

Facing the Future: The Case for A Right to a Healthy Environment for Future Generations under International Law

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Keywords

INTERGENERATIONAL EQUITY; RIGHT TO A HEALTHY ENVIRONMENT; INTERNATIONAL HUMAN RIGHTS LAW; INTERNATIONAL ENVIRONMENTAL LAW

Abstract

This paper seeks to examine whether the current framework of international human rights law formally grants the right to a healthy environment to future generations. There has been much debate regarding the effectiveness of international human rights law in guaranteeing environmental sustainability in particular without the consideration of future generations. The right to a healthy environment was specifically chosen both as a means of narrowing the scope of this research and given that future generations are a fundamental concept of international law relating to environmental sustainability. In Section II, all relevant concepts, including 'future generations', 'intergenerational justice' and 'environmental sustainability' will be defined and explored. In addition, a link will be established between intergenerational equity and sustainable development in light of current literature and scholarly discussion. The following section discusses how the link drawn between environmental protection, human rights protection and environmental sustainability provides for a common approach to fully handling current environmental issues. Subsequently, a positive analysis of present day international legal instruments, customary international law and case law will be conducted, to determine the current status of future generations regarding the right to a healthy environment. Use will also be made of academic literature on the subject, including extensive research carried out by scholars such as Edith Brown Weiss and Bridgit Lewis. To conclude, the findings of each section will be summarised, and a final conclusion will be drawn as to the state of future generations in international law and the potential for the right to a healthy environment to be accorded to them.

I. Introduction

A. Introductory Remarks

Global environmental change affects our capacity to achieve environmental sustainability, and its implications are inherently long-term. As a result, our future generations are increasingly vulnerable to the consequences of the present generation's actions. For instance, their ability to enjoy fundamental human rights will be impacted by the way we enjoy our own.

This paper seeks to examine whether the current framework of international human rights law formally grants the right to a healthy environment to future generations and how

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such an extension of the right can assist in effectuating environmental sustainability.

Despite the recognition of its growing importance, there has been much debate regarding the effectiveness of international law in guaranteeing environmental sustainability, in particular, without the consideration of future generations. The current imperative is that the Intergovernmental Panel on Climate Change has recently predicted that the global community now has less than 12 years to put measures in place to address climate change in order to avoid conditions that are no longer capable of sustaining human life on Earth.¹ However, current environmental and human rights laws remain focused on past breaches of such laws and require that breach to have occurred before any redress is given. The lack of action on the part of governments and corporations in the present may have little impact on current generations but has the potential to have a catastrophic impact on the lives of generations to come, impact for which we will be ultimately responsible. Therefore, the importance of this topic is in leveraging the international community to act on environmental protection measures in the present in order to provide the right to a healthy environment for the future. The right to a healthy environment was specifically chosen since future generations are a fundamental concept of international law in relation to environmental sustainability. It becomes clear that current international human rights law does not provide the right to a healthy environment, neither in its terms nor scope.² However, while key United Nations (UN) human rights documents do not include this right, nor explicitly express intergenerational equity as a legal rule or principle, both concepts are found in the regional human rights treaties of Africa and South America, among other legal documents.³

B. Why Focus on International Law?

In order to understand the current status held by future generations in international law and the importance of assigning an international right to a healthy environment to them, it is first necessary to explain why rights must be accorded to future generations on an international level. State sovereignty still lies at the heart of international law and, as a result, some argue that international law does not have the necessary structural capacity to address the rights of future generations in relation to a healthy environment or environmental sustainability.⁴ However, the importance of creating such a right for future generations at the international level revolves around the fact that no single country or group of countries has the ability to guarantee a healthy environment for the future.⁵

Only by relying on international law is it possible to encourage cooperation between countries and among communities to fulfill obligations to future generations, or even to elaborate on and codify the relevant norms of intergenerational equity. Indeed, a binding

¹ IPCC, 'Special Report: Global Warming of 1.5 °C' (*IPCC*, 2018) <ipcc.ch/sr15/> accessed 5 March 2019.

² Peter Lawrence, 'An atmospheric trust to protect the environment for future generations' in Marcus Düwell and Gerhard Bos (eds), *Human Rights and Sustainability: Moral Responsibilities for the Future* (Routledge 2016) 34.

³ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 December 1986) 1520 UNTS 218, art 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988) 28 ILM 156 (Protocol of San Salvador), art 2.

⁴ Lawrence (n 2) 24.

⁵ Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1990) 84 *American University International Law Review* 19, 22.

multilateral treaty is chiefly capable of addressing relevant concerns regarding ‘trade competitiveness’⁶ and of delivering the necessary commitments in the future, which is essential for intergenerational justice.⁷ This is because codification reduces ambiguities around expected behaviour and distinguishes cooperative behaviour from uncooperative behaviour.

Within international law, some of the available legal instruments will be binding, while some may be non-binding, or may become binding over time. To the extent that norms represent customary international law, they will become binding upon all countries, whether or not they are party to the relevant agreement. We must encourage both general legal instruments, articulating intergenerational rights and obligations in relation to our planet, and binding agreements directed to conserving specific aspects of the environment.

C. Structure and Methodology

This paper, and therefore its discussion, is divided into 5 sections. Firstly, Section II will begin by defining the concepts of ‘future generations’, ‘intergenerational justice’ and ‘environmental sustainability’ as herein understood. A closer look will then be taken at the underlying principles of intergenerational equity as outlined by Edith Weiss Brown, as well as Passmore’s ‘chain of love’ theory as it relates to future generations. This paper does not purport to deal with questions surrounding the non-sentience issue, the conceptualisation of future generations in human rights discourse, or how current generations can expressly owe obligations to future ones, given that these issues are particularly abstract, and their theoretic nature goes beyond the scope of this paper. Secondly, a link will be established between intergenerational equity and sustainable development in light of current literature and scholarly discussion.

Section III discusses in full how the link drawn between environmental protection, human rights protection and environmental sustainability provides for a common approach to fully handling current environmental issues. By developing an argument based on the right to a healthy environment for future generations, this section recognises and describes the ways in which sustainability requires placement within a human rights framework and how this could potentially impact on State rights and obligations.

In Section IV, a positive analysis of current international legal instruments, customary international law and case law will be conducted in order to determine whether or not a right to a healthy environment exists for future generations. Use will also be made of academic literature on the subject, including extensive research carried out by scholars such as Edith Brown Weiss and Bridgit Lewis. The development and current status of future generations and the right to a healthy environment within international will be traced – acknowledging their context within the notion of sustainability – through an analysis of international conventions, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement and the Declaration of the UN Stockholm Conference on the Human Environment (Stockholm Declaration), as well as case law. Particularly, the approach of international courts, such as the Inter-American Court of Human Rights and the International Court of Justice (ICJ) towards intergenerational equity, and whether intergenerational equity can be perceived as a part of customary international law, will be

⁶ Lawrence (n 2) 24.

⁷ *ibid.*

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examined, with the conclusion that no such legal right is yet assigned to future generations, but noting the potential for advancement.

To conclude, in Section V, the findings of each section will be summarised, and a final conclusion will be drawn as to the state of future generations in international law and the potential for the right to a healthy environment to be accorded to them.

II. Understanding the Context

A. Key Concepts

Before discussing the significance of future generations and intergenerational equity to environmental sustainability, we must establish a secure understanding of what each concept individually entails.

Most importantly, as an explanation for why a right to a healthy environment should be granted to future generations, environmental sustainability must first be considered. Although there is no single, universally accepted definition, the idea of environmental sustainability is to ‘create and maintain conditions under which humans and nature can exist in productive harmony’, which allows for the environmental requirements of the present and future generations to be fulfilled.⁸ Immediately, we see that environmental sustainability depends upon future generations having certain entitlements to a habitable environment. In this regard, there are two different ways to ensure that the needs of future generations can be met.⁹ The first approach is through ‘weak sustainability’, by which future generations are compensated for any environmental loss through the creation of alternative sources of wealth.¹⁰ On the other hand, ‘strong sustainability’ views the environment as ‘offering more than just economic potential’ and argues that, regardless of wealth, future generations should not inherit a degraded environment.¹¹

The term ‘generation’ is unclear and holds several references, including but not limited to: 1) people sharing the same familial lineage; 2) a group of people with shared beliefs, ie societal generations; 3) a certain age group in society alive at the same time, such as the elderly; or 4) everyone alive today.¹² In this paper, ‘future generations’ will be defined as referring to generations where ‘its members are not yet alive’ at the time of reference.¹³ This understanding of future generations excludes presently existing younger generations, such as children, since their interests can be considered to be short- or medium-term and would therefore pose restrictions on the effective long-term guarantee of environmental sustainability.¹⁴ As developed from Passmore’s conceptual ‘chain of love’, the remoteness between generations has temporal implications since our concerns differ between generations and, while present

⁸ Cynthia Stahl and Todd S Bridges, “‘Fully baked’ sustainability using decision analytic principles and ecosystem services” (2013) 9 *Integrated Environmental Assessment and Management* 551; James Kevin Summers and Lisa M Smith, “The Role of Social and Intergenerational Equity in Making Changes in Human Wellbeing Sustainable” (2014) 43 *Ambio* 718, 721.

⁹ Summers and Smith (n 8) 725.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Joerg Chet Tremmel, *A Theory of Intergenerational Justice* (Earthscan 2009) 19–20; Peter Lawrence, *Justice for Future Generations: Climate Change and International Law* (Edward Elgar 2014) 15.

¹³ Lawrence (n 12).

¹⁴ Hendrik PH Visser ‘t Hooft, *Justice to Future Generations and the Environment* (Kluwer 1999) 47.

generations' concerns affect us 'in an immediate way', future generations' interests are allegedly 'hidden in a complete autonomy'.¹⁵ Since young children are already born, they are generally treated in a distinct manner by international, regional and local legal regimes.¹⁶ Consequently, given this differentiation, it would be problematic to consider both groups as constituting 'future generations' in light of the legal connotations of the term.

Further, the terms 'intergenerational justice' and 'intergenerational equity' will be used interchangeably to mean the 'concept of fairness among generations in the use and conservation of the environment'.¹⁷ Intergenerational equity views the human race as a partnership between all generations, in which each has the right to inherit an environment which is suitable for maintaining life and equitable access to its resources.¹⁸ As a result, the present generation is seen as the custodian of the planet for future generations. In this case, intergenerational equity extends the scope of social justice in the future.¹⁹ The basis of intergenerational equity is formed by three principles – the principle of conservation of options, the principle of conservation of quality and the principle of conservation of access.²⁰ Conservation of options requires each generation to conserve the diversity of natural and cultural resources. Conservation of quality requires each generation to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received and enjoyed. Conservation of access requires equitable access to use and benefit of the planet's resources.²¹ In sum, each generation must conserve the environment in order to allow future generations to access and enjoy the same resources being presently enjoyed and to receive the planet in 'no worse condition' than that in which it was received by the present generation.²²

B. The Common Thread: Intergenerational Equity within Sustainability

Over time, it has become evident that environmental sustainability is somewhat premised on, and relies on, a commitment to intergenerational justice,²³ as this is an essential component of sustainability. Since intergenerational equity is established on the basis of maintaining available resources whilst simultaneously ensuring there is no degradation of the environment, there is a need for a proper balance to be struck between the current use of the environment and its conservation for future use.²⁴ Concern over environmental externalities focuses on the

¹⁵ *ibid.*

¹⁶ Laura Westra, *Environmental Justice and the Rights of Unborn and Future Generations: Law, Environmental Harm and the Right to Health* (Rutledge 2006) 3 et seq.

¹⁷ Edith Brown Weiss, 'Intergenerational Equity', *The Max Planck Encyclopedia of Public International Law* (February 2013) <opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1421> accessed 25 April 2019; Summers and Smith (n 8) 719.

¹⁸ Summers and Smith (n 8) 719.

¹⁹ *ibid.*

²⁰ *ibid* 725.

²¹ *ibid.*

²² *ibid.*

²³ Edith Brown Weiss et al, *International Law for the Environment* (West Academic Publishing 2016) 52; Edith Brown Weiss, *Environmental Change and International Law: New Challenges and Dimensions* (United Nations University Press 1992) ch 12.

²⁴ Rajendra Ramlogan et al, *Sustainable Development: Towards a Judicial Interpretation* (Brill 2011) 213; Mélanne Civic, 'Prospects for the Respect and Promotion of Internationally Recognized Sustainable Development Practices: A Case Study of the World Bank Environmental Guidelines and Procedures' (1998) 9 *Fordham Environmental Law Review* 231, 237.

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costs that must be faced by both current and future generations due to the pollution of the air, water and soil. Such concern ensures that environmentally damaging action is contemplated before being taken and that the benefits of that contemplated action exceed its costs. However, in reality, this is not effective, as the costs and benefits of these actions are assessed solely from the perspective of the present generation.²⁵ Sustainability requires that the environment is looked at not only as an 'investment opportunity' but as a 'trust' that is continually passed on to each new generation by their ancestors, for their benefit and use. This, therefore, demonstrates the existence of both rights and responsibilities and, even more importantly, that future generations can also have rights.²⁶ However, those rights require the present generation to respect them.²⁷ Consequently, each generation should use the 'natural system' to improve the human condition.²⁸ When one generation degrades the environment, the obligation to care for this natural system is violated.²⁹ In this case, other generations may have the obligation to restore the system, though not entirely and not bearing all the costs. Rather, such costs should be distributed across generations, which can be difficult to implement. However, there are measures by which this is possible, such as long-term bonds. This would ensure that each generation leaves the planet in no worse condition than it was received and grants subsequent generations equitable access to its resources and benefits.³⁰

One need not look further than one of the major achievements of the international community in reaching a consensus on the path towards sustainability, namely the Brundtland Report of the World Commission on Environment and Development (WCED).³¹ The WCED was established in 1983 by the UN in order to address concerns over the 'accelerating deterioration of the human environment and natural resources' and to 'propose long-term environmental strategies for achieving sustainable development by the year 2000 and beyond'.³² In doing so, the UN recognised that environmental issues are globally relevant and therefore that it was necessary for all States to establish policies on sustainable development. This definition of sustainable development entails 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs',³³ and clearly shows that the discussion on sustainability is one of our responsibilities and duties to future generations. Since its creation, the Brundtland Report has served as the basis for discussions on both future generations and sustainability.

²⁵ Weiss et al (n 23) 52; Weiss (n 23) ch 12.

²⁶ Weiss et al (n 23) 20.

²⁷ Weiss et al (n 23) 52; Weiss (n 23) ch 12.

²⁸ *ibid* 21.

²⁹ *ibid* 21.

³⁰ *ibid*.

³¹ Gro Harlem Brundtland, 'Report of the World Commission on Environment and Development: Our Common Future' (1987) UN Doc A/42/427; Lothar Gündling, 'Our Responsibility to Future Generations' (1990) 84(1) AJIL 207, 208; The report aimed to emulate the spirit of the Stockholm Conference, which had introduced environmental concerns into the international political sphere, and discussed the environment and development as a single issue.

³² United Nations, 'Report of the World Commission on Environment and Development – Our Common Future' (United Nations, 2000) available at <sustainabledevelopment.un.org/milestones/wced> accessed 1 June 2019; IDRC, 'Brundtland Commission/ Commission Brundtland (WCED)' (IDRC Digital Library, 2015) available at <idl-bnc-idrc.dspacedirect.org/handle/10625/53401> accessed 1 June 2019.

³³ Brundtland (n 31).

As aforementioned, intergenerational equity provides for the recognition of the interests of future generations and can be seen as an extension of interest theory and the expression of the specific rights owed to future generations by present generations, namely that future generations must receive the planet in no worse condition than it was previously received and have equitable access to its resources. There are clear parallels to the notion of sustainability as explained above, with both notions holding similar objectives and being intrinsically linked to each other and to human rights. With this, and the implications of the principles of intergenerational equity, such as the conservation of access, in mind, it becomes clear that intergenerational equity is incompatible with ‘weak sustainability’, given its inequitable redistribution.³⁴ The Brundtland definition, combined with the notion of equity, points in the direction of strong sustainability.³⁵

Equity provides that each generation has the obligation to conserve and protect the environment for the use and benefit of both present and future generations.³⁶ Therefore, when contemplating environmental sustainability, we must recall that the central tenet behind it is that while the needs of the present are being met, with the use of environmental factors, it must also be ensured that the ability of future generations to benefit from a healthy, resourceful environment is not being conceded. Accordingly, the WCED outlined a list of legal principles, including the right to a healthy environment as a fundamental right, which involved the obligation to conserve the environment for present and future generations.³⁷

However, the idea of preserving the environment for the use of present and future generations existed long before the Brundtland Report was published. For instance, following the Stockholm Declaration, the need to protect the environment in the interests of present and future generations was mentioned several times in Resolutions of the UN General Assembly.³⁸ Moreover, the significance of future generations within the notion of sustainability was considered in the Human Development Report 1994.³⁹ Later, in 1995, the Copenhagen Declaration on Social Development reminded the international community of its ‘responsibility to ensure intergenerational environmental equity by sustainable use of environment.’⁴⁰ Further, through the inclusion of sustainability as a guiding principle of the Paris Agreement, future generations can be seen as beneficiaries of sustainability.⁴¹ While the Paris Agreement does not explicitly mention future generations, it includes language which

³⁴ Summers and Smith (n 8) 725.

³⁵ Peter Lawrence (n 2) 29.

³⁶ See, in general, Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations Press 1989).

³⁷ *ibid*; Expert Group on Environmental Law of the World Commission on Environment and Development, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* (Graham & Trotman/Martinus Nijhoff 1987) 25–33.

³⁸ Historical responsibility of States for the preservation of nature for present and future generations: UNGA Res 38/5 (30 October 1980) UN Doc A/RES/35/8; and Resolutions: UNGA Res 42/186 (11 December 1987) UN Doc A/RES/42/186; UNGA Res 43/53 (6 December 1988) UN Doc A/RES/43/53; UNGA Res 44/207 (22 December 1989) UN Doc A/RES/44/207.

³⁹ United Nations Development Programme, *Human Development Report 1994* (OUP 1994).

⁴⁰ UNGA, ‘Copenhagen Declaration on Social Development’ (14 March 1995) UN Doc A/CONF.166/9, principle 26(b).

⁴¹ Bridgit Lewis, ‘The Rights of Future Generations within the Post-Paris Climate Regime’ (2018) 7 *Transnational Environmental Law* 69, 83; Paris Agreement (n 7) Preamble paras 8, 16, Arts 2, 4, 5, 6, 7, 8, 10.

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could be interpreted as ‘bringing the rights of future generations within the scope of States’ obligations’.⁴² States are indirectly required to consider the future impacts of their policies, potentially having the ultimate effect of promoting and protecting the rights of future generations, if even just implicitly.⁴³ Nonetheless, while this is a progressive step, it still falls short of what is truly required in order to adequately protect the rights and interests of future generations. A greater discussion of the implications of certain wording and inclusions within the Paris Agreement’s preamble will be covered in Section V.

III. An International Right to a Healthy Environment for Future Generations as an Engine of Environmental Sustainability

As the implications of global environmental change and sustainability are inherently long-term, we are required to address these issues alongside intergenerational justice, given that they span several generations. The idea of a right to a healthy environment is developed from the interrelation between environmental protection, human rights protection and sustainability. We can go one step further with the idea of sustainability at the forefront, leading to the idea that since ‘all’ human beings are entitled to such rights and protection, there is no true reason for future human beings to be excluded from this mechanism or system. For instance, the Rio Declaration on Environment and Development (Rio Declaration) reaffirmed the principles of the Stockholm Conference. While it did not expressly provide for the right to a healthy environment, it expresses an evolution of the concept of the right to a healthy environment, translated into the principle of sustainable development composing the rights of future generations.⁴⁴ Moreover, the impact of environmental harms will be mostly felt by unborn generations, which will face irreversible harm to their environment:

Environmental conditions help determine whether people are healthy or not, and how long they live. They can affect reproductive health and choices, and they can help determine prospects for social cohesion and economic growth, with further effects on health. Changes in the environment – pollution and degradation, climate change, extremes of weather – also change prospects for health and development.⁴⁵

In addition, it can be posited that the concept of sustainability incorporates the notion of a right to a healthy environment, as it is undeniable that basic environmental health is necessary for the enjoyment and exercise of already recognised human rights, the overall functioning of the biosphere and all aspects of human survival.⁴⁶ Therefore, environmental degradation will interfere with fundamental human rights to the extent that those rights become violated.⁴⁷ As

⁴² Lewis (n 41) 72.

⁴³ *ibid* 83.

⁴⁴ UNGA ‘Report of the United Nations Conference on Environment and Development’ (28 September 1992) UN Doc A/CONF.151/26, principle 1.

⁴⁵ Alex Marshall et al (eds), *Footprints and Milestones: Population and Environmental Change* (UNFPA 2001).

⁴⁶ Dinah Shelton, ‘Human Rights, Environmental Rights, and the Right to Environment’ (1991) 28 *Stanford Journal of International Law* 103, 112.

⁴⁷ *ibid* - according to Shelton, ‘the human rights directly threatened by environmental deterioration include the right to life, the right to health, the right to privacy, the right to suitable working conditions, the right to an adequate standard of living, and rights to political participation and information.’.

a consequence, rights and obligations have been progressively formulated in order to address such environmental impact, leading to new concepts and principles emerging. It is evident, then, that in order to prevent environmental damage, it becomes necessary to establish a right to a 'healthy' environment to human beings, including those of future generations, in a legally binding international instrument.

Traditionally, international human rights law and international environmental law are separate, and international human rights law has not included the environment as a distinct right, despite evidence that a degraded environment threatens traditional human rights.⁴⁸ Rather, it involves other rights which may be violated by environmentally harmful action, such as the rights to life and health,⁴⁹ and those which depend upon a healthy and stable environment in terms of 'water, food and shelter'.⁵⁰ Therefore, a logical conclusion is the creation of an international right to a 'healthy' environment for future generations as an attempt to reinforce environmental sustainability and protect the rights of people through a right which encompasses both environmental and human aspects. It is possible to argue that the right to a healthy environment can be viewed as an 'interpreted' right, ie stemming from existing rights, since it allows for new problems to be addressed without altering the 'status quo' of the international human rights system.⁵¹ However, this does not carry the necessary weight or binding legal status needed for such a right to be effectively enforced and implemented, given the pace at which the right to life and other human rights is being threatened by environmental changes. The independent recognition of this right in an international instrument significantly affects its binding status and potential for legal recourse.⁵²

As discussed in Section II(b), a legally binding international instrument would be the most effective tool in delivering the necessary international commitment required for intergenerational justice. This would ensure that States are able to explicitly focus on meeting the preconditions for sustainability and fully capture the threats posed by these developments, while also ensuring that States do, in fact, maintain sovereignty in some regard; after all, for the State to be bound to obligations under a multilateral treaty, it must sign and ratify said provisions. It would also guarantee that States are held accountable for their environmental actions – with possible consequences to be faced if environmental degradation is caused to an alarming extent which would undermine the preservation of the environment for future generations – and for tackling environmental sustainability issues, such as concerns over trade competitiveness. If the structural challenges of the international legal sphere can be resolved, there is no plausible reason for the creation and extension of such a right to be problematic, as it has already been conceived on both national and regional levels.⁵³

One might also argue that the meaning of a 'healthy' environment would differ by State, which would not be incorrect. This is expressed by the European Court of Human Rights (ECtHR):

⁴⁸ Lawrence (n 2) 27–29.

⁴⁹ Simon Caney, 'Climate Change, Human Rights and Moral Threshold' in Stephen Humphreys (ed), *Human Rights and Climate Change* (CUP 2009) 167; Lawrence (n 2) 27–29.

⁵⁰ Richard P Hiskes, *The Human Rights to a Green Future* (CUP 2009) 39; Lawrence (n 2).

⁵¹ Jennifer A Downs, 'A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right' (1993) 3 *Duke Journal of Comparative and International Law* 351, 378.

⁵² *ibid.*

⁵³ *Minors Oposa v Secretary of the Department of Environment and Natural Resources* (1994) 33 *ILM* 173.

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National authorities are best placed to make decisions on environmental issues, which often have difficult social and technical aspects. Therefore, in reaching its judgments, the Court affords the national authorities in principle a wide discretion.⁵⁴

This discussion leaves several policy choices to be made by States, such as the weight to be given to the exploitation of natural resources over the protection of nature. These choices would likely result in wide diversities of policy and interpretation among States, since each State would pursue its own priorities, which would be moderated only to some extent by specific international treaties.⁵⁵

Some may also question why it is necessary for there to be a right to a 'healthy environment'. Several scholars argue that a 'decent environment' is too anthropocentric and uncertain as a concept, and that its explanation is, in fact, unnecessary given the extent to which international law has already addressed environmental problems.⁵⁶ Further, there is little international consensus on the most appropriate terminology to employ in legal documents. For instance, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities used varying terms, referring to the right to a 'healthy and flourishing environment' (Introduction) or to a 'satisfactory environment' (Chapters I, IV, VI) in its report, and to the right to a 'secure, healthy and ecologically sound environment' in the draft principles.⁵⁷ Similarly, Principle 1 of the Stockholm Declaration mentions an 'environment of a quality that permits a life of dignity and well-being',⁵⁸ while Article 24 of the African Charter on Human and Peoples' Rights (African Charter) refers to a 'general satisfactory environment favorable to their development'.⁵⁹ Notably, the African Charter is the first international treaty to recognise a right to a healthy environment.⁶⁰ This provision was included to acknowledge that a 'satisfactory' environment is important for the development and realisation of other human rights in Africa.⁶¹ Later, the Revised African Convention on the Conservation of Nature and Natural Resources outlined various State obligations, including that of creating 'preventive measures and the application of the precautionary principle, and with due regard

⁵⁴ Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23(3) EJIL 613, 627.

⁵⁵ *ibid.*

⁵⁶ Alan Boyle, 'The Role of International Human Rights Law and the Protection of the Environment' in Alan Boyle and Michael Anderson (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press 1998).

⁵⁷ Fatma Zohra Ksentini, 'Review of Further Developments in Fields with which the Sub-Commission has been Concerned: Human Rights and the Environment' (UNHRC, 6 July 1994) UN Doc E/CN.4/1994/9, Annex I (the Draft Declaration).

⁵⁸ UN Conference on the Human Environment, 'Stockholm Declaration of the United Nations Conference on the Human Environment' (16 June 1972) UN Doc A/CONF.48/14/Rev 1, principle 1.

⁵⁹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 218 (African Charter), art 24.

⁶⁰ *ibid.*

⁶¹ Lilian Chenwi, 'The Right to a Satisfactory, Healthy, and Sustainable Environment in the African Regional Human Rights System' in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018); Emeka Polycarp Amechi, 'Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples' Rights' (2009) 5(1) Law, Environment and Development Journal 58, 62.

... in the interest of present and future generations.’⁶² However, generally speaking, exact terminology is not necessary in order to accomplish a set goal once a right, mindful of intergenerational equity, which allows for the protection of the environment for future generations is established. The right to a healthy environment could be merely understood to mean a ‘right to an ecologically balanced, sustainable, healthy, clean, or satisfactory environment that permits healthy living’ for human beings on Earth.⁶³ By considering the impact of environmentally harmful activities on other human rights, such as the right to life, the international community will focus on what matters most – the prevention of environmental harm and the protection of certain values. This approach to creating a right avoids the need for explicit terminology, such as a ‘satisfactory’ or ‘decent’ environment. Instead, it allows a court to balance States’ right to development and the respect for conventional rights.⁶⁴

IV. The Development and Current Status of Future Generations and a Right to a Healthy Environment in International Environmental Law

Having established the relevance of international law as regards the existence of the right of future generations to a healthy environment, it is now time to delve into the development and current status of future generations and a healthy environment within international law and determine whether such a right currently exists.

A. International Instruments

Since the mid-1940s, States have held concern for future generations within both national and international legal documents, often including provisions within conventions and declarations which share the intention to protect future generations.⁶⁵ For instance, the 1945 United

⁶² African Convention on the Conservation of Nature and Natural Resources (adopted 7 March 2017) <au.int/sites/default/files/treaties/7782-treaty-0029_-_revised_african_convention_on_the_conservation_of_nature_and_natural_resources_e.pdf> accessed 1 June 2019, art 4.

⁶³ Louis J Kotzé, ‘In Search of a Right to a Healthy Environment in International Law’ in John H Knox and Ramin Pejman (eds), *The Human Right to a Healthy Environment* (CUP 2018) 136.

⁶⁴ Boyle (n 56) 627.

⁶⁵ Weiss (n 23); Edith Brown Weiss (ed), *Environmental change and international law: New challenges and dimensions* (United Nations University Press 1992) ch 12; the United Nations Charter, the Preamble to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the American Declaration on the Rights and Duties of Man, the Declaration on the Elimination of Discrimination against Women, the Declaration on the Rights of the Child, and many other human rights documents contain provisions concerning the dignity of all members of human society in an equality of rights that extends in time as well as space; other international agreements and declarations that make reference to future generations are the International Convention for the Regulation of Whaling (1946), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1975), African Convention on the Conservation of Nature and Natural Resources (1968), Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques (1976), Bonn Convention on the Conservation of Migratory Species of Wild Animals (1979), Berne 24 A/68/x.. Convention on the Conservation of European Wildlife and Natural Habitats (1979), Council of Europe Convention for the Protection of the Architectural Heritage of Europe (1985), ASEAN Agreement on the Conservation of Nature and Natural Resources (1985), Paris Convention for the Protection of the Marine Environment of the North-East Atlantic (1992), Convention on the Transboundary Effects of Industrial Accidents (1992), UNECE Convention on the Protection and Use of

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Nations Charter's Preamble states: 'we the peoples of the United Nations, determined to save succeeding generations from the scourge of war'.⁶⁶ In addition, States have also shown explicit concern for future generations, specifically with regards to the environment, for instance in the 1982 World Charter for Nature, and, more pertinently, the Preamble of the Stockholm Declaration which states that 'to defend and improve the human environment for present and future generations has become an imperative goal for mankind'⁶⁷ and that 'the natural resources of the Earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations'.⁶⁸ There is, therefore, a link drawn by the Stockholm Declaration between environmental protection and human rights.⁶⁹

It is notable that, while several environmental treaties refer to both present and future generations, this reference is only found within their respective preambles.⁷⁰ For instance, the Paris Agreement provides only one preambular reference to human rights and intergenerational equity.⁷¹ Earlier drafts of the negotiating text involved much more emotive language, as it concerned the interests of future generations; however, these references were removed prior to the adoption of the final agreement.⁷² For example, the draft text of Article 2, which set out the objective, initially included obligations that States should address climate change 'for the benefit of present and future generations'.⁷³ Now, as it is located in the Preamble, this passage does not have the same binding nature as if it were in the operative section.⁷⁴ However, these preambles can provide assistance in understanding the object and purpose of a treaty in the process of its interpretation.⁷⁵ They are part of the text of their

Transboundary, Watercourses and International Lakes (1992), North American Agreement on Environmental Cooperation (1993), UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998), Charter of Fundamental Rights of the European Union (2000), Stockholm Convention on Persistent Organic Pollutants (2001), WHO Framework Convention on Tobacco Control (2003), Vienna Declaration and Programme of Action, World Conference on Human Rights (1993), UNESCO Universal Declaration on Bioethics and Human Rights (2005), Antarctic Treaty (1959), Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979), United Nations Convention on the Law of the Sea (1982), UNESCO Universal Declaration on the Human Genome and Human Rights (1997).

⁶⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16, preamble.

⁶⁷ UN Conference on the Human Environment, 'Stockholm Declaration of the United Nations Conference on the Human Environment' (16 June 1972) UN Doc A/CONF.48/14/Rev 1 (Stockholm Declaration), preamble, para 6.

⁶⁸ *ibid* principle 2.

⁶⁹ Dinah Shelton, 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?' (2006) 35 *Denver Journal of International Law and Policy* 129, 130–34.

⁷⁰ Catherine Redgwell C, *Intergenerational trusts and environmental protection* (Manchester University Press 1999) 115.

⁷¹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add1, preamble.

⁷² Lewis (n 41) 7–15.

⁷³ *ibid*.

⁷⁴ *ibid*; Benoit Mayer, 'Human Rights in the Paris Agreement' (2016) 6 *Climate Law*, at 113.

⁷⁵ Lewis (n 41) 7–15.

respective treaties, defining its context and influencing the reading of the text.⁷⁶ Preambles are meant as part of the primary text, not merely to be ‘supplementary means of interpretation.’⁷⁷ While preambles may not create rights and obligations, they assist in the interpretation of the precise terms of treaties, identify what the treaty aims to accomplish or set out and reflect current attitudes towards a certain state of affairs.⁷⁸

Moreover, the UNFCCC contains a reference to intergenerational equity, stating that the ‘Parties should protect the climate system for the benefit of present and future generations of human kind...’.⁷⁹ While it also provides the principles by which States should be guided, these principles are inherently vague. For instance, ‘equity’ is meant to be applied in order for there to be balance between the needs of the present and future generations; however, what remains unclear is whether the reference to ‘intergenerational equity’ reflects the idea that each person’s interests have equal weight regardless of when they happen to be born.⁸⁰

Despite States being somewhat willing to make international commitments for the sake of future generations, the legal recognition of this right, or any similar one, has been hindered by the inexplicit wording of international legal instruments, the non-binding nature of some of these legal instruments, a lack of enforcement procedures and limits in scope and practice. Further, the principal of explicit legal recognition of this intergenerational right, with a healthy environment at its core, is found mainly at national and regional levels, in Constitutions, statutes, and judicial decisions.⁸¹

However, recent pioneering efforts in Latin America and the Caribbean have led to the establishment of The Escazú Agreement in 2018. The Agreement aims to:

guarantee the full and effective implementation ... of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters ... contributing to the protection of the right ... of present and future generations to live in a healthy environment.⁸²

Still, two years after its creation, only nine of the necessary eleven ratifications by Latin American and Caribbean States have been attained at the time of writing – the most recent being Ecuador, in May 2020. 18 States in total have signed the agreement. This current non-event can be explained by various reasons, discussed below, regarding the hesitancy of States on an even wider international scale to recognise the issue and be publicly accountable, along with the current measures in place as a result of the Covid-19 crisis slowing the pace of political and legal action.

⁷⁶ Max H Hulme, ‘Preambles in Treaty Interpretation’ (2016) 164(5) *University of Pennsylvania Law Review* 1281, 1297–1299.

⁷⁷ *ibid.*

⁷⁸ Jan Klabbbers ‘Treaties and Their Preambles’ in Michael J Bowman and Dino Kritsiotis (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (CUP 2018) 182–195.

⁷⁹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC), art 3; Lawrence (n 12) 110.

⁸⁰ Lawrence (n 12) 110–111.

⁸¹ *ibid.* 29.

⁸² Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018) (The Escazú Agreement <treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf> (accessed 4 August 2020).

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B. Customary International Law

There is no single formulation of intergenerational equity within the treaties, mentioned and unmentioned, concerning various areas of the environment. Therefore, it is very difficult to posit that the notion of intergenerational equity has a ‘sufficiently consistent’ meaning in international law, which can allow for an interpretation of Article 3 UNFCCC. In fact, in the eyes of some, the references to intergenerational equity are simply ‘hortatory’ and without weight as a principle, let alone as a rule of international law.⁸³

Article 3 UNFCCC links intergenerational equity to the right of sustainable development. The question that then becomes relevant is whether intergenerational equity can be considered part of customary international law due to its falling under the umbrella of sustainable development. In order to establish a rule of customary international law, it is first necessary to establish consistent State practice and *opinio iuris*. An additional requirement is that a rule is of a ‘fundamentally norm creating character’, meaning that a rule must be sufficiently clear.⁸⁴

There can be said to be extensive State practice, given the growing number of States that include sustainable development, including intergenerational equity, in their national laws and Constitutions.⁸⁵ Moreover, the right to a healthy environment, often times extended to future generations, is enshrined within the Constitutions of over 92 States. Such widespread adoption raises the idea that the right may be evolving as a ‘general principle of law recognized by civilized Nations’ and, thus, a source of international law under Article 38 of the ICJ Statute.⁸⁶ However, there is insufficient *opinio iuris* which demonstrates that States have implemented sustainable development with the belief that there was an international legal obligation to do so, as opposed to a mere political commitment.⁸⁷ This is evidenced by the failure of States to agree on an international legal norm of a healthy environment due to a lack of consensus on protection standards for natural resources and human rights.⁸⁸ Moreover, intergenerational equity fails to meet the test of being of a ‘norm creating character’, as it is too vague in that it does not explain or indicate what weight is to be given to future generations and their interests, as opposed to those of the present generation.⁸⁹ Nonetheless, the very fact that world leaders convened to discuss environmental responsibilities and human rights demonstrated the readiness of the international community to consider a new right.⁹⁰

C. International Case Law

The mention of future generations in relation to the environment can also be seen in international case law, particularly that of the ICJ. What is worth mentioning, before delving

⁸³ *ibid.*

⁸⁴ *ibid.* 114–115; *North Sea Continental Shelf case (Germany v Denmark/Netherlands)* [1969] ICJ Rep 3 [41–42].

⁸⁵ Lawrence (n 12) 115; see *Taralga Lanscape Guardians Inc v Minister for Planning* [2007] NSWLEC 59; see South African National Environmental Management Act 1998.

⁸⁶ Jennifer A Downs, ‘A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right’ (1993) 3 *Duke Journal of Comparative and International Law* 351, 375.

⁸⁷ Lawrence (n 12) 115–116.

⁸⁸ Downs (n 85) 375.

⁸⁹ Lawrence (n 12) 115–116.

⁹⁰ Downs (n 85) 376.

into the pith of the ICJ's perspective, is the far-sighted argument put forth by the United States in *Bering Sea Fur Seals Arbitration*⁹¹ in defense of intergenerational environmental rights, which expressed the ideal of intergenerational justice:

The earth was designed as the permanent abode of man through ceaseless generations. Each generation, as it appears upon the scene, is entitled only to use the fair inheritance. It is against the law of nature that any waste should be committed to the disadvantage of the succeeding tenants. The title of each generation may be described in a term familiar to English lawyers as limited to an estate for life; or it may with equal propriety be said to be coupled with a trust to transmit the inheritance to those who succeed in at least as good a condition as it was found, reasonable use only excepted. That one generation may not only consume or destroy the annual increase of the products of the earth, but the stock also, thus leaving an inadequate provision for the multitude of successors which it brings into life, is a notion so repugnant to reason as scarcely to need formal refutation.

This visionary argument has not been recalled in most modern-day case law; despite the considerable number of international instruments expressing concern over the environment which is being left for future generations, there are several limitations to effective action which will be mentioned later in this section, such as a lack of enforceability or, if considered to be binding, the lack of enforcement procedures.⁹²

Turning now to the case law of the ICJ, the Court has made reference to intergenerational issues in its *Advisory Opinion on the Legality of the Use of Nuclear Weapons*,⁹³ in which it considered a request from the UN General Assembly on the question of whether the threat or use of nuclear weapons in any circumstances was allowed under international law. The (majority) judgment, having considered the relevance of international environmental agreements, stated that 'The Court recognizes that the environment... represents the living space, quality of life and the very health of human beings, including generations unborn.'⁹⁴ However, the Court did not rely directly on the impact of the use of nuclear weapons on future generations in its judgment, nor is the purpose of its use of the notion of intergenerational equity immediately clear.⁹⁵

In his dissenting opinion, Judge Weeramantry noted that the ICJ, in applying international law, must 'pay due recognition to the rights of future generations', adding that 'if there is any tribunal that can recognize and protect their interests... it is this court.'⁹⁶ He goes on to mention that 'the rights of future generations ... have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations.'⁹⁷ Whilst he makes excellent arguments for the consideration of intergenerational equity in future cases before international courts, he fails to clarify common issues that arise in this regard, such as explaining the basis upon which

⁹¹ IX Fur Seal Arbitration 2-8 (Washington: Government Printing Office 1895).

⁹² Luis E. Rodriguez-Rivera, 'Is the Human Right to Environment Recognized Under International Law? It Depends on the Source' (2001) 12 Colorado Journal of International Environmental Law and Policy 1, 28.

⁹³ *Advisory Opinion on the Legality of the Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226.

⁹⁴ *ibid* [29].

⁹⁵ Lawrence (n 12) 116.

⁹⁶ *ibid*.

⁹⁷ *ibid*.

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future generations can be rights-bearers, how intergenerational equity can be based on ‘general principles of law’, and how treaties which include the notion of intergenerational equity can create obligations on all States.⁹⁸

In another dissenting Opinion, Judge Weeramantry shared the novel notion of the ICJ being a trustee of the rights of future generations;⁹⁹ an idea which is not commonly shared by other ICJ judges. This should not really be surprising as, in order for the Court to be a trustee in this regard, it would require that this role be outlined in the Court’s Statute or specified in the treaties which the Court applies. Such reluctance can also be explained by the fact that international courts and dispute resolution bodies rely on the consent of States and would therefore be hesitant to develop international law beyond certain limits already established.¹⁰⁰

Notably, however, in late 2017, the IACHR released a significant and precedent-setting Opinion in which it recognised that the right to a healthy environment is both an individual and collective right which protects not only the current generation but also future generations.¹⁰¹ In reaching this conclusion, the Court linked the right to a healthy environment to the concept of sustainable development. However, it maintained the distinction between an independent right to a healthy environment and the environmental obligations which stem from other human rights, such as the right to life.¹⁰² It also recognised that governments have a duty to protect human rights from environmental damage caused by activities both under the jurisdiction of the State and outside the control or territory of the State.¹⁰³ The Court observed that environmental degradation can cause irreparable damage to the quality of life of human beings and, therefore, a healthy environment is a ‘fundamental right for the existence of humankind’¹⁰⁴ – an argument which was extensively made in Section IV of this paper. Another unique feature of the Opinion is the link between international human rights law and international environmental law. Similarly, the ECtHR has developed jurisprudence which links human rights to environmental degradation.¹⁰⁵ However, no other international court has made a decision asserting an autonomous right to a clean environment.

The importance of this Opinion is underlined by the fact that decisions of the IACHR have advanced jurisprudence at international courts. This Opinion, therefore, may be the necessary change to get the wheels turning towards not only a more globally focused recognition of the right to a healthy environment but also the extension of this right to future generations. Therefore, the Opinion has the potential to shape the practice of other international and regional courts. Further, the Advisory Opinion reflects the evolving

⁹⁸ *ibid.*

⁹⁹ *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December in the Nuclear Tests (New Zealand v France) Case*, Order of 22 September 1995 (Dissenting Opinion of Judge Weeramantry) [1995] ICJ Rep 317, 341.

¹⁰⁰ Lawrence (n 12) 122.

¹⁰¹ *The Environment and Human Rights*, Advisory Opinion Right to A Healthy Environment, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017).

¹⁰² Harlan Cohen, ‘International Decisions’ (2018) 112(3) AJIL 460.

¹⁰³ *ibid.*

¹⁰⁴ Monica Feria-Tinta and Simon C Milnes, ‘The Rise of Environmental Law in International Dispute Resolution: The Inter-American Court of Human Rights Issues a Landmark Advisory Opinion on the Environment and Human Rights’ (2016) 27 Yearbook of International Environmental Law 64.

¹⁰⁵ Cohen (n 101).

interplay between binding and non-binding legal instruments and the importance of soft law in establishing legally binding rules, drawing heavily on the principles within the Stockholm and Rio Declarations, such as the precautionary principle, as bases for binding obligations under the IACHR framework.¹⁰⁶ Despite this, the Court did not assess State practice and *opinio iuris* nor did it recognise the right to a healthy environment as customary international law. However, this is not entirely surprising, as it would have been outside the scope of Colombia's requests. Nonetheless, the affirmation made by the Court can still be seen as a step toward the future recognition of the right as part of customary international law.

V. Conclusion

In examining the current framework of international law in order to determine whether a right to a healthy environment that extends to future generations exists, or could possibly be established, a number of conclusions have been drawn.

Firstly, through the explanation of 'future generations' as those persons not yet born, and 'intergenerational justice' as far-sighted conservation of the environment for the benefit and use of all generations, it is accepted that environmental rights and sustainability closely relate to future conditions and concern for future generations. This is even more evident when the principles underlying intergenerational equity – conservation of options, conservation of quality and conservation of access – are examined alongside the notions of strong and weak sustainability. Similarly, Passmore's 'chain of love' theory allows us to understand the implications of the temporal remoteness of unborn generations as compared to younger generations already existing, but who face similar circumstances of lesser representation.

When considering the broader discussion on environmental sustainability, it is critical to understand the prominent role given to future generations as rights holders, due to the extent to which they are affected by current actions. While the Brundtland Report effectively tied the notion of sustainability to the enabling of future generations to enjoy a healthy environment, similar notions (though not binding to the necessary degree) may be found in preceding international instruments, such as the Stockholm Declaration, the Human Development Report and the Copenhagen Declaration on Social Development. Furthermore, the importance of sustaining a healthy environment for future generations is highlighted by the fact that long-term considerations must be taken into account in decision-making. Indeed, taking future generations into account inevitably leads to greater focus on environmental sustainability when compared with other workable alternatives. However, given the nature of current environmental concerns, and the limits of State sovereignty and accountability on the national level, it is recognised that the only viable solution to the issue of creating a right to a healthy environment remains at the international level, namely the adoption of a multilateral treaty.

Further, upon examining existing international legal instruments, it is evident that the international community has been mindful of the environment and the impact of its development and/or degradation on the future generations since the 1940s. While present international environmental instruments generally restrict reference to future generations to their preambles, these nonetheless function as key considerations for the purposes of interpretation. Similarly, deductions may be made from broader references to 'the interests of mankind', which allude to the interests of future generations. That said, it is fairly obvious

¹⁰⁶ *ibid.*

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that States appear hesitant to adopt such a right at the international level, the reasons for which may involve transboundary issues and increasing public accountability to the international community as a whole. This is especially strange when one notes that most States' Constitutions comprise a right to a 'healthy' environment for both present and future generations.

In light of the link between sustainable development and intergenerational equity, it is imperative to determine whether the right to a healthy environment extends to future generations as part of customary international law. While there is sufficient State practice, in both regional and national laws and jurisprudence, there is insufficient *opinio iuris* demonstrating a shared belief that this is an international legal obligation. As regards international case law, the concepts of future generations and intergenerational equity have been referred to within the case law of the ICJ, though its reluctance to formally acknowledge the importance of extending rights to future generations is partly owed to its dependence on State consent. In addition, there are varying approaches by international courts concerning the development or acknowledgement of rights relating to the environment and future generations. Distinct practice, however, is seen within the case law of other tribunals, such as national and regional courts, including the IACHR, where the right to a healthy environment has been accepted and is further granted to future generations. As such, the right of future generations does not presently exist within a binding legal instrument or as a custom of international law.

Conclusively, there is still much progress to be made before the international community fully accepts and implements a right to a healthy environment, not only for future generations, but for all persons.

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