

Review Essay: Future Generations and International Law

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Edited by Emmanuel Agius and Salvino Busuttil, with Tae-Chang Kim and Katsuhiko Yazaki. *Future Generations and International Law* (Law and Sustainable Development Series). London: Earthscan Publications, 1998. 206pp. index. US\$38.00 paper ISBN 1-85383-503-X.

Those in the field of international environmental law have raised a critical voice on behalf of future generations. They do not have an easy task, since the discussion concerning posterity is often entangled in epistemological dispute, particularly when the majority of the debate focuses on the rights of unborn species. The discussion covers some tough issues. Do future generations have identifiable interests and rights, and if so who gives us the right to speak on their behalf? How can present generations decide the interests and rights of future generations? Should individuals, governments and corporate entities have moral and legal obligations towards those who are not yet living? *Future Generations and International Law*, edited by Emmanuel Agius and Salvino Busuttil, offers answers to such questions, and examines the legal, ethical and theoretical frameworks for representing and safeguarding the interests of future generations in current international agreements. The book is a series of essays written by prominent philosophers and jurists, which seeks to "disseminate new insights and proposals on our responsibilities towards future generations and stimulate people everywhere to build and preserve a global neighbourhood of democracy, peace and prosperity for present and future generations (p. xii)."

This publication differs from other progressive works specializing in international environmental law. It points to those principles or obligations from global conventions, charters, documents and treaties which seek to protect the well-being of posterity. It also highlights the need for a guardian or series of guardians who would speak on behalf of future generations. The authors maintain that the world should have "an authorized person (guardian) to represent future generations at various international fora whose decisions would affect the future [and who would] argue the case on behalf of future generations, hence bringing

out the long-term implications of proposed actions and proposing alternatives; [the] role would not be to decide, but to plead for future generations, and to counter the firmly established attitude of our civilisation to discount the future (p. 65)." Questions are also raised about where, who and what the guardian should be. Should the guardian or series of guardians be housed in a non-governmental organization, federal government bodies and/or the United Nations? Should the guardian(s) be scientists, lawyers and/or policymakers? Should the guardian be an advocate who urges the living to leave few risks, little poverty and a healthy ecosphere for future generations? In addition to decoding the meaning of guardians, the book examines the definition of future generations. The reader learns that "different meanings have been assigned to the term in common usage [and that] some (loosely) regard children among the present generation as being included in future generations, while others only consider those who would follow the present or living generation to constitute future generations (p. 40-41)." S/he also discovers that "complications arise in considering discrete future generations since the present generation, its successor, as well as, in turn, every following generation constitute a continuum in generations, and it is well nigh impossible to separate specific collective persons from such a continuum (p. 41)." Moreover, "considerable clarity would be achieved [in international law] if the term future generations was considered to represent a collectivity ad infinitum of all human beings who succeed the present or living generation (p. 41)." The book also offers an interpretation of intergenerational and intragenerational equity, which is bound by the principles of distributive justice. This interpretation calls for greater equality among generations, and recognizes the intragenerational dimension "by which all members of the present generation have an equal right to use and benefit from the planet (p. 47)." Moreover, there is a useful section that offers a draft instrument establishing the role of a guardian. It proposes a United Nations resolution on a guardian for future generations. The book ends with an intriguing and important observation. The United Nations charter, the chief document of international law, possesses permanent and continuous legal force, and interestingly its main goal is to "prevent suffering by later generations and to give consideration to their interests (p. 145)." In other words, it is possible for international lawyers to "view the charter as a legal basis for guarding the interests of future generations (p. 145)."

Future Generations and International Law does contain some legalese and academic terminology, and therefore is not suitable for a lay audience. It would likely be of interest to environmental lawyers, lobbyists, policymakers, professors and students. In general, the book is

a useful, timely and unique examination of the emerging field of intergenerational justice and international environmental law. However, there are a few minor issues that the authors and editors may wish to address in any future edition of the book.

First, there is limited information on the nature of non-human intergenerational justice. True, one author asks whether future generations of non-human beings should be appointed a guardian, while another highlights the importance of non-human intergenerational equity, and proposes "a group of guardians, one for each of several natural objects - for example, a legal spokesperson for marine mammals, another for Antarctic fauna... (p. 66)." But in general, the publication does not offer a socioecocentric interpretation of intergenerational justice. While it is vital to consider human intergenerational justice, it is also important to consider the well being of non-human posterity. In fact, to exclude consideration of non-human posterity is to endanger the protection of human posterity, since one influences the other.

Secondly, the reader is led to believe that "since the 1972 Stockholm United Nations (UN) Conference on the Human Environment, most countries, whatever their political systems or levels of economic development, have in general shown a remarkable willingness to adopt new rules to regulate environmental issues, [and many] of these environmental policies specifically single out the responsibilities of the present generation to bequeath to posterity a world worth living in (p. 3)." While it is critical to credit governments who show concern for the environment and future generations, I wonder the extent to which they have established or been in the socioeconomic and political position to adopt strong binding environmental agreements that secure the interests and rights of future generations. Governments are increasingly dependent upon the interests of world markets that reap short-term benefits from free enterprise, deregulation and weak environmental agreements.

Thirdly, in one chapter the reader is told "that the time has come in which our efforts should move away from the development of new principles and rules, towards the implementation and enforcement of existing principles and rules (p. 89)." Why is it not possible to develop new principles at the same time as implementing existing principles? Why should there be a sacrifice of one for the other when it is possible and necessary to have both? In fact, some principles are outright problematic and are in need of revision. For example, the UNCED document, *Principles for a Global Consensus on the Management,*

Conservation and Sustainable Development of All Types of Forests, indicates that "states have the sovereign and inalienable right to utilise, manage and develop their forests, in accordance with their own development needs and socioeconomic development level (p. 45)." States can utilize, manage and develop their forests? These very same words have been used by timber companies to promote clearcutting and deforestation. This statement needs to be rewritten to reflect current directions in ecoforestry.

Finally, some of the chapters contain outdated terminology. One author writes "social justice appeals to the principle that a community has the moral duty to give particular help to its handicapped or weaker members... (p. 10)." Progressive communities no longer view a person with one or more disabilities as a "weak" individual, but as an empowered and contributing member of society. Moreover, the word "mankind" is repeatedly used in one of the publication's articles. Since the word has masculinist overtones, it too is no longer used in contemporary dialogue. It has been replaced with the terms humankind, humanity or society. In order to facilitate social change, it is useful to replace some existing terminology with more amiable words. By utilizing alternate words, it is possible to change perceptions and belief systems so that they reflect our compassion, togetherness and need for a healthy planet.

Aside from these few minor shortcomings, *Future Generations and International Law* is an impressive contribution to the field of international environmental law. It is also one of a handful of books (if not the only book) to consider the interrelationships between international law, posterity, environmental protection and social justice. Without question, this unique volume is an empowering, informative and compelling piece of modern legal thought.

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