



Human Rights & Responsibilities regarding future Generations

ESF VICI Workshop - 14-16 October 2013, Kontakt der Kontinenten, Soesterberg, NL

ESF Research Networking Programme 'Rights to a green Future' (ENRI-Future)

NWO VICI - Human Dignity as the foundation of Human Rights

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Final Report

Summary (up to 1 page)

Although the international normative vocabulary predominantly is in terms of human rights and sustainability is an issue of global concern, it should be explored if and how the human rights framework can accommodate this concern. To that effect, we brought together a group of lawyers, philosophers and policy advisors to clarify the extent to which human rights law has accommodated this issue, and discuss conceptual possibilities within the human rights framework to further accommodate it. The workshop took place from 14-16 October 2013 at Kontakt der Kontinenten, Soesterberg (NL). Among the speakers were the members of publication line 2 of the ESF research networking programme 'Rights to a green Future', as well as external participants related to the co-funding NWO VICI project 'Human Dignity as the Foundation of Human Rights?'

The workshop was in five sessions.

- 1) Obstacles and Promises in contemporary (Human Rights) Law - To what extent can contemporary international human rights law accommodate a duty for the present generation to safeguard an environment for future generations? Given that human rights law was designed to protect and empower subjects and minorities against certain forms of government, it is needs to be developed in order to entails or can accommodate a demand for sustainable conduct. Are there signs that such development takes place?
- 2) Which Rights, Whose Rights - Which right could/would imply a duty to behave sustainably, and to whom would these rights belong? Does it derive from special human rights, or those ordinarily perceived to be among human rights? Does it derive from rights of individuals or groups? Are the rights had by present or by future people?
- 3) Conceptual Possibilities - What are conceptual possibilities for and limitations to a duty to sustainable conduct within the human rights context? Is there a value-orientation underlying the present human rights framework that could help us specifies the conditions under which such a duty could be developed?
- 4) Restrictions - How would these responsibilities fit with rights that are generally assigned to the present generation? For example, would it require restrictions on freedoms such as procreative rights, food rights or emission rights?
- 5) Institutions - Would institutional change be required to accommodate future generations in the human rights framework? Would we need new forms of law, lawyers and courts? Would we need a new form of politics? For example, should future generations be represented in democracy? How should we perceive the relation between law and politics in view of this? Can we still have a constitutional democracy as we now it?

During the workshop, papers were presented and after each paper there a question and answer session. Draft papers were circulated among the participants two weeks before the workshop, so that the debates were well informed. The workshop aimed at developing a coherent collection of papers on the topic, to be submitted for peer review. Routledge has signalled interest in publishing such a bundle edited by Marcus Düwell and Gerhard Bos

Description of the scientific content of and discussion at the event

In his 'Rights in the Context of Climate Change – A Contested Terrain' Prof. Dr. Jörg Tremmel considered that 'rights talk' is used in several ways in the context of climate change. It is used to argue that the present population in developing countries should have a right to greenhouse gas emissions if these emissions are indispensable for a minimum standard of living (so-called 'subsistence emissions'). By contrast, human rights are also used to provide an effective clarion call for stronger mitigation efforts. Granting such rights to certain groups of people would impose duties on present people or mankind in general to refrain from emitting too many greenhouse gases. The article discussed the pros and cons of 'rights talk' in the context of climate change.

Dr. Emilie Gaillard argued in 'How Complex thought may open the way to recognize Human Rights for Future Generations' that since entering the ecological age, an irrepressible dynamic tends to rally Nations around the objectives of preserving the common interests of mankind. At the same time, it announces the advent of new ways of thinking and formulating human rights. Greening human rights tends to recognize new environmental duties and to embrace new spatio-temporal scales. In a globalized world, contemporary Human Rights law tends to be subjected to major changes. At the same time, it initiates various epistemological breaks. It opens the way to overtake obstacles to think, to identify and to formulate Human Rights for Future Generations.

Peter Lawrence, in his 'International human rights law and protection of the environment for future generations: limits and possibilities' analysed the scope, structure and effectiveness of contemporary international human rights (IHR) law as a vehicle for addressing the interests of future generations in a healthy environment primarily drawing on examples relating to climate change. The scope of IHR law is limited in that there is no well-established human right to a healthy environment – including a stable climate system, and there is controversy as to whether future unborn generations can possess human rights. But IHR law does include human rights to life, subsistence and health which are threatened by climate change. These rights generate obligations on governments that potentially benefit future generations. The structure of IHR law, however, limits its effectiveness as it is premised on obligations of governments towards their own citizens: its ability to address trans boundary environmental challenges remains disputed. It is also limited in its ability to address intergenerational distributional justice issues created by global environment issues such as climate change.

Lukas Köhler in his 'Human Rights as a Normative Guideline for Climate Policy' (co-authored by Prof. Dr. Michael Reder) explored the non-judicial power of Human Rights in the climate change debate. It is obvious that rights do more than just lay groundwork for cases of the law. In a public sphere that accepts rights, they tend to produce norms as well. By incorporation of human rights in the global debate on climate change and showing which normative guidelines can be deduced from human rights, and normative guidelines for climate policy can be analysed.

In her 'Rights and Climate Justice', Dr. Adina Preda claimed that climate change poses three distinct problems that could raise issues of justice. This is because climate change affects future generations, the environment itself as well as current inhabitants of the planet. The first raises issues of intergenerational justice, the second issues of environmental justice and the last is a question of global justice. One aim of this paper is to argue that only the third issue can be fruitfully framed in terms of rights.

Dr. Gerhard Bos argued in his 'A Duty to Safeguard our Environment for the Future' that respecting the human rights of the present generation as part in a chain of partially overlapping generations, is possible only by leaving them as well as their future contemporaries and future non-

contemporaries the possibility to have, on ground of their humanity, access to the objects of human rights.

Dr. Rutger Claassen in his 'The Capability Rights of Future Generations' asked what a capability theory of justice should say about the question whether, and if so which ecological obligations we owe to future generations. A capability theory of justice (hereafter: CTJ) will answer the question of intergenerational justice by drawing upon two core features that make up its content for current generations as well. The CTJ is a rights-based moral theory with capabilities as the metric or content of these rights. First, it proposes to conceive of justice as a matter of protecting a set of basic human capabilities. Second, it proposes that human beings have rights to such a set of basic capabilities. The major challenge that this leaves open is to show which resources such a CTJ is to leave to future generations. It was argued that a CTJ cannot agree with the influential views of Rawls and Solow that these resources should be conceived in terms of 'total capital'. Finally, it was argued that a CTJ must accept a combination of two ecological resources that focus on the preservation of specific forms of natural capital: the ecological space approach and Daly's resource rules.

In his 'What Duties Do We Have to Future Generations? A Gewirthian Approach', *Prof. dr. Deryck Beyleveld* outlined the approach to the question of duties we owe to future generations from the perspective of Alan Gewirth's Principle of Generic Consistency (PGC), which he interpreted and defended in detail in various places. It was spelled out briefly, what the PGC prescribes, as well as two arguments for using it. Then it specified middle order principles the PGC supports that are of particular importance in relation to duties to future generations, which, in principle it supports, because it grants rights to agents simply because they are agents and to needs that all agents have regardless of their circumstances or contingent preferences.

Dr. Jos Philips in his 'Human rights and threats concerning future people', asked how threats to future people could be adequately incorporated in human rights – also considering the risks and uncertainties that are attached to such threats. Human rights must take such threats on board if they are to remain relevant and they urgently need guidance on how to do so. A proposal was developed that relies on a novel two-step articulation of the notion of a standard threat. This proposal was initially defended by showing its advantages over important alternatives (articulated by Stephen Gardiner and Henry Shue) and by answering a number of objections to it, specifically to its (sufficientarian) shape in which a threshold has a prominent place. It was concluded that human rights are in relatively good shape to take on threats concerning future people and that such threats are less distinctive than is sometimes thought.

In his 'Human Rights in an intergenerational Perspective' *Prof. dr. Marcus Düwell* shortly outlined what the possibilities are of seeing the relationship between the human rights-regime and obligations in an intergenerational perspective. Secondly, he discussed whether human dignity, as the justificatory principle of the human rights-regime, has to be interpreted so that it implies obligations towards future generations. Thirdly, he discussed what, if such an extension to future generations would be necessary, this would imply for the human rights-regime.

Dr. Franck Meijboom considered in his 'On Current Food Habits and Future Generations' whether there is a moral need to change our food consumption in order to safeguard human rights of future generations? In the Universal Declaration of Human Rights (UDHR), the right to food is explicitly mentioned as an essential part of an adequate standard of living. As a consequence, food security has been on the public and academic agenda for many years and still is a serious global challenge. At the same time, there is a debate on the impact of – mostly Western - food habits and food styles on global food security, the welfare of non-human animals and the environment. Finally, there is a discussion on the question whether, and if so, why human rights of future generations give normative reasons to

change our current actions. In this paper, these discussions were combined in order to frame an answer to the question whether the human rights of future generations can be a compelling moral reason to change our current food habits.

Tim Meijers in 'On the Freedom to Procreate' argued that liberal theorists cannot ignore the question of what - if anything - makes procreation so important, so central to human life from a liberal point of view. Can we compare it to the basic liberties, like freedom of speech? Only with an answer to this question in hand can we consider the strength of the moral right to procreate. This article focused on the right to have one child, and offered considerations why the liberty of having one child is something that the liberal ought to defend against many other kinds of moral considerations in case of a clash. It was argued that because of the importance of the life-transcending projects and the value of the family, the right to procreate can be strengthened, but that there are moral limits to these defences of the right to procreate. These arguments can only be used to justify having one child, and there are circumstances in which people lack the right altogether.

In her 'An overview of China's climate policies and actions' *Teng Fei* provided an overview of China's domestic policies and international strategies on climate change; particularly aimed at explaining some fundamental principles underlying those policies and figure out China's views on issues of responsibilities to future generations, emission rights and distributive justice; attempts to address some normative questions need further studies.

In his 'Institutional representation of future generations' *Dr. Sándor Fülöp* started with observing that rights of the future generations are acknowledged and analysed in details in the report of the UN Secretary General to the General Assembly of Autumn, 2013 as a follow up to the Rio+20 Summit closing document, Para. 86. This key report ensures plenty of room to discussing institutional representation as a logical consequence and guarantee of implementation of the rights of the future generations. The report gives also an overview of the existing examples of such institutions, including the Hungarian Parliamentary Ombudsman for Future Generations (FGO). In its 4 years operation FGO performed three functions: as a complaint office solved hundreds environmental conflicts of local, regional and national scale; as a legislative advocacy centre raised its voice whenever laws, regulations infringed long term social and environmental interests; and as a think-tank organisation FGO initiated research and iterative discussions on important problems and solutions of sustainable development, such as sustainable local communities or alternative indicators.

In his 'Constitution and Time in International Law' *Dr. Stephen Riley* asked questions concerning the conditions of a duty-generating legal system and the kind of constitutional reform would be necessary to make international law serve the interests of future generations given the constitutional poverty, and constitutional possibilities, of international law. Using Winfried Brugger's analysis of the anthropology of decision-making it schematized how legal systems should orientate themselves towards time. Brugger's 'decisional cross' provides a model of the temporal and self-perceptual conditions of authentic personal decision-making, and has an exact parallel in the decision-making of social institutions. Law too must decide to act within the four-fold informational currents of needs, aspirations, past and future, and the obligations generated by a legal system are validated by the standard applicable to personal decision-making: whether they contribute to good self-constitution, and whether they maintain human dignity.

In his 'We can't, we won't. Climate Justice for the Unable and Unwilling', *Dr. Dominic Roser* claimed that climate change is a human rights issue: The risks of climate change threaten the human rights of future generations and the burdens of climate policy can delay the fulfilment of socio-economic human rights in the present generation. In the policy arena, however, a just climate regime that would do without violating human rights is often dismissed on account of it's being infeasible. The danger was highlighted of abusing the subtleties involved in feasibility and motivation

constraints for the purpose of tacitly smuggling one's own interests into the political debate via superficially empirical based feasibility constraints. Following this was a call for making better use of opportunities to decrease injustice in climate policy within given feasibility and motivation constraints.

Assessment of the results and impact of the event on the future direction of the field

The bringing together of lawyers, philosophers and people more directly involved in the practice of protecting future generations, provided a unique occasion to assess the need for a human right approach to sustainability issues. In general, it the impression during the workshop was that there is much work to do in developing the human rights approach in order to recognize future generations both in theory, law and practice. More specifically, it has become clear that in international law and practice, as well as in some constitutions of different countries some explicit recognition of rights of future generations in acknowledged. Although, obviously limited in certain ways, this observation provides occasion to assess the moral and legal philosophical dimensions of the extent to and sense in which future generations are recognized in institution and practice to have rights against us. On top of that it provided a references point for a more theoretical reflection on the human rights logic when discussing sustainability in terms of future generations rights.

As a main result of the workshop, the organizers of the workshop will come up with a format enabling authors to contribute to a coherent collection of papers for a book. The idea is that, based on the presentations, authors will be asked to rewrite their papers in view of the feedback at the workshop as well as to accommodate it to this format. Routledge has signalled interest in publishing such a book.

Final program of the meeting

Monday 14 October

14.00 - 15.00 Registration
15.00 - 15.15 Opening words
Session 1 - Contemporary (Human Rights) Law
15.15 - 16.00 Prof. Dr. Jörg Tremmel
16.00 - 16.45 Dr. Emilie Gaillard
16.45 - 17.30 Peter Lawrence
17.45 - 19.15 Dinner
Session 2a - which rights, whose rights
19.30 - 20.15 Lukas Köhler & Prof. Dr. Michael Reder

Tuesday 15 October

Session 2b - which rights, whose rights
9.00 - 9.45 Dr. Adina Preda
9.45 - 10.30 Dr. Rutger Claassen
10.30 - 10.45 Coffee break
Session 3 - Conceptual Possibilities
10.45 - 11.30 Prof. dr. Deryck Beyleveld
11.30 - 12.15 Prof. dr. Marcus Düwell
12.15 - 13.00 Dr. Jos Philips
13.00 - 14.00 Lunch
Session 4 - Restrictions
14.00 - 14.45 Dr. Franck Meijboom
14.45 - 15.30 Tim Meijers
15.30 - 16.15 Teng Fei
16.15 - 16.30 Coffee break
Session 5a - Institutions
16.30 - 17.15 Dr. Dominic Roser
17.15 - 18.00 Dr. Unnerstall
18.15- 19.45 Dinner

Wednesday 16 October

Session 5b - Institutions
9.00 - 9.45 Dr. Sándor Fülöp
9.45 - 10.30 Dr. Stephen Riley
10.30 - 10.45 Coffee break
10.45 - 11.30 Dr. Gerhard Bos
11.30 - 12.15 Proceedings publication & concluding remarks
12.15 - 13.15 Lunch

List of participants

Name	Affiliation
Prof. Dr. Beyleveld, Deryck	Durham University; Utrecht University
Dr. Bos, Gerhard	Utrecht University
Dr. Claassen, Rutger	Utrecht University
Prof. Dr. Düwell, Marcus	Utrecht University
Dr. Fülöp, Sándor	The World Future Council
Dr. Gaillard, Emilie	University of Caen
Göbel, Marie	Utrecht University
Hamer, Jurriën	Utrecht University
Prof. Dr. Heeger, Robert	Utrecht University
Dr. Kaldewaij, Frederike	Utrecht University
Köhler, Lukas	Hochschule für Philosophie, München
Lawrence, Peter	University of Tasmania
Dr. Meijboom, Franck	Utrecht University
Meijers, Tim	Universite catholique de Louvain
Dr. Philips, Jos	Utrecht University
Dr. Preda, Adina	University of Limerick
Dr. Riley, Stephen	Utrecht University
Dr. Roser, Dominic	University of Oxford
Teng, Fei	Utrecht University
Prof. Dr. Tremmel, Jörg	University of Tübingen
Dr. Unnerstall, Herwig	Evangelische Akademie Hofgeismar