021), Vrousalis (2016), Brown-Weiss (1991 & 1992), Westra (2006), Rawls (1999), Agius (2013), Karnein (2016), Rehfeld (2006), and Bidadanure (2016). Then, it analyzes the Welsh Commissioner for Future Generations and the Commission for Future Generations of the Knesset as case studies of the representation of future peoples. Finally, the project proposes recommendations to the UN in its appointment of a FGC as a form to practice intergenerational justice.

## II. Background

The aggravating planetary emergency due to climate change and demographic changes over the coming century have pushed intergenerational justice to the top of the international agenda. The Intergovernmental Panel on Climate Change has warned that global warming of 1.5°C and 2°C will be surpassed during the twenty-first century if the emissions of greenhouse gasses are not significantly reduced.<sup>4</sup> This projection indicates that Earth will be in a condition that might put at risk natural resources and humankind's ability to live safely.

According to the United Nations Department of Economic and Social Affairs, the world's population in 2100 is expected to reach 10.9 billion people. Future generations are an unrepresented majority since they are a larger population than the 7.7 billion people who currently live on our planet. It is predicted that 85% of these future generations will live in Africa or Asia, 8% in Europe and North America, and 6% in Latin America and the Caribbean.<sup>5</sup> This demographic transition represents a call of action to a global debate on intergenerational issues.

In 1987, the World Commission on Environment and Development indicated that the planet's management was limiting the options for future generations. It highlighted the increasing repercussions of climate change: acid precipitation, global warming, desertification, loss of species, and ozone depletion. The Commission noted that young people are the hardest critics of the world's decision-making because their future is at peril. It recommended the designation of an ombudsman<sup>6</sup> "to represent the interests and rights of present and future

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<sup>4</sup> MassonDelmotte *et al.*, "IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change," Cambridge University Press, In Press.

<sup>5</sup> United Nations, Department of Economic and Social Affairs, Population Division, "World Population Prospects 2019: Highlights (ST/ESA/SER.A/423)" (2019). p. 1.

<sup>6</sup> From the Merriam-Webster dictionary, definition of "ombudsman" used by the United Nations: "a government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials." From this moment onward, this term will be referred to as "ombudsperson." United Nations Ombudsman and Mediation Services, "General Questions."

generations and act as an environmental watchdog, alerting governments and citizens to any emerging threats.”<sup>7</sup>

During the 1992 Earth Summit, Malta indicated that the world needs an institution that can work on the concerns to protect the Earth’s heritage. Based on the proposals by scholar Edith Brown Weiss, Malta championed the creation of a Guardian for Future Generations.<sup>8</sup> In 1995, Malta made a request to the United Nations General Assembly (UNGA) to review the Trusteeship Council<sup>9</sup> and repurpose it for safeguarding humankind’s common heritage and the rights of future generations.<sup>10</sup> The proposal was rejected by Member States, and the council remained suspended. Three years later, at the World Summit for Sustainable Development, world leaders committed to social development and created a framework for action to ensure equity among generations and to protect the sustainable use of the environment.<sup>11</sup>

In 2012, the World Future Council proposed the appointment of a UN High Commissioner or Ombudsperson with the mission to promote policies that bridge the gap between current and future generations.<sup>12</sup> The United Nations Conference on Sustainable Development (Rio +20) took this recommendation into account in their zero draft, but decided to not adopt the proposal given concerns on the ability to represent the needs of generations from all countries. It also invited the UNSG to present a report on the needs of future generations.<sup>13</sup>

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<sup>7</sup> World Commission on Environment and Development, “Our Common Future,” (1987).

<sup>8</sup> Delegation of Malta, “Address by the Head of Delegation of Malta the Hon Dr. Mario de Marco, Minister for Tourism, Culture and the Environment at the UN Conference on Sustainable Development, Rio de Janeiro, (June 22, 2012).

<sup>9</sup> The Trusteeship Council was established under the UN Charter in 1945 as one of the main organs of the UN. It supervised the administration of Trust Territories and their progress towards independence or self-government. It suspended its operations on November 1st, 1994. United Nations, “Trusteeship Council,” (no date)

<https://www.un.org/en/about-us/trusteeship-council>

<sup>10</sup> United Nations General Assembly, “Request for the inclusion of an item in the provisional agenda of the fiftieth session: review of the role of the trusteeship council,” June 16, 1995.

<sup>11</sup> United Nations, “Report of the World Summit for Social Development,” Copenhagen, March, 1995.

<sup>12</sup> Ward *et al.*, “The Mandate of a UN High Commissioner for Future Generations,” February, 2012.

<sup>13</sup> United Nations General Assembly, “The Future We Want,” September 11, 2012.

In 2013, UNSG Ban Ki-moon published the *Intergenerational Solidarity and the Needs of Future Generations* report in response to the invitation. He pointed out the legal void in the responsibility towards future generations and stressed that “the pursuit of welfare by the present generation should not diminish the opportunities of succeeding generations for pursuing a good and decent life.”<sup>14</sup> The report proposed a High Commissioner for Future Generations—or a special envoy of the UNSG as an alternative—with the responsibility to advocate for intergenerational solidarity with Member States and throughout the UN system. The proposal did not receive a lot of support.

Four years later, the Group of Friends of Future Generations proposed the establishment of the Global Guardians for Future Generations under the UN. These guardians would be appointed by the UNSG to report back and provide briefings on how to operate intergenerational equity in the UN.<sup>15</sup> In 2018, the group was reported to have a membership of twenty permanent representatives. It is unknown if the group is still active.

For the seventy-fifth anniversary of the UN in 2020, Heads of State and Government requested UNSG Antonio Guterres to report back before the end of the seventy-fifth session of the General Assembly with recommendations to respond to current and future challenges. There was a specific interest “to strengthen coordination and global governance for the common future of present and coming generations.”<sup>16</sup> From the Declaration on the Commemoration of the Seventy-fifth Anniversary of the United Nations, one of the commitments was to “listen to and work with youth.”<sup>17</sup>

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<sup>14</sup> United Nations General Assembly, “Intergenerational solidarity and the needs of future generations- Report of the Secretary-General,” August 15, 2013.

<sup>15</sup> Mary Robinson Foundation, “Global Guardians: A voice for future generations,” January, 2018.

<sup>16</sup> United Nations, “Declaration on the Commemoration of the Seventy-Fifth Anniversary of the United Nations” (2020), p. 5.

<sup>17</sup> *Ibid*, p. 4-5.



The UNSG delivered the *Our Common Agenda* report on September 17, 2021 before the end of the seventy-fifth session. This report prioritizes long-termism for the multilateral system to be accountable to young people and future generations. His proposals on the topic include implementing a Futures Lab, a Declaration on Future Generations, a SEFG in the UN, and repurposing the Trusteeship Council.<sup>18</sup> The report promotes long-term intergenerational thinking and represents future generations. The UNSG argues that current decision-making is highly based in short-term thinking even when the capacity for long-term thinking is greater than ever before.

*Our Common Agenda* states that the UN will begin conducting future impact assessments of policies and programs through a Futures Laboratory that will support States and exchange good practice to augment long-termism. In order to explore the viability of a FGC or ombudsperson for future generations, the UNSG proposed to appoint a Special Envoy for Future Generation who will represent the people who will be born before the century ends. This envoy will also be tasked with finding a way to use the Trusteeship Council to provide future generations with a platform.<sup>19</sup> This capstone project focuses on scrutinizing the FGC as a model of representation of future peoples.

### **III. Literature Review**

Meyer (2021) argues that the issue of intergenerational justice is whether present generations should be obligated to provide justice to future generations. The main consideration with intergenerational justice is the lack of reciprocity between generations because there is no mutual cooperation or exchanges. The second aspect to consider is the power asymmetry between

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<sup>18</sup> United Nations, "Our Common Agenda- Report of the Secretary-General," New York, NY 10017, USA

<sup>19</sup> Ibid

present and future generations. While future people cannot damage the well-being of present lives, present generations can exercise their power to pursue actions that have negative consequences in the long-term. Not only that, but present generations affect all of the existence of future generations, including the number of future people and whether or not human life continues. Meyer (2021) indicates that these relationships between living people and future people help create a valid justice claim under the understanding that justice does not depend on the ability to benefit or harm each other.<sup>20</sup>

Vrousalis (2016) presents three different doctrines for intergenerational justice: egalitarianism, sufficientarianism, and prioritarianism. Egalitarians believe that each person should enjoy benefits at least as good as those any other person enjoys. Intergenerational sufficientarians argue that justice does not command equality; rather, justice ensures each generation has enough to survive. On the other hand, intergenerational prioritarians claim that transfers to well off and worse off generations can be justified.<sup>21</sup> Brown-Weiss (1992), whose work has influenced the UN's work on the topic, falls under the egalitarian doctrine, hence this capstone project takes this doctrine as the benchmark of success in terms of protecting future generations' rights.

According to Brown-Weiss (1991), each generation has rights and duties that have intragenerational and intergenerational particularities. She argues that intergenerational duties include: i) passing the Earth to the next generation in the condition it was received; and ii) repairing damages of previous generations. Brown-Weiss's position is that all generations should receive the Earth in the condition that previous generations enjoyed it. Furthermore, she traces

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<sup>20</sup> Meyer, Lukas, "Intergenerational Justice," The Stanford Encyclopedia of Philosophy (Summer 2021 Edition), Edward N. Zalta (ed.).

<sup>21</sup> Vrousalis, "Intergenerational Justice," *Institutions For Future Generations*, Oxford: Oxford University Press, (2016).

four duties for each generation: i) protecting the Earth's diversity of natural and cultural resources; ii) conserving the Earth's environmental quality; iii) providing everyone equitable access to resources inherited from previous generations; and iv) preserving this equitable access for future generations.<sup>22</sup> Westra (2006) agrees with Brown-Weiss, but she further strengthens the link with intragenerational duties by stating that rich countries have an obligation to developing countries, otherwise they will not be able to deliver their own obligations.<sup>23</sup>

Rawls's (1999) definition of intergenerational justice has shifted the conversations regarding the intersections between environmental policy and the rights of future generations. He argues that intergenerational justice is part of the "justice as fairness" theory, where present generations act in the interest of future generations.<sup>24</sup> Agius (2013) identifies the 1992 Rio Earth Summit as "the first international effort to safeguard the quality of life of posterity." Three documents signed at Rio include the idea of intergenerational solidarity and responsibilities: the Rio Declaration, the Convention on Biological Diversity, and the Convention on Climate Change. Furthermore, Article 6 of the Vienna Declaration and Programme of Action specifies that the right to development should be satisfied to meet the needs of present and future generations.<sup>25</sup> Nonetheless, serving justice is subject to a person having rights, and not all scholars agree that future people should have them.

Meyer (2021) presents three arguments against future generations having rights vis-à-vis present generations. First, future people are denied any rights because they live in the future.

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<sup>22</sup> Brown-Weiss, "In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity," New York: Transnational Publishers, Inc., 1989, Yearbook of International Environmental Law. Oxford University Press, (1991).

<sup>23</sup> Westra, "Environmental Justice and the Rights of Unborn and Future Generations: Law, Environmental Harm and the Right to Health / Laura Westra," London : Earthscan, (2006), p.137.

<sup>24</sup> Rawls, "A Theory of Justice," Oxford: Oxford University Press, (1999).

<sup>25</sup> Agius, "Obligations of Justice Towards Future Generations," *Future Generations and International Law / Edited by Emmanuel Agius and Salvino Busuttill with Tae-Chang Kim and Katsuhiko Yazaki*. London: Routledge, (2013), p. 3-4

Second, present people give future people the right to exist. Third, present people cannot relate to future people as individuals through epistemic scenarios. Moreover, Meyer (2021) delineates the Non-Identity-Problem, where anyone could argue that “many, if not all of our actions have (indirect) effects not only on the conditions of life, but also on the number, existence, and identity of future persons.” In other words, if any harmful action could result in the harmed person not existing, then the person could not have been harmed at all. Nonetheless, Meyer (2021) presents the Threshold Conception of Harm' as a counterargument to the Non-Identity-Problem. The threshold conception is the idea that the person being harmed is worse off than they ought to be, hence present people owe them that they will come into existence and not be in a harmed state.<sup>26</sup>

Agius (2013) proposes that the term “mankind”<sup>27</sup> utilized in international documents encompasses present and future generations. Such documents normally make references to present and future peoples, revealing that humankind covers more than the present collectivity. Under this idea, every person, regardless of whether they presently exist or not, can have a claim to such rights simply because they are humans. Furthermore, Agius (2013) argues that human rights historians have conceptualized three “generations” of human rights: a) political, rights pertaining to individuals; b) socioeconomic, rights pertaining socioeconomic groups; and c) environmental, rights pertaining the human species.<sup>28</sup>

Agius (2013) supports Brown-Weiss's (1991) argument, later used by the Delegation of Malta, that all humans have a right to participate given that Earth's natural and cultural wealth is

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<sup>26</sup> Meyer, Lukas, “Intergenerational Justice,” The Stanford Encyclopedia of Philosophy (Summer 2021 Edition), Edward N. Zalta (ed.).

<sup>27</sup> From this moment onward, this term will be referred to as “humankind.”

<sup>28</sup> Agius, “Obligations of Justice Towards Future Generations,” *Future Generations and International Law / Edited by Emmanuel Agius and Salvino Busuttil with Tae-Chang Kim and Katsuhiko Yazaki*. London: Routledge, (2013), p.8.

a common heritage. This logic legitimizes setting up an organ to represent future generations and gives them an opportunity to be part of today's decision-making processes. Moreover, Agius (2013) sees the appointment of a guardian of future generations as a matter of justice that represents the first step towards recognizing juridically the rights of humankind and peoples' responsibilities to future generations.<sup>29</sup> The guardian could be a person or organ appointed through an international organization with the purpose of pointing out the long-term implications of actions and introducing a new time dimension into short-term resolutions of issues.<sup>30</sup> The guardian might also be able to participate as a special intervenor-counselor in disputes, appear before legislature and agencies considering actions that have long-term effects, and take legal and diplomatic action.<sup>31</sup>

Establishing a guardianship for unborn generations is an issue highly discussed and examined by academia and policy designers. Karnein (2016) points out a problem of authorization: what is the best way to represent future generations if they cannot elect or appoint a representative? Moreover, there is a problem of accountability because there is no way to ensure future generations are not being misrepresented. The non-existence of future generations would not be an issue if there was a way to know their interests. The concern is that legislative, executive, or judicial bodies accept someone's claim to represent future generations without any proof.<sup>32</sup> Rehfeld (2006) calls people who are not authorized to act or accountable to the people they represent "non-democratic representatives."<sup>33</sup> In response, Karnein (2016) proposes "surrogate representation" as an alternative in which a person can be elected to represent

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<sup>29</sup> Ibid, p. 11

<sup>30</sup> Ibid, p. 39

<sup>31</sup> Ibid, p. 70

<sup>32</sup> Karnein, "Can we represent future generations?" *Institutions For Future Generations*, Oxford: Oxford University Press, (2016).

<sup>33</sup> Rehfeld, Andrew, 'Towards a General Theory of Political Representation.' *Journal of Politics*, (2006), p. 1–21.

powerless constituents based on the condition that they share a characteristic of policy they stand for.<sup>34</sup>

Young people could act as surrogate representatives through the UN guardianship for future generations. Bidanure (2016) argues that intergenerational diversity could help solve long-term challenges creatively, and promoting innovative problem-solving could help undermine short-termism. While Bidanure (2016) claims that there is little evidence to prove that young people care more about future generations than old people, she points out that studies show that youth have greater environmental concerns.<sup>35</sup> Age essentialism will not take any argument far enough, but it is undeniable that the future of young people is at stake, and this serves as a primary motivation for protecting their shared world with succeeding generations. As UNSG Antonio Guterres indicated in *Our Common Agenda*, long-term thinking will be necessary for the multilateral system to successfully implement intergenerational justice.

This capstone project argues that the UN can practice intergenerational justice by appointing a FGC that protects the rights of future generations. The commissioner would be responsible for promoting future-oriented negotiations, long-term thinking, and accountability mechanisms. However, for the commissioner to be successful, the UN needs to build its work model based on the best practices from FGCs in countries like Wales and Israel. The UN must fill legal voids regarding the rights of future generations in order to set a clear framework of responsibilities for the FGC. Transparency, intergenerational diversity, sufficient funding, and clear authorities are also necessary for the successful implementation of this role in the UN.

Furthermore, I propose that the commissioner should be a young person, given that youth can act

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<sup>34</sup> Karnein, “Can we represent future generations?” *Institutions For Future Generations*, Oxford: Oxford University Press, (2016).

<sup>35</sup> Bidanure, “Youth Quotas, Diversity, and Long-Termism,” *Institutions For Future Generations*, Oxford: Oxford University Press, (2016).

as surrogate representatives because they are more likely to have a higher interest in long-termism and will share the Earth with future generations. If this model of non-democratic representation is successful at the UN, I recommend that Member States appoint their own national FGCs.

#### **IV. Case Selection**

There are UN Member States who have already taken steps towards intergenerational justice by designating commissioners, committees and ombudspeople. For this paper, I will conduct a qualitative analysis on the representation and protection of future generations through commissioners. I will examine two countries that have adopted different approaches and strategies to the topic. The first country is Wales, from the United Kingdom, given that their FGC is the first one of its type in the world, has attracted international media coverage, and has received positive feedback. The second country is Israel because the Commission for Future Generations of the Knesset was the first organization in the world with institutional power to protect the rights of future generations. As later explained in this paper, Wales is an example of a successful commission and Israel demonstrates the result of an unbacked commission. These two countries will serve as case studies in order to identify the best practices in commissions for future generations.

Committees and ombudspeople that represent young generations already exist in some countries. The Norwegian Ombudsperson for Children was established in 1981, becoming the world's first ombudsperson for children. The ombudsperson is an independent body that advocates for children and young people's rights. They seek to influence authorities, provide

advice, talk to youth, and identify areas of work.<sup>36</sup> The Finnish Committee for the Future was established in 1993 as a committee in the Parliament of Finland. It works as a think tank for policy regarding futures, technology and science. It's seventeen members are tasked to issue the Government's Future Report and identify relevant political themes for the Prime Minister's Office.<sup>37</sup> Another significant example is Hungary's Ombudsman for Future Generations. In 2007, the Hungarian Parliament accepted the need for this role and, four years later, it recognized the need to protect natural resources. The Hungarian Ombudsman for Future Generations provided a direct relation between rights, future generations, and the environment.<sup>38</sup> These formats of representation were not selected for this project because the Welsh model has been considered a point of reference by countries interested in appointing a FGC.

There are multiple initiatives around the world that encompass intergenerational justice from the sustainability and environmental approach. Some examples include the Parliamentary Advisory Council on Sustainable Development from Germany, the Commissioner of the Environment and Sustainable Development from Canada, the Parliamentary Commissioner for the Environment from New Zealand, and the Commissioner for Sustainability and the Environment from Australia Capital Territory. These initiatives were not selected for this research because their objective is not focused on the representation of future generations.

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<sup>36</sup> "About the Ombudsperson for Children," *Barneombudet*, <https://www.barneombudet.no/english>

<sup>37</sup> "Committee for the Future," *Parliament of Finland*, <https://www.eduskunta.fi/EN/valiokunnat/tulevaisuusvaliokunta/Pages/default.aspx>

<sup>38</sup> "The Role of the Ombudsman," *Office of the Commissioner for Fundamental Rights of Hungary*, <https://www.ajbh.hu/en/web/ajbh-en/the-role-of-the-ombudsman>



## V. Case Study: Welsh Commissioner for Future Generations

The role of a FGC for Wales came into force on April 1st, 2016 as a result of the *Well-being of Future Generations (Wales) Act 2015*. The act dictates that Welsh Ministers will appoint an individual to fulfill the role after consulting with the National Assembly. It establishes that the Commissioner's duty is to: a) promote sustainable development; and b) monitor and assess if public bodies' objectives are being met. The Commissioner specifically is meant to act as guardian of future generations and encourage public institutions to consider the long-term impact of their actions.<sup>39</sup>

Welsh public servant Sophie Howe began her mandate as Commissioner in 2016 and continues to hold the role. Her general duties include advising public bodies on climate change and development, encouraging best practices and collaboration, and seeking advice from the advisory panel.<sup>40</sup> She is also expected to prepare and publish a report with her assessments of how public institutions can better meet the well-being objectives as indicated in the sustainable development principle.<sup>41</sup>

Howes is the first and only FGC in the world. She has statutory powers to represent the unborn citizens of Wales as the country's law indicates that they deserve to participate in current political debates. Nonetheless, her power is considered to be limited because she acts as a watchdog, not as decision-maker or judge.<sup>42</sup> Howes has intervened to make fundamental changes

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<sup>39</sup> Legislation.gov.uk *Well-being of Future Generations (Wales) Act 2015*. The National Archives. <https://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

<sup>40</sup> The *Well-being of Future Generations (Wales) Act 2015* establishes that the government provides the Commissioner with a panel of advisors. The members of the advisory panel include: the Children's Commissioner for Wales, the Welsh Language Commissioner, the Commissioner for Older People in Wales, the Chief Medical Officer for Wales, the chairperson of the Natural Resources Body for Wales, an officer representing the trade unions in Wales (Wales TUC Cymru), an officer representing businesspeople in Wales, and any other person the Welsh Ministers may appoint. *ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Balch, O. *Meet the world's first 'minister for future generations'*. The Guardian, March 2nd, 2019. <https://www.theguardian.com/world/2019/mar/02/meet-the-worlds-first-future-generations-commissioner>

in legislation and prevented actions that compromise the ability of future generations to meet their own needs. She has influenced the Welsh government's spending in major transport schemes, housing plans, land use policy, and more.<sup>43</sup>

UNSG Antonio Guterres's support to establish a SEFG in the UN is indicative of the success of the Welsh FGC.<sup>44</sup> Other countries like Scotland and Ireland have demonstrated interest in replicating the Welsh model. The former will establish its own Future Generations Act and Commissioner, while the latter is said to be interested in following in their footsteps.<sup>45</sup>

## **VI. Case Study: Commission for Future Generations of the Knesset**

From 2001 to 2006, the Commission for Future Generations operated in the Knesset, the parliament of Israel. When it was created, it constituted the only establishment in the world that had parliamentary and governmental power to protect the rights of future generations. This Commission had the authority, under Knesset Law, to interfere in bills and give an opinion if the legislation was deemed to have a negative effect on future generations. It also had the ability to spread public awareness on various issues through conferences and workshops.

The Commission was meant to engage on any subject of the parliament's agenda, especially those related to sustainable development. It covered issues such as the environment, natural resources, education, the economy, science, development, technology, the economy, and

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<sup>43</sup> High-Level Climate Champions, *Sophie Howe, Future Generations Commissioner for Wales: Protecting the unborn today*. Interview, YouTube, November 8, 2021. <https://youtu.be/ggoTh1IE-Rg>

<sup>44</sup> "Our vision for a UN Special Envoy for Future Generations is inspired by the progress being made in some countries around the world, including Wales, which demonstrates that it is possible to legislate and take action to put the interest of future generations at the heart of government." Jayathma Wickramanayake, United Nations Secretary-General's Envoy on Youth. Future Generations Commissioner for Wales. *Wales leading the way with Future Generations Legislation UN plans to adopt Welsh Approach*. November 10, 2021. <https://www.futuregenerations.wales/news/wales-leading-the-way-with-future-generations-legislation-un-plans-to-adopt-welsh-approach/>

<sup>45</sup> Ibid.

construction. Knesset Law established that the Commission had to provide data and opinions on any topic relevant to future generations. Moreover, it produced assessments of bills, gave consultations to Members of Knesset, participated in deliberations in Knesset Committees, and wrote annual reports of its activities.<sup>46</sup>

When the Commission's head Judge Shlomo Shoham ended his term in 2006, the body's work ceased and no new Commissioner was appointed.<sup>47</sup> Members of Knesset pointed to the cost of operations and excessive ability to interfere in their work as the main two reasons to dissolve it. The Commission had participate in the Knesset and gather information from it, but its key power was being able to delay legislation by claiming the right to issue an informed opinion or postponing a decision by parliament. Such power was exclusively exercised by the Commissioner behind the scenes, since formal avenues created antagonism from all the participants. It was also considered that the Commission failed to differentiate between facts and moral opinions, which interfered with the work of Members of the Knesset.<sup>48</sup> In December 2010, a bill from the Knesset Plenum dissolved the Commission.

## **VII. Findings**

The Welsh and Israeli FGCs are initiatives that originated from top-down processes through the legislative establishment. The *Well-being of Future Generations (Wales) Act 2015* resolved to introduce a Welsh Commission for Future Generations to act as the legal sustainable development representative. The Israeli Commission for Future Generations was an idea that

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<sup>46</sup> Teschner, N. *Official Bodies that Deal With the Needs of Future Generations and Sustainable Development: Comparative Review*. The Knesset Research and Information Center, April 30, 2013, p. 2-3  
<https://m.knesset.gov.il/EN/activity/mmm/me03194.pdf>

<sup>47</sup> Ibid.

<sup>48</sup> Gessner, L. *Knesset Commission for Future Generations*. June 25, 2017. <http://www.fdsd.org/ideas/knesset-commission-future-generations/>

came from parliament when the Shinui<sup>49</sup> leader, MK Joseph Lapid, proposed it. It is probable that these initiatives would not have been possible through a bottom-up process as they demanded parliamentary support and funding.

The implementation of the Welsh FGC was the result of a propositive and supportive political environment, dissimilar to the circumstances surrounding the Israeli FGC. The act for the Welsh FGC introduced a new structure based on the experience from the Welsh *Local Agenda 21* and was acknowledged by the UN as a “model for other countries” after Wales adopted it as new sustainable development legislation. The principal criticism it received was that the act is an open-ended document with vague instructions for the implementation of the FGC.<sup>50</sup> It established that the Welsh commissioner has power to monitor “the extent to which well-being objectives set by public bodies are being met.”<sup>51</sup> Meanwhile, when the Israeli FGC initiative was proposed, there was significant pushback and changes had to be made for its implementation. The difference between the original bill and the law consists of the reduction of responsibilities and authorities of the FGC body. The main two authorities of the Israeli commission included: a) demanding information from any establishment under the State Comptroller Act; and b) requesting a parliamentary committee to prepare an opinionated position.<sup>52</sup> While Wales embraced the vagueness of the power and mandate of their FGC, Israel demanded specificity in order to limit the capabilities of their respective FGC.

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<sup>49</sup> Middle-class liberal party in Israel

<sup>50</sup> Jones, Rhys, Bryonny Goodwin-Hawkins, and Michael Woods. “From Territorial Cohesion to Regional Spatial Justice: The Well-Being of Future Generations Act in Wales.” *International journal of urban and regional research* 44, no. 5 (2020): 894–912.

<sup>51</sup> Legislation.gov.uk *Well-being of Future Generations (Wales) Act 2015*. The National Archives. <https://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

<sup>52</sup> Tremmel, Jörg. *Handbook of Intergenerational Justice / Edited by Joerg Chet Tremmel*. Cheltenham, UK ;: Edward Elgar, 2006.

The Welsh and Israeli FGCs became antagonistic to the extent in which they interfered in decision-making processes. According to interviews conducted by Nesom and MacKillop (2020), people thought that the Wales Act would allow for local flexibility according to specific needs and circumstances. Nonetheless, the Welsh FGC “marked” local plans and took away the expected flexibility for local authorities. Interviewees questioned the value of local strategies if they were judged by national actors, hence portraying the Welsh FGC as antagonistic at times. The authority of the Israeli FGC to request time to prepare opinionated positions made the commission an antagonistic force in the Knesset. Israeli political parties and parliamentarians resented delays in the legislative process and decision-making, hence pushing the FGC to avoid using its capabilities. Furthermore, the Israeli FGC’s authority to demand information gave it an advantage over government ministries as it could access data that was otherwise unavailable. This power furthered the commission’s antagonism as it brought media attention to compromising issues. Interference with other authorities and institutions built up an antagonistic reputation for the Welsh and Israeli FGCs.

Funding for the Welsh and Israeli FGCs was influenced by the socioeconomic circumstances of each country when the commissions were established. The Welsh FGC’s office is independent of the Government of Wales, but it is generously funded by it and audited by the Wales Audit Office.<sup>53</sup> Meanwhile, the Israeli FGC was appointed during a controversial budget year (2002), which limited the initiative’s support and funding from the Government of Israel.<sup>54</sup> The poor budget that the Israeli commission received did not permit the employment of more than four people at the time it was established, a significantly smaller team compared to the

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<sup>53</sup> “Our Team.” Future Generations Commissioner for Wales. 2018. <https://futuregenerations.wales/about-us/our-team/>

<sup>54</sup> Tremmel, Jörg. *Handbook of Intergenerational Justice / Edited by Joerg Chet Tremmel*. Cheltenham, UK ;: Edward Elgar, 2006.

Welsh FGC who has over thirty staff members. There is a correlation between the funding for FGCs and public support. Unlike its Israeli counterpart, the Welsh FGC was appointed at a time (2016) when the international agenda promoted investment in sustainable development. The Israeli FGC was instituted in 2001, when there were no precedents of a commission like it. The concept was unknown to the public eye, hence the media criticized the Knesset for taking the luxury of investing in future generations.<sup>55</sup> Many parliamentarians also joined the criticism due to the power that the Commission would have in the Knesset. The comparison between the Welsh and Israeli FGC indicates that a prosperous socioeconomic environment is needed for the proper funding of the commissions.

Legal voids are some of the principal struggles that the Welsh and Israeli FGC faced when paving the way in the practical application of intergenerational justice theory. Due to the limited scholarship and resources on the field at the time the Israeli FGC was established (2001), the commission had to learn how to fill legal voids as it undertook its duties. It had to define future generations, determine their interests, set the range of its action within the establishment, understand its implications in politics, and how to represent people that do not exist.<sup>56</sup> The Welsh FGC's power and responsibilities are reflective of other countries' models, specifically those from New Zealand, Hungary, and Israel. Wales has had better results in the implementation of its FGC because it was built from other countries' best practices and the legal voids they have resolved. Nonetheless, the scholarship on the rights for future generations remains insufficient and it is reflected in the performance of the Welsh and Israeli FGCs.

The fields of authority of the Welsh and Israeli FGCs are overwhelming due to the wide scope of the protected group under the term "future generations." The Israeli FGC had clear legal

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<sup>55</sup> Ibid

<sup>56</sup> Ibid

instructions in the focus on the environment, children, and sustainable development, however, this work could not be done exclusively by itself. The Israeli commission was in charge of a Committee for National Infrastructures that discussed the environmental implications of large-scale infrastructure projects. As well, it was requested to analyze the effects that legislation initiatives would have on children. Later on, it undertook the task to make legislation that protected sustainable development to set new standards for the rights of future generations.<sup>57</sup> In order to have a significant impact through her work, the Welsh FGC decided to limit her resources to five key areas: skills, health and wellness, adverse childhood experiences, land use planning and placemaking, housing, and transport.<sup>58</sup> These priority areas are significantly more specific than the themes covered by the Israeli FGC. Furthermore, unlike its Israeli counterpart, the Welsh FGC is not responsible for a committee or writing legislation; instead, her role is restricted to analyzing and making recommendations. The Welsh FGC's model is more specific and encompasses less responsibilities than Israeli FGC had, which indicates that limiting a FGC's scope of work is important to avoid their overburden.

## VIII. Implications

The Welsh and Israeli FGCs have worked under Vrousalis's egalitarian doctrine of intergenerational justice. They have focused on working to provide future generations with the opportunities and resources that present generations enjoy. The doctrine of egalitarianism has been favored by the UN before through the adoption of Brown-Weiss's work and it could indicate why the UNSG's *Our Common Agenda* favored the Welsh model. Nonetheless, the

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<sup>57</sup> Ibid

<sup>58</sup> "Priority Areas," *Future Generations Commissioner for Wales*, 2021. <https://futuregenerations.wales/about-us/our-team/>

work of the Welsh and Israeli FGCs depart from Brown-Weiss's school of thought because their work gives preference to one of the two intergenerational duties she indicates: they focus more on passing the Earth on in the condition it was received than on repairing the damages of previous generations.

The analyzed FGCs use Rawls's "justice as fairness" framework by taking actions in the interest of future peoples. Contrary to Meyer's Non-Identity-Problem against future generations having rights vis-à-vis present generations, the Welsh and Israeli FGCs operated under Meyer's Threshold Conception of Harm because they think future generations are worse off than they ought to be. Both FGCs built agendas around Agius's three "generations" of human rights (political, socioeconomic and environmental), hence took steps to advocate for the rights of future generations and the need for their participation in decision-making processes.

Wales and Israel solved Karnein's authorization problem by adopting Rehfeld's concept of non-democratic representatives. However, both countries departed from Karnein's suggestion of surrogate representation because they elected commissioners that did not necessarily share a characteristic of policy future generations stand for: the urgency of climate change. Following Bidadanure's argument, a person of a younger age would have been more fitting for the role of FGC given that youth, like future generations, have greater environmental concerns than older generations. A young non-democratic representative would help create intergenerational diversity in governmental institutions, which are normally led by senior decision-makers.

## **IX. Recommendations**

If the UN decides to pursue the FGC model as a form of representation of future generations, it should create a framework for the role based on findings from the Welsh and Israeli case studies.



The SEFG should help build not only the repurposed Trusteeship Council, but also a UN Commission for Future Generations. The UN's FGC should embody the proposals of *Our Common Agenda* report, like long-term thinking and future-oriented negotiations. Moreover, it must have clear accountability mechanisms that help fast-track implementation of the most urgent, such as those related to environmental policy.

The following are recommendations to the UN in its appointment of a FGC. They are outlined in six variables identified from the Welsh and Israeli case studies:

1. Building a transparent top-down process: By proposing a SEFG through *Our Common Agenda* report, the UNSG has begun a top-down process for their appointment. This same approach should be considered in the appointment of a FGC in the UN. The appointment process should be transparent, as that in the past, the UN has received criticism for handling these procedures behind closed doors and it is left to the public's speculation.
2. Embracing intergenerational diversity: One of the risks in the process of appointing a FGC is choosing a person for the role with the bias of age essentialism. In order to avoid this, the UN should strongly consider a surrogate representative or someone that has a political position and interests similar to those future generations could have.

Environmental advocacy should be the principal point of interest given that climate change endangers the security and livelihood of future generations. A young person could act as a surrogate representative because young people will share the Earth with future generations, have a higher interest in long-termism and share a sense of urgency regarding the current climate emergency.

3. Guaranteeing sufficient funding: The bureaucratic top-down procedure should work to guarantee abundant funding from the UN. The UNSG's Envoy on Youth and her office is infamously underfunded, hence affecting their ability to achieve ambitious goals. It is imperative that the FGC and their office is properly financially supported from the moment they are established and throughout its existence.
4. Fostering a supportive political environment: As seen in the Welsh and Israeli case studies, the support of key stakeholders from the beginning is fundamental for the success of a FGC. In the case of the UN, it is important to build a strong coalition of Member States that are willing to champion the FGC's work and agenda. Forming a group of supporters could be done from within the UN by sending an open invitation for Member States to engage in conversations regarding suggestions for capabilities of the FGC. Involving UN actors will help prevent the FGC from becoming an antagonistic force in the institution. Modern narratives in the media regarding the support of sustainable development should also be utilized in order to build support from the public.
5. Filling legal voids in future generations' human rights: The UN should revise its Charter, the Universal Declaration of Human Rights, and international legal framework to include the protection of the rights of future generations. The revision would encourage countries to scrutinize their legal frameworks through the same lens. These steps along other proposals from *Our Common Agenda*, such as the Declaration of Future Generations, will help the FGC take targeted action without compromising its time and resources in filling legal voids that other institutions in the multilateral system are responsible for.
6. Designating clear responsibilities and authorities: The UN should define whether the FGC will have multiple authorities such as veto, consultancy, guardianship, giving

opinions, writing recommendations, providing data, etc. Specific language should be used when writing the responsibilities of this role because it will undertake an issue that encompasses a wide range of topics related to future generations, as previously discussed with the Welsh and Israeli case studies.

By appointing a FGC, the UN could create an antecedent regarding the protection of future generations' rights as a form to practice intergenerational justice. If the FGC is successful in its endeavors, the UN should invite Member States to appoint counterparts in their national governments. In the interest of sustainable development and intergenerational justice, national governments should strongly consider requesting key stakeholders, like private companies, to create a similar role in order to increase long-termism in decision-making.

## **X. Conclusion**

The current efforts to protect the rights of future generations are insufficient. Appointing FGCs is the first step in the pursuit to advocate for future people. In order for the FGCs to perform effectively, governments need to provide proper resources and frameworks for their implementation. The multilateral system must commit to developing the legal, ethical, and philosophical intricacies of intergenerational justice. Due to its commitment to sustainable development, the UN is responsible for enforcing intergenerational justice. The UNSG's SEFG should examine the success of FGCs around the world in order to explore the viability of adopting their model of representation. Moreover, the UN needs to build their agenda on intergenerational justice based on the extensive work it has done related to the environment and future generations in the past decades.

Although it is true that this capstone project examines the appointment of a FGC as a pathway for the UN to protect the rights of future generations, inspecting other forms of practicing intergenerational justice would require a much longer and deeper analysis that is not the scope of this paper. Undoubtedly, there is also a much needed analysis of the implications of appointing FGCs in countries around the world. As detailed in the Welsh and Israeli case studies, the variables studied in this paper were affected by the social, political, and economic context of each country. Perhaps the appointment of a FGC in the UN will help further understand how these variables can be controlled to successfully apply the model elsewhere.

We might not get to share the future with the upcoming generations, but that does not mean we have no responsibilities to them or our planet. Taking future-oriented decisions, practicing long-term thinking, and keeping ourselves accountable are ways in which we can also practice intergenerational justice. Protecting the rights of future generations is in everyone's interest.

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