

Theorizing Intergenerational Justice in International Law: The Case of the Treaty on the Prohibition of Nuclear Weapons

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On July 21, 2021, a resolution was introduced in the Chicago City Council calling on the US government to ratify the new United Nations Treaty on the Prohibition of Nuclear Weapons (TPNW) and describing the struggle to abolish nuclear weapons as a matter of racial justice. Unlike prior nuclear disarmament treaties, the TPNW bans all nuclear weapons outright and reframes nuclear disarmament as a matter of decolonial struggle. The coming into force of the TPNW treaty raises questions about the relationship between this new treaty regime and the traditional framework of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

In this Article, we argue for understanding the novelty of the TPNW through the prism of intergenerational conflict and justice. The Nuclear Ban Treaty comes into effect at a moment when the generation that personally experienced nuclear warfare is quickly passing, and it speaks to a new generation of activists and diplomats who place less hope in back-room negotiations among great powers. More broadly, we argue for centering intergenerational justice in international law. Although the question of what each generation owes the next is not a standard frame of reference in international law, as we suggest in Part II, upon closer analysis, questions of intergenerational justice pervade many international legal problems, from climate change to human rights to the law of war.

To address the challenge of intergenerational justice demands that international lawyers develop more complex and subtle approaches to intergenerational conflict and collaboration. In Part III, we borrow insights from a global anti-nuclear art mural project with roots in Chicago's

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community-based struggles for racial justice in which political action is framed as a problem of intergenerational collaboration.

Ultimately, we argue in Part IV that the contested relationship between the NPT and the TPNW frameworks can be an opportunity for intergenerational collaboration of its own. Progress on the elimination of nuclear weapons now requires working across generational divides in international law and developing methodologies and commitments to build solidarity across generations of experts and activists.

Introduction	123
I. International Law and the Question of Generations	128
A. International Legal Doctrine	128
B. A Vague and Unstable Concept.....	133
C. Anti-Racism as Generational Thinking	136
II. Intergenerational Collaboration.....	138
III. Towards Intergenerational Justice in International Law	142

INTRODUCTION

On July 21, 2021, a resolution was introduced in the Chicago City Council¹ calling on the U.S. government to ratify the new UN Treaty on the Prohibition of Nuclear Weapons (TPNW), which went into effect on January 22, 2021. Unlike prior nuclear disarmament treaties,² which primarily sought to limit the proliferation of nuclear weapons to non-nuclear states and to secure commitments from nuclear states to reduce stockpiles and testing, the TPNW effectively erases the distinction between nuclear and non-nuclear states and bans all nuclear weapons as a matter of international law.³ The TPNW has been celebrated as the culmination of efforts to

1. The resolution is currently under consideration at the Council's Committee on Health and Human Relations Committee.

2. For example, consider the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) regime.

3. The Treaty on the Prohibition of Nuclear Weapons (TPNW) was adopted on July 7, 2017, and went into effect on January 22, 2021. Unlike prior treaties, which sought only to limit the "proliferation" of nuclear weapons, the TPNW bans all nuclear weapons as a matter of international law. Article 1 lays out sweeping obligations on signatories:

Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;

enhance the influence of small and non-nuclear states in frameworks long controlled by states possessing nuclear weapons.⁴ Moreover, although transnational issue networks are increasingly recognized as international actors, the new treaty envisions a much more robust and active partnership between nation-states and civil society to abolish nuclear weapons. As Beatrice Fihn, the Executive Director of the International Campaign to Abolish Nuclear Weapons (ICAN) has stated: “A treaty prohibiting nuclear weapons is not only a legal tool. A ban will also create space for states, international organizations, civil society and individuals to carry out the political work necessary to spread the commonsense understanding that possessing nuclear weapons is unacceptable.”⁵

Around the world, the Nuclear Ban Treaty has energized grassroots activism and local municipal government-level engagement.⁶ The Chicago resolution is part of a nationwide “Back from the Brink” campaign, organized by a coalition of non-governmental organizations (NGOs) long dedicated to nuclear disarmament,⁷ in coordination with ICAN, the global coalition of anti-nuclear NGOs that led the campaign for the ratification of the Nuclear Ban Treaty.⁸

The sponsor of the Chicago resolution is Maria Hadden, a first term Chicago City alderwoman who is African-American. At an event introducing the resolution, Alderwoman Hadden highlighted the fact that younger generations, including

(g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

4. Proponents argue that this distinction between nuclear and non-nuclear states has been critical to creating a prestige to nuclear weapons, and even a desire on the part of non-nuclear states to join the “nuclear club.”

5. Beatrice Fihn, *The Logic of Banning Nuclear Weapons*, 59 SURVIVAL 43, 48 (2017).

6. Unlike prior nuclear treaties, the TPNW results from an International Campaign to Abolish Nuclear Weapons (ICAN), led by a coalition of NGOs and individuals dedicated to the elimination of nuclear weapons, including the mayors and atomic bomb survivors of Hiroshima and Nagasaki. *See, e.g.*, Motoko Mekata, *How Transnational Civil Society Realized the Ban Treaty: An Interview with Beatrice Fihn*, 1 J. FOR PEACE & NUCLEAR DISARMAMENT 79 (2018); Tilman Ruff, *Negotiating the UN Treaty on the Prohibition of Nuclear Weapons and the Role of ICAN*, 30 GLOB. CHANGE, PEACE & SEC. 233 (2018); Hirokazu Miyazaki, *Hiroshima and Nagasaki as Models of City Diplomacy*, 16 SUSTAINABILITY SCI. 1215 (2021). At the same time, the TPNW was ultimately championed by non-nuclear states and ultimately draws its legitimacy by virtue of coming into force as a treaty on the traditional terms of the state-focused UN treaty regime.

7. These include such as the Union of Concerned Scientists, the Physicians for Social Responsibility, and Soka Gakkai International.

8. The “Back from the Brink” campaign is decentralized, and each local resolution is championed by local activists and organizations, including civic groups, religious organizations, academics and universities, and inter-faith coalitions. As of August 2021, four states, three counties, and fifty-four city councils have adopted resolutions to call on the U.S. Federal Government to ratify and sign the TPNW. The “Back from the Brink” campaign has prepared and published several resolution templates each of which includes “five policy solutions”—the pursuit of a “verifiable agreement among nuclear armed states to eliminate their nuclear arsenals,” the foregoing of the first use of nuclear weapons, the creation of oversight over the “president’s authority to order the use of nuclear weapons,” the ending of the “hair-trigger alert” status of nuclear missiles, and the cancellation of the 1.7 trillion dollar program to renew the entire nuclear arsenal. Municipal governments that have endorsed the call have adopted the language of one of the templates, but many have also incorporated their own perspectives into the language of their resolutions that reflect their community’s distinctive historical relationship with nuclear weapons and anti-nuclear activism.

herself, have not usually regarded the issue of nuclear weapons as urgent and relevant to their world. However, Hadden explained that she convenes a Youth Advisory Council composed of high school students in her district. Upon learning that over 500 million dollars of Chicago taxpayers' money is spent each year on nuclear weapons, Youth Advisory Council members asked Haddon to make this issue a priority for their ward. Hadden also noted that she sees a "disconnect" where she and other city leaders seek to solve local issues of violence such as police reform and gun control yet remain indifferent to the global violence of nuclear weapons.

Only a few months before fifty states ratified the treaty and it came into force under international law, this treaty seemed like a fantasy, an impractical dream. Many legal observers have dismissed resolutions like the one before the Chicago city council, as merely "symbolic" activity. Like most such resolutions, the Chicago resolution does not purport to exercise local municipal power over nuclear activity within city limits. Its purpose, rather, is to call on federal authorities to accede to the TPNW and work towards the elimination of nuclear weapons.

Yet the events of 2020—from the rise of global digital social movements to stated threats from then U.S. president Trump of launching a "limited" nuclear attack (on the scale of Hiroshima or Nagasaki) on adversaries, to the collapse of the non-proliferation regime with the withdrawal of the US and Russia from longstanding treaties—ironically forged new coalitions and opened new horizons of possibility. The treaty is also a product of a larger global political moment—of which the Black Lives Matter movement is paradigmatic—in which obvious and ever-present state violence can be called out, made newly apprehensible.

The coming into force of this treaty has raised new questions about the relationship between this new regime and the traditional non-proliferation negotiations within the framework of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). In the mainstream view, the two treaties proceed from different paradigms—the NPT proceeds from a framework of national security, and favors a realist approach, while the TPNW foregrounds instead international humanitarian law and takes a more idealist approach.⁹ The TPNW also provides a greater opening for an anti-colonial and anti-racist perspective on nuclear weapons.¹⁰ Finally, another innovation of the TPNW, relative to the NPT

9. From proponents' point of view, one of the core innovations of the TPNW over the NPT framework is its jettisoning of the national security model in favor of a theoretical approach that places global "humanity" rather than nation states at the center of nuclear governance. The TPNW affirms signatory states' concerns about the "catastrophic humanitarian consequences" of nuclear weapons. The humanitarian approach proceeds from an analogy between nuclear weapons and biological weapons: "Because nuclear weapons by their very nature cannot make a distinction between civilians and military targets, their use is generally recognized, except by the nuclear states and their allies, as contrary to international humanitarian law . . . The Humanitarian Initiative therefore proposes that nuclear weapons should be prohibited—just as biological weapons were in 1972, chemical weapons in 1993, landmines in 1997, and cluster munitions in 2008."

10. Another innovation of the TPNW is its explicit recognition of the disproportionate impact of nuclear testing on indigenous peoples, and its tacit openness to arguments that nuclear weapons are a product of colonial and radicalized power structures. The Preamble to the treaty states that signatory

framework, is its vision of state sovereignty and of the relationship between pluralistic actors in the international system.

Many of the traditional participants in NPT processes regard the Nuclear Ban Treaty as redundant to their work since the ultimate objective of the NPT regime is also nuclear disarmament. They view the new treaty as dividing the attention of nation states and activists, and as presenting potentially conflicting international legal norms and obligations. Others view the treaty as a shot in the arm for the languishing NPT regime, which has suffered in recent years from a lack of commitment and energy among expert communities in both the U.S. and Russia.¹¹ For these commentators, the new treaty creates no new legal obligations since none of the nuclear states or states under the nuclear umbrella are signatories, but it does represent a *cri de coeur* from citizens around the world and from non-nuclear states, demanding action from the experts in the NPT regime. For proponents of the Nuclear Ban Treaty, in contrast, the treaty represents a fresh approach, and a potential replacement of the old regime, after the disappointments of the NPT process and the collective failure to achieve disarmament over more than fifty years.

In this Article, we argue that another perspective for understanding this treaty is through the prism of intergenerational conflict and justice. The Nuclear Ban Treaty comes into effect at a moment when a multitude of intergenerational issues have become central to the debate about nuclear weapons. The generation that personally experienced the effects of nuclear warfare—the *hibakusha* (survivors of the atomic bombings of Hiroshima and Nagasaki), the architects of the NPT regime

states are: “*Mindful* of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons, “*Recognizing* the disproportionate impact of nuclear-weapon activities on indigenous peoples.” *Treaty on the Prohibition of Nuclear Weapons* pmb. (July 7, 2017), <https://d3n8a8pro7vhm.cloudfront.net/tectodevms/pages/2417/attachments/original/1571248124/TPNW-English1.pdf?1571248124>. Ritchie and Egeland have described the treaty as heralding a new “diplomacy of resistance” that “constitutes a process of collective resistance to entrenched power structures that perpetuate the existence of nuclear weapons.” Nick Ritchie & Kjølvi Egeland, *The Diplomacy of Resistance: Power, Hegemony and Nuclear Disarmament*, 30 GLOB. CHANGE, PEACE & SEC. 121, 121 (2018).

11. The seeds of return to humanitarianism began not as a revolt against the NPT framework but within that framework itself. In 2010, Switzerland, spurred by the International Red Cross, proposed the addition of humanitarian language at the NPT Review conference. In 2014, 127 nations signed a Humanitarian Pledge, framing nuclear non-proliferation as a matter of international humanitarian law and calling on states to work “to stigmatize” nuclear weapons. The TPNW is the culmination of this campaign among diplomats and activists to reframe the limitation of nuclear weapons as a matter of global humanitarian law rather than national security.

Pivoting off the fractious NPT Review Conference in 2005 and the success of the Convention on Cluster Munitions in 2008, some had come to believe that recasting nuclear disarmament diplomacy in humanitarian terms could be a way of changing a stale debate. It seemed clear to them that what the disarmament process needed was not some ingenious technical fix or diplomatic horse-trade, but a fundamental normative reset. As long as nuclear weapons were seen as legitimate or even prestigious instruments of statecraft, they believed, disarmament would remain a Sisyphean task In Gramscian terms, the hegemonic ideology of nuclear weapons and nuclear discourses that selectively value and legitimise nuclear weapons – nuclear “common sense” – needed to change in order to undermine hierarchical political structures of nuclear power.

Ritchie & Egeland, *supra* note 10, at 127.

such as George Schultz, Henry Kissinger, and Mikhail Gorbachev, and the ordinary citizens who grew up with routine Cold War-era civil defense exercises—are aging or have already passed. The intergenerational transfer of memory and anti-nuclear commitment has therefore become an increasingly urgent issue in anti-nuclear activism. Today, although young people are engaged in activism of many kinds around issues of gender inequality, racial justice, and climate change, younger generations of activists are less familiar with, or interested in, nuclear issues. The preamble to the treaty directly addresses this challenge where it “[r]ecogniz[es] . . . the importance of peace and disarmament education in all its aspects and of raising awareness of the risks and consequences of nuclear weapons for current and future generations, and committed to the dissemination of the principles and norms of this Treaty.” At the same time, the activists who have led the campaign for the ratification of the Nuclear Ban Treaty are largely of a new generation.

The treaty also expressly frames a nuclear ban as a question of intergenerational justice in its preamble: “Cognizant that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations. . . .” In this context, the new treaty has offered a space in which newer and older generations of activists are finding new points of engagement—for both collaboration and conflict.

We take this treaty therefore as an opportunity to argue for centering intergenerational justice in international law. We argue that one achievement of the nuclear ban treaty is to foreground the many ways generations conflict and collaborate in peace-building. Although the question of what each generation owes the prior generation and the next is not a standard frame of reference in international law, as we suggest in Part II, upon closer analysis, questions of intergenerational justice pervade many international legal problems, from climate change to human rights to the law of war. Reframing nuclear disarmament as a question of racial justice for example powerfully engages new generations in the cause. It is not enough simply to notice the question of intergenerational justice in international law, however. We need more complex and subtle approaches to intergenerational conflict and collaboration. In Part III, therefore, we borrow insights from a global anti-nuclear art mural project with roots in Chicago’s community-based responses to racial injustice that explicitly foregrounds intergenerational collaboration. From this perspective, we argue in Part IV that the contested relationship between the NPT and the TPNW frameworks can be interpreted as an opportunity for intergenerational collaboration of its own. To address this challenge demands that international lawyers engage more deeply with questions of intergenerational justice in international law.

I. INTERNATIONAL LAW AND THE QUESTION OF GENERATIONS

A. International Legal Doctrine

Although the problem of relations among generations goes unremarked in international law, upon closer analysis, numerous doctrines address it. For example, the preamble to the UN Charter frames the work of international institution-building as for the benefit of future generations: “We the peoples of the United Nations, determined to save succeeding generations from the scourge of war. . .”¹² The Vienna Declaration on Human Rights (1993) likewise references “present generations’ responsibilities towards future generations.”¹³ A UNESCO General Conference of 1997 even adopted a Declaration on the Responsibilities of the Present Generations Towards Future Generations.

In what follows, we trace how generations are invoked in three large areas of international law with implications for nuclear non-proliferation—international environmental law, international humanitarian law, and the memorialization of atrocities in transitional justice. In these doctrines, the central question is the question of obligation: what does each generation owe another? For example, the Convention for the Protection of the World Cultural and Natural Heritage imposes on signatory states an obligation of “transmission to future generations of the cultural and natural heritage.”¹⁴ In these duties to share resources, to remember, or to transmit knowledge, the definition of generations and their relationship to one another is abstract and vague. There is a common refrain of presumed antagonism: each generation, it is assumed, displaces and disrupts the previous generation with its different values and priorities, and has competing claims to resources.

One place in which intergenerational issues surface in international law is in the protections afforded to children. The United Nations Convention on the Rights of the Child (UNCRC) establishes a diverse set of rights oriented toward the situation of the child and gives moral and legal statuses to children.¹⁵ This effort to accord rights to children stems not only from their present unprotected status but from their status as members of and links to future generations.¹⁶ Some authors

12. U.N. Charter pmbl.

13. See Vienna Declaration on Human Rights Part I, ¶ 11, June 25, 1993 (“The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”).

14. Convention Concerning the Protection of the World Cultural and Natural Heritage art. 4 (Nov. 16, 1972), <https://www.refworld.org/docid/4042287a4.html>.

15. Maryanne Theobald, *UN Convention on the Rights of the Child: “Where Are We at in Recognising Children’s Rights in Early Childhood, Three Decades on . . .?”*, 51 INT’L J. EARLY CHILDHOOD 251, 251 (2019).

16. As Bohman puts it: “This problem of the lack of status extends beyond children alone and includes many who lack rights and political statuses, including, most important, the rights of others who are not yet citizens: future generations.” James Bohman, *Children and the Rights of Citizens: Nondomination and Intergenerational Justice*, 633 ANNALS AM. ACAD. POL. SOC. SCI. 128, 129 (2011). Bohman argues that “the rights owed to children express not only their statuses as human beings, communication partners, and so on, but that children are also owed these rights because of their duties to the future of an intergenerational community.” *Id.* at 137.

frame the political disenfranchisement of children as a matter of intergenerational injustice. For example, Steven Lecce advocates for a system that encourages children to take more active interest in the values and processes of political decision-making and suggests that lowering the voting age would be a good way to do so.¹⁷ Likewise, Geraldine Van Bueren, one of the original drafters of the Convention on the Rights of the Child, develops a concept of “multigenerational citizenship” and argues that the inclusion of “the best interests of the child” implies state responsibility to allow the participation of children in policy-making in “accordance with their evolving capacities,” such as through child legislatures.¹⁸

Another area in which intergenerational equity surfaces in international law is in the regulation in international humanitarian law of relations between combatants, who are generally young adults, and non-combatants, whose members include greater representation of children on the one hand and older generations on the other. Although international humanitarian law protects all persons who are not taking part in the hostilities, the Geneva Conventions contain some additional protections for the elderly.¹⁹

In recent years there has been much debate over the foundations of the principle of child immunity as the specter of “child soldiers” and “child suicide bombers” has proliferated in theories of war.²⁰ Likewise, some scholars argue that existing provisions “continue to reflect social constructions of vulnerability and victimhood” and hence fail to protect adult civilian men from the horrors of war.²¹

17. Steven Lecce, *Should Democracy Grow Up? Children and Voting Rights*, 9 INTERGENERATIONAL JUST. REV. 133 (2009).

18. See Geraldine Van Bueren, *Multigenerational Citizenship: The Importance of Recognizing Children as National and International Citizens*, 633 ANNALS AM. ACAD. POL. SOC. SCI. 30, 35–37 (2011); see also Seamus Byrne, *Reclaiming Progressive Realisation: A Children’s Rights Analysis*, 28 INT’L J. CHILD.’S RTS. 748, 750 (2020) (arguing that the principle of progressive realization in Art. 4 of the United Nations Convention on the Rights of the Child “requires that States expand their promotion and protection of economic and social rights over time to the fullest extent possible within their available resources”).

19. E.g., “Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion”. Geneva Convention Relative To The Protection of Civilian Persons in Time of War, art. 27, ¶ 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; see also *id.* at art. 17 (“The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.”).

20. See, e.g., Emily Kalah Gade, *Defining the Non-Combatant: How Do We Determine Who Is Worthy of Protection in Violent Conflict?* 9 J. MIL. ETHICS 219, 219 (2010) (“Western societal norms have complicated our understanding and application of the principle of non-combatant immunity by depicting combatancy in terms of innocence and guilt: those viewed as innocent deserve legal protection. Child soldiers and female suicide bombers exemplify today’s complex and expanding parameters of combat. Consequently, in practice, authorities in conflict zones cannot rely on existing legal distinctions; instead, they are forced to make subjective judgements when deciding whom to protect.”).

21. Michael Scott, *Innocent Victims: Constructions of Vulnerability and Siege in International Humanitarian Law* 1, 21, 22, RESEARCHGATE (Sept. 2016), https://www.researchgate.net/publication/281669958_Innocent_Victims_Constructions_of_Vulnerability_and_Siege_in_International_Law (demonstrating how constructions of vulnerability influence

Perhaps nowhere is intergenerational justice more explicitly at the forefront of international law, however, than in agreements relating to biodiversity and climate change. “Problems of equity between generations arise from the depletion of nonrenewable resources . . . and the elimination of renewable resources, from degradation in the quality of environmental resources such as air, water and soils, from loss of the environmental services performed by natural resources, from loss of cultural resources, and from lack of effective access to natural and cultural resources.”²² The precautionary principle enshrined in much international environmental law is in its essence a generational concept—that “the present generation has an obligation to proceed extremely cautiously in the face of scientific uncertainty about risks of serious irreversible harm to future generations.”²³

As early as 1972, the Preamble to the Stockholm Declaration on the Environment (1972) stated that it aimed to “defend and improve the environment for present and future generations.”²⁴ The 1992 Convention on Climate Change imposes a duty to protect the climate “for the benefit of present and future generations,” while the 1992 Convention on Biological Diversity speaks of conserving biodiversity “for the benefit of present and future generations”²⁵ of humankind, on the basis of equity.²⁶ More recently, the United Nations Framework Convention on Climate Change (UNFCCC) repeats this language of obligation to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity.”²⁷ In the area of nuclear safety, also, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Water Management (1997) imposes a duty to avoid actions that unreasonably burden future generations.²⁸ A recent concurring opinion by Judge Trindade in the International Court of Justice case *Pulp Mills on the River Uruguay* goes so far as to state that “Nowadays, in 2010, it can hardly be doubted that the

the treatment of different groups of civilians and arguing for the elimination of discrete categories of protected non-combatants such as the elderly from the language of the Geneva Conventions in favor of a simple distinction between civilian and military targets).

22. EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* 5 (1989).

23. United Nations Framework Convention on Climate Change art. 3, ¶ 1, Mar. 21, 1994, 1771 U.N.T.S. 107 [hereinafter “Convention on Climate Change”]; Weiss, *supra* note 22, at 69. *See also* VINCENT IALENTI, *DEEP TIME RECKONING: HOW FUTURE THINKING CAN HELP EARTH NOW* 4 (2020).

24. U.N. Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment*, 3 U.N. Doc. A/CONF.48/14/Rev.1 (Jul. 25, 1995).

25. Convention on Biological Diversity, pmbl., June 5, 1992, 1760 U.N.T.S. 79.

26. *See* Convention on Climate Change, *supra* note 23; *see also* Stockholm Declaration on the Environment, June 16, 1972.

27. *Id.*

28. EMMANUEL AGIUS, *INTERGENERATIONAL JUSTICE*, in *HANDBOOK OF INTERGENERATIONAL JUSTICE* 317 (Joerg Chet Tremmel ed., 2006).

acknowledgment of intergenerational equity forms part of conventional wisdom in International Environmental Law.”²⁹

As the images of youth activists at the recent Glasgow COP26 meeting, ridiculing the international lawyers as just so much “blah blah blah” suggests,³⁰ climate change is a critical issue not only for abstract future generations but for children’s rights and for relations between present-day adults and youth.³¹ Indeed, in the area of climate, child activists and proponents of the Convention on the Rights of the Child often position children and children’s rights as representatives of as yet unborn generations. For example, Bohman concludes that if we accept that nondomination is the goal of many of the provisions of the CRC, “we must include the imposition of enormous costs on future generations as a temporal form of domination and as the failure of the present generation to act as temporary possessor of the power it shares with future generations.”³²

What exactly does intergenerational justice mean or demand in the context of climate change? Despite the many references in the preambles of treaties, the concepts of generation and generational equity remain quite abstract and unspecified. Edith Brown Weiss, one of the sole voices to give structure to these obligations, argues that “intergenerational equity” means that “each generation is entitled to inherit a planet and cultural resource base at least as good as that of previous generations.”³³ For Weiss, nuclear waste disposal exemplifies the problem of intergenerational equity. “Nuclear wastes pose four problems of justice between generations: contamination of adjacent resources; contamination of global commons, such as oceans; threats to public health; and land-use limitations on areas near storage sites.”³⁴ Although the language of generational justice in international environmental treaties has little binding specificity, Weiss attempts to extract three general principles of intergenerational equity from existing principles of international law, such as the duty of non-discrimination,³⁵ and duties to conserve natural resources in individual treaties:³⁶

First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations Second, each generation

29. *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14, 181, ¶ 122 (Apr. 20) (separate opinion by Trindade, J.); see also Lydia Slobodian, *Defending the Future: Intergenerational Equity in Climate Litigation*, 32 *Geo. Env’t L. Rev.* 569, 572 (2020).

30. Denise Chow, *‘Blah, blah, blah’: Protestors Push for Action at COP26*, NBC News (Nov. 2, 2021, 2:30 PM), <https://www.nbcnews.com/science/environment/blah-blah-blah-protesters-push-action-cop26-rcna4315>.

31. Elizabeth D. Gibbons, *Climate Change, Children’s Rights, and the Pursuit of Intergenerational Climate Justice*, 16 *HEALTH & HUM. RTS.* 19, 20 (2014).

32. James Bohman, *Children and the Rights of Citizens: Nondomination and Intergenerational Justice*, 633 *ANNALS AM. ACAD. POL. & SOC. SCI.* 128, 139 (2010).

33. Edith B. Weiss, *Our Rights and Obligations to Future Generations for the Environment*, 84 *AM. J. INT’L L.* 198, 198–207.

34. *Id.* at 171. See also VINCENT IALENTI, *supra* note 23.

35. Weiss, *supra* note 22, at 55.

36. *Id.* at 53.

should be required to maintain the quality of the planet so that it is passed on in no worse condition than the present generation received it . . . Third, each generation should provide its members with equitable rights of access to the legacy from past generations and should conserve this access for future generations.³⁷

Weiss proposes addressing the interests of future generations through a trust³⁸ concept borrowed from property law, in which estates are divided in time³⁹: “At any given time, each generation is both a custodian and a trustee of the planet for future generations and a beneficiary of its fruits. This imposes obligations upon us to care for the planet and gives us certain rights to use it.”⁴⁰ Ultimately, Weiss calls for a “Declaration Planetary Obligations and Rights” to codify this argument from existing international law.⁴¹

In response, a number of commentators have argued for creating a guardian *ad litem* regime to represent future generations’ environmental interests in treaty-making, international organizations, and national and international litigation.⁴² Weiss proposes that such a guardian have standing in international and national courts and administrative bodies which, she argues, are designed to address short-term problems. “They are for the most part not well-suited to address long-range problems, particularly those whose effects may not be felt for a generation or more.”⁴³ Another approach to empowering future generations is for representatives of future generations—either intergenerational groups such as tribes, or classes of

37. *Id.* at 38.

38. EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY (1989).

39. *Id.* at 17.

40. Weiss, *supra* note 38, at 17. *See also* Bohman, *supra* note 32, at 137 (“The notion that the present generation is a trustee holding past, present, and future sovereignty is an appropriate development of the idea of an intergenerational polity. Thus, if democracies are to avoid intergenerational domination, pooling sovereignty requires sharing statuses and freedoms across time. The insecurity of intergenerational democratic domination can be avoided only if each generation has both forward- and backward-looking rights and obligations to other generations (and not simply to past and future individuals). Environmental security—a shared form of freedom across borders and generations—is achieved only when no spatial or temporal demos can assert final authority over the past, the present, and the future.”)

41. Louis B. Sohn & Edith Brown Weiss, *Intergenerational Equity in International Law*, 81 PROC. ANN. MEETING (AM. SOC’Y INT’L.L.) 126 (1987).

42. Slobodian, *supra* note 29, at 576. The Maltese Government proposed establishing a guardian for future generations in international fora on the theory that “future generations are similar to those that our society has declared legally incompetent. The same consideration that presently supports proxies for the incompetent among our contemporaries also gives credence to the idea of a proxy for future generations where contemplated policies could impose substantial long-term risks.” Agius, *supra* note 28, at 322.

43. Weiss, *supra* note 38, at 119. *See also* Maja Gopel & Malte Arhelger, *How to Protect Future Generations’ Rights in European Governance*, 10 INTERGENERATIONAL JUST. REV. 4 (2010) (supporting the creation of a Guardian).

individuals who claim a shared interest with future generations, such as youth—to bring lawsuits in domestic courts.⁴⁴

Finally, if climate change and international humanitarian law raise the question of what adults owe to children and to future generations, a third area of international law—transitional justice—reverses the question to ask what obligations each generation holds to memorialize the tragedies of the past, and what restitution is owed by present generations for the atrocities of prior generations such as slavery, forced labor, sexual violence, and genocide. Transitional justice approaches often call for the continued memorializing of past violence through present day actions by both state actors and non-state actors,⁴⁵ such as erecting statues, including discussions of past events in school textbooks, or holding official holidays and memorial celebrations.⁴⁶ In many cases, international law implicitly or explicitly recognizes a duty on present generations to memorialize the violence experienced by prior generations of victims and to take actions to atone for the actions of prior generations of perpetrators.⁴⁷

B. *A Vague and Unstable Concept*

In the areas of international law we have considered, the concept of generation is ever present. But it remains undertheorized, abstract, vague, and unstable. First, whether or not the interests of intergenerational justice, are treated as determinative shifts from one period and one conflict to the next. For example, Sam Moyn argues that in the early postwar period, the Holocaust was framed in a language of “universal victimhood” and as “crimes against humanity” that were not specific to any particular group or generation. In the 1960s, he argues, this abstract and atemporal understanding gave way to Holocaust memory as a matter of intergenerational obligations to remember.⁴⁸ As Moyn writes:

Something drastic had happened: At some point a few decades ago, it became publicly meaningful to dwell on wounds and “trauma.” A new

44. The Supreme Court of the Philippines recognized children and future generations as a class with standing to challenge government action that threatened their right to a balanced and healthful ecology, finding that every generation has a responsibility to preserve the rhythm and harmony of nature, and that the minors’ assertion of these rights fulfilled their own obligation to ensure protection of the environment for future generations. *Oposa v. Factoran*, G.R. No. 101083, 224 S.C.R.A. 792 (July 30, 1993) (Phil.).

45. Karen Knop & Annelise Riles, *Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the Comfort Women Agreement*, 102 Cornell L. Rev. 853, 866 (2017).

46. E.g., as reparations for colonial era massacre of independence activists in Kenya, the British government agreed to construct a memorial in Nairobi to the victims of the massacre. *Id.* at 864.

47. Shelton, *supra* note 59, at 135. See Human Rights Comm., International Covenant on Civil and Political Rights, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/ Add.13 (May 26, 2004); G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005); Knop & Riles, *supra* note 45, at 864 (citing Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (2012)).

48. Samuel Moyn, *Two Regimes of Memory*, 103 AM. HIST. REV. 1182, 1186.

type of memory had taken hold. Testimonies were recorded, monuments erected, museums built, and curricula updated.⁴⁹

Where generational interests are treated as dispositive, contradictory notions of generation appear in the doctrine. In some cases, generations are identified with reference to their experience of a specific event. The notion of “generation” first appeared in popular discourse after World War I, to refer to returning soldiers who shared a common experience of war, and an anger at the older generation that had sent them to war.⁵⁰ The anger of young climate activists at “older generations” likewise adopts this understanding of generation as framed by a shared relationship to epoch-making events. This understanding of generation draws on Karl Mannheim’s sociological analysis of generations. For Mannheim, each new generation experiences the world differently than previous generations, and each generation shares similar core ideals and values throughout their lifetime. This generational connection, or consciousness, influences individual attitudes and views.⁵¹ As in both of these examples, “generation” often indexes generational conflict: it is assumed that what defines a generation is its rejection of a prior generation’s actions, values, or beliefs.

This concept of generation as singular historical experience has been critiqued by feminists, sociologists of youth, and scholars of inequality, who argue that in the rush to identify a shared generational ethos, it erases critical differences in experience and identity.⁵² Writing about intergenerational conflict in feminist theory, for example, media and cultural studies scholar Alison Winch argues that “generation” is a slippery concept used to “scaffold inaccurate and often apolitically charged historical narratives” that may homogenize experiences.⁵³ Winch points out how intergenerational conflict serves a neoliberal agenda by masking the underlying

49. Samuel Moyn, *You Must Remember This*, THE NEW REPUBLIC, May 4, 2016.

50. Astrid Erll, *Generation in Literary History: Three Constellations of Generationality, Genealogy, and Memory*, 45 NEW LITERARY HIST. 385 (2014).

51. KARL MANNHEIM, THE PROBLEM OF GENERATIONS 26 (1952). *E.g.*, Reger employs a political generation approach, defined as “a group who share a similar political awakening brought about by societal changes” as a way of understanding “patterns of continuity and change across generations of feminist mobilization” JO REGER, EVERYWHERE AND NOWHERE: CONTEMPORARY FEMINISM IN THE UNITED STATES 285 (2012). Likewise, Thorpe and Inglis, speak of “generational consciousness”, in which, following Mannheim, major events such as the attacks on the Twin Towers in New York created a common experience among young people, giving a sense of being a part of a generation. Christopher Thorpe & David Inglis, *Do “Global Generations” Exist?: From Mannheim to Beck and Beyond*, 1 YOUTH & GLOBALIZATION 40 (2019).

52. France and Roberts have situated the increasing use of “social generation” in youth sociology and sociology more broadly as potentially representing a “new orthodoxy” in the discipline. Alan France & Steven Roberts, *The Problem of Social Generations: A Critique of the New Emerging Orthodoxy in Youth Studies*, 18 J. YOUTH STUD. 215 (2015). Providing a critical survey of the sociology of youth, Roberts and France find that the concept of “generational units” does not adequately address inequality, and that the use of “global generations” relies too heavily on research from the Global North and may be inadequate for describing the experiences of youth in the Global South. Steven Roberts & Alan France, *Problematizing a Popular Panacea: A Critical Examination of the (Continued) Use of ‘Social Generations’ in Youth Sociology*, 69 SOC. REV. 775 (2021).

53. Alison Winch, *Does Feminism Have a Generation Gap? Blogging, Millennials and the Hip Hop Generation* 22 ANGELAKI 207 (2017).

issues all face under neoliberalism. She argues that “generational mistrust” of baby boomers “diverts attention from socio-economic problems that are driven by neoliberal politics.”⁵⁴ Winch nonetheless finds generations a productive, intersectional tool when generational identities are located within the “conjunction” of larger, contradictory, social, and historical contexts.⁵⁵

In other cases, the concept of generation references actual genealogical ties. For example, studies of the children of Holocaust survivors have documented experiences of second-generation trauma.⁵⁶ Psychoanalytic approaches to Holocaust memory have therefore sought to understand the “repetitive temporality” of trauma in subsequent generations arising out of acts of mass atrocity.⁵⁷

In other cases, generation is not genealogical, but is rather a matter of the difference between having direct experience of violence versus experiencing violence mediated through circulating media and imagery. In this subsequent generation, people experience historical violence not through personal experience or even through kinship with actual victims or perpetrators, but rather through the portrayal of violence in literature, film, journalism, and other media. So-called “post-memory” scholars such as Marianne Hirsch argue that what differentiates the experience of the second generation of Holocaust survivors and beyond is that memory is produced through media accessed in the public sphere more than through stories handed down in the private sphere of the family. Postmemory is a particular “structure of inter- and trans-generational transmission of traumatic knowledge and experience. It is a consequence of traumatic recall but (unlike post-traumatic stress disorder) at a generational remove.”⁵⁸

In other cases, generations are future-oriented, as in obligations to protect the planet for future generations.⁵⁹ In these references to obligations to future generations, generations are often treated as an abstract and cross-cultural entity—everywhere the same across class, gender and sexual orientation, culture and ethnicity. Future generations become a stand-in for “mankind as a whole,”⁶⁰ or “the common heritage of mankind,”⁶¹ and generational rights are used interchangeably

54. Alison Winch, *Feminism, Generation and Intersectionality*, 2014 SOUNDINGS 9 (2014).

55. DOREEN MASSEY, IDEOLOGY AND ECONOMICS IN THE PRESENT MOMENT, in *THE NEOLIBERAL CRISIS* 97, 97 (Sally Davison & Jonathan Rutherford eds., 2012).

56. Alice Bloch, *How Memory Survives: Descendants of Auschwitz Survivors and the Progenic Tattoo*, 168 *THESES ELEVEN* 107 (2021).

57. Knop & Riles, *supra* note 45, at 901 (quoting DOMINICK LACAPRA, *WRITING HISTORY, WRITING TRAUMA* 42 (2014)).

58. Marianne Hirsch, *The Generation of Postmemory*, 29 *POETICS TODAY* 104, 106 (2012).

59. Dinah Shelton notes three possibly conflicting definitions of generation. What she terms a “popular notion . . . that links individuals to historical, social or cultural events,” a notion of “generations of lineal descendants” and a category of “future generations” meaning “those who will not be born in the lifetime of anyone presently alive.” DINAH SHELTON, *INTERGENERATIONAL EQUITY, in SOLIDARITY: A STRUCTURAL PRINCIPLE OF INTERNATIONAL LAW* 123, 126–27 (Rüdiger Wolfrum & Chie Kojima eds., 2009).

60. Agius, *supra* note 28, at 321.

61. Weiss, *supra* note 38, at 30.

with “planetary rights.”⁶² For feminist theorist Robyn Wiegman, this universality is anchored in an assumed universality of parentage and heteronormativity. Writing from a queer feminist perspective, she refuses any obligation to define oneself as against or in conflict with a prior generation.⁶³

C. Anti-Racism as Generational Thinking

The regulation and abolition of nuclear weapons is not one of the international legal subjects that typically triggers generational analysis. Yet nuclear weapons invoke elements of both the intergenerational justice of war memory, with its focus on the transmission of commitment to remembering the violence of the past, and the intergenerational justice of climate action, with its call to action on behalf of somewhat abstract and unrealized future generations. Calls for nuclear disarmament appeal both to a duty to remember the violence of the past and a duty to prevent harms to a generalized future generation.

As we have seen, one of the inherent challenges is how to keep the commitment of a prior generation not to repeat the horrors of violence alive in the next generation. In anti-nuclear activism, the central challenge faced by hibakusha, or nuclear bombing survivors, is how to transmit commitment from one generation to the next as the numbers of persons with first-hand experience of nuclear war dwindle with the passing of time. The Chicago resolution does something specific in this context of the challenge of how to transmit political commitment across generations. It is the first municipal resolution to explicitly link the production and maintenance of nuclear weapons to issues of systemic racism. The resolution states that the U.S. federal government’s use of taxpayers’ money for the maintenance and renewal of the U.S. nuclear arsenal is a racist policy which fails “to address safety and security concerns of communities of color, both at home and abroad, while prioritizing security concerns of white Americans.” Other resolutions have referenced the disproportionate impact of weapons testing on indigenous communities but have not made this larger claim of structural racism.

The indictment of U.S. nuclear policy as racist is not new; civil rights activists have long drawn attention to the linkage between issues of military spending and issues of economic inequality and poverty which disproportionately affect Black and other minority populations.⁶⁴ In the immediate aftermath of the atomic bombings of Hiroshima and Nagasaki, for example, contributors to African American

62. Weiss, *supra* note 38, at 96.

63. Robyn Wiegman, *Feminism’s Apocalyptic Futures*, 31 NEW LITERARY HIST. 805 (2000).

64. The 1954 Bikini Atoll tests and the subsequent convening of the 1955 conference of African and Asian countries framing anti-nuclear arguments around issues of European colonization and white supremacy impacted African American civil rights leaders such as Richard Wright and Adam Clayton Powell. VINCENT J. INTONDI, AFRICAN AMERICANS AGAINST THE BOMB: NUCLEAR WEAPONS, COLONIALISM, AND THE BLACK FREEDOM MOVEMENT 46 (2015). Civil rights and anti-apartheid leaders throughout the 1960s criticized U.S. support for South Africa to develop a nuclear weapons infrastructure. *See id.* at 92. Martin Luther King’s mid-career rejection of nuclear weapons as “genocidal and suicidal in character” represented a turning point in his characterization by many segments of the American public as “anti-American.” *Id.*, at 67.

newspapers in Chicago queried the role race played in the decision to use atomic bombs against Japan.⁶⁵ Yet, the indictment of the U.S. nuclear policy as racist has renewed potency at this moment in Chicago, in the context of energized youth activism around Black Lives Matter. When Alderman Haddon frames these issues in this way, she makes it possible to call upon new energies, relations, and authorities—generation-old community alliances central to local legitimacy and action. She purposely links one generation of activism to another.

Despite her critiques of the concept of generation in feminist theory, Winch finds the fact of perceived or experienced generational differences within feminist theory as “opportunities for dialogue” across those differences.⁶⁶ In this respect, we can see the Chicago resolution as a case study for how to build a greater global movement by shifting from the wider context of generational conflict to generational dialogue. Linking nuclear disarmament—something perceived as a prior generation’s issue—to generational conflict in the context of the Black Lives Matter movement reframes both sets of concerns.

Yet for all its innovation, the Chicago ordinance remains within a well-known paradigm of municipal action, in which “progress” is metered by the demonstration of municipal power, and linkages between organs and scales of the nation-state, from local to global, are invoked. Although the Chicago ordinance is unique, it is understood to participate in a global movement in which myriad similar ordinances, literally created from templates produced by global activists, replicate one another and in so doing create global norms. What matters here is the number of municipalities that pass analogous resolutions, the number of countries that ratify. Local differences or specificities ultimately are less significant than the effect of mass support for ratification.

65. The Chicago resolution touches on the city’s historical role in the development of nuclear weapons. CITY OF CHICAGO, CALL FOR UNITED STATES GOVERNMENT TO CEASE SPENDING FEDERAL TAX DOLLARS ON NUCLEAR WEAPONS, EMBRACE UNITED NATIONS TREATY ON PROHIBITION OF NUCLEAR WEAPONS, AND MAKE GLOBAL NUCLEAR DISARMAMENT MAIN FOCUS OF NATIONAL SECURITY POLICY (2021). Chicago was once one of the key centers of the Manhattan Project during World War II. It was at the University of Chicago where in 1942, a self-sustaining nuclear chain reaction was achieved for the first time, and many of the scientists involved in those discoveries were the first champions of efforts to eliminate nuclear weapons. See *Chicago, IL*, ATOMIC HERITAGE FOUNDATION, <https://www.atomicheritage.org/location/chicago-il#:~:text=One%20of%20the%20most%20important,could%20fuel%20a%20nuclear%20reaction> (last visited Jan. 14, 2022). The “Bulletin of the Atomic Scientists,” founded by nuclear scientists at the University of Chicago, calls nuclear weapons an “existential threat,” and publishes the famous “Doomsday Clock” every year. SCI. & SEC. BD., 2021 DOOMSDAY CLOCK STATEMENT 2, 18 (2021). In 1986, the Chicago City Council passed a Nuclear Free Zone Ordinance banning the “design, production, deployment, launching, maintenance or storage of nuclear weapons or their component parts” within city boundaries. See William N. Weaver et al., *The Legality of the Chicago Nuclear Weapon Free Zone Ordinance*, 17 LOY. U. CHI. L.J. 553, 553, 555–56 (1986). That ordinance has never actually been enforced, although it remains on the books to this day. Ordinances of this kind have been the subject of considerable litigation in the United States, where federal authorities and private parties have claimed that they violate federal authority to regulate trade or engage in foreign affairs. Since the nuclear-free zone activism of the 1980s, the legitimacy of municipal governments’ engagement with the global policy debate about nuclear weapons and other national security matters has been repeatedly questioned.

66. Winch, *supra* note 54, at 8.

The issue then becomes how to effectively have this intergenerational dialogue, and what forms this intergenerational dialogue might take. To think about this methodological question, we now turn to a very different project also produced in the shadow of the TPNW, a global anti-nuclear art project bringing together the Chicago community mural tradition and the experiences of nuclear survivors in Nagasaki that also draws energy and methods from the experiences of movements for racial justice.

II. INTERGENERATIONAL COLLABORATION

The Kids Guernica project is a global art project in which children are invited to collaboratively create large canvases depicting images of peace. Founded by a group of art educators and practitioners in the U.S. and Japan in 1995 in commemoration of the 50th anniversary of the atomic bombings of Hiroshima and Nagasaki and the end of World War II and in recognition of Japan's 1994 ratification of the UN Convention on the Rights of Children,⁶⁷ the project has facilitated the creation of over 500 murals since 1995. We came to be involved in the project in Nagasaki, alongside local peace activists and atomic bomb survivors who had participated in it since 2003. In Nagasaki, the project has been incorporated into the City of Nagasaki's annual ceremony commemorating the atomic bombing on August 9.

The Kids Guernica Project is anchored in two significant art traditions: first, Pablo Picasso's *Guernica* (1937), perhaps the most influential example of anti-war artwork, and second, the U.S. community murals, so-called "People's Art" such as *The Wall of Respect* (1967), a community-based art movement initiated by African American artists in Chicago in the context of civil rights activism.⁶⁸ The project inherits from *Guernica* its theme—peace—its size (3.5 x 7.8 meters, or 11.5 x 25.5 feet)—, and most of all, its transportability. Just like *Guernica* did in its early years, Kids Guernica murals are meant to circulate the world. Completed murals are typically sent to another location for display alongside other murals created elsewhere. Sometimes, canvases are carried by activists to another part of the world, where they are completed by children in another community, who reflect on and add to the work of others. The murals are designed to be displayed side-by-side with other murals of the same size created by other children from elsewhere.

The Kids Guernica Project inherits from the community murals a commitment to making art with and for a community, so that each mural is created as a collective response to the community's specific and changing political concerns.⁶⁹ As one of the founders of the project, Tom Anderson, a scholar of the

67. Kaoru Mizukuchi, *Kizgyu Guernika Kokusai Kodomo Heiwabekiga Seisaku Purōjekuto: Ibunkarikai to bijutsukyōiku no kanosei* [*Kids Guernica International Peace Mural Creation Project: Cross-Cultural Understanding and the Potential of Art Education*], OTEMAE DAIGAKU RONSHU 189, 196 (2011).

68. Interview with Abe Toshifumi, in Osaka, Japan, (May 11, 2019) [hereinafter "Toshifumi interview"].

69. Thomas Leroy Anderson, *A Critical Analysis of American Street Murals: 1967-1982*. (1983) (Ph.D. dissertation, University of Georgia) (on file with University of Georgia); EVA COCKCROFT,

history of U.S. community murals, has observed: “the entire project is circumscribed by local specificity. Every mural is locally conceived and locally constructed in relation to local conditions and concerns.”⁷⁰ The project thus elevates the specificity of each community’s experience both of violence and of peace. In Kids Guernica workshops, participating children, in collaboration with adults, are encouraged to express their conceptions of peace through images particularly relevant to their situation, community, and history. Although painting usually begins with short remarks about the bombings of Hiroshima and Nagasaki, nuclear themes almost never appear in the paintings. Unlike community murals in the U.S. that are regularly painted over after several years of completion, Kids Guernica murals continue to circulate and be displayed side-by-side with older and newer murals all over the world.

The project also borrows from the community mural tradition the challenge and hope of collaboration. Community murals demand collaboration among artists in the creation of the mural. They also prioritize collaboration between artists and members of the community where the mural is located. Kids Guernica takes this focus on collaboration a step further to prioritize and problematize collaboration between adults and children. The core concern of Kids Guernica, according to art education specialist and project co-founder Toshifumi Abe, is the intergenerational transmission of cultural identity, commitment, and memory. In Abe’s view, different kinds of intergenerational relationships manifest themselves in different murals: “[Kids Guernica] workshops take many different forms. They do not have a definitive form. This is because the relationship between [adults] and children varies from one place to another.”⁷¹

Intergenerational collaboration is therefore a critical aspect of what the Kids Guernica Project inherits from the Chicago mural tradition. In a typical Kids Guernica peace mural collaborative creation event, adults do the preparatory work. They negotiate with and select a school with whom to work together on a mural creation project. They procure the canvas, paint, and other art supplies and give a short commentary before children begin painting.

In our observation, organizers of Kids Guernica workshops in Nagasaki are careful not to interfere with children’s creativity. They do offer some comments and suggestions during the workshop. Sometimes they propose an overall framework or theme for the mural and let children choose colors and images within that framework. They try hard to respect children’s autonomy, and mostly they simply prepare acrylic paint for children to use and focus on reminding children of space left unpainted. However, toward the end of each workshop, after children complete their activity, adults add finishing touches to the mural and hence do not leave the painting only to children. In these subtle interventions, they are keenly aware of the

JOHN PITMAN WEBER & JAMES COCKCROFT, *TOWARD A PEOPLE’S ART: THE CONTEMPORARY MURAL MOVEMENT 3* (1977).

70. TOM ANDERSON, *2010 KIDS’ GUERNICA 3* (2009).

71. Toshifumi interview, *supra* note 68.

need to strike a balance between the agency of adults and the agency of children. Everyone involved in the global project agrees that the quality of the final product depends on how well children and adults work together.

This is a stressful task, especially for adult organizers, and it is tempting for them to make more forceful interventions and get the work done. These practical temporal, ethical, and other challenges foreground and even amplify the urgency of the challenge of intergenerational collaboration and its consequences. It is these consequences that Kids Guernica murals record and make visible, and these consequences, which are concrete results of specific intergenerational relationships, in turn serve as simulations of the possible future consequences of a myriad of ongoing broader efforts to pass on memories and commitments across generations.

The artwork therefore is a kind of practical negotiation between adults, with their own frames of reference, time frames, agendas, and aesthetic ideals, and children, with their own experiences of art-making and play, beginner's mind, aesthetic preferences, and interpretations of and reactions to adults' framings and interventions. As Anderson notes: "Every mural is a peacemaking process in its very construction that proceeds, sometimes through stops and starts as each group learns the lessons of cooperative activity and respect and tolerance for our fellow human beings."⁷² In his comparative analysis of workshops in Florida and Japan, Anderson has observed a contrast between the individualistic orientation and "uneven" quality of the U.S. mural and the collective orientation and the relative uniformity and formal sophistication of the Japanese murals. Anderson concludes that this difference indexes different dynamic processes of collaboration in the two workshops.

These unique and differing practices of negotiation are apparent in the final results, and organizers make no effort to hide the unevenness of the resulting canvases. Indeed, the founders of the project insist on preserving and appreciating the unevenness in the quality of murals created by different groups. Each year, on the anniversary of the atomic bombings of Hiroshima and Nagasaki, a dozen colorful murals created that year around the world are displayed along the banks of a river flowing around the Atomic Bomb Hypocenter Park in Nagasaki, where thousands jumped in the water to extinguish the flames, a place understood to be heavy with the spirits of those who died there. The paintings add a colorful and future-oriented vision to the otherwise somber site of mourning. Some murals look highly polished and perhaps reflect adults' overarching involvement. Other murals are more rudimentary.

As with the figures of the original Guernica, the graphic traces of pain, anger, and hope layered into these canvases are confusing and perhaps somewhat unreadable to many viewers. However, the total effect of the accumulated layering—collaboration upon collaboration, canvas next to canvas, each sharing in the simplest of unity of form—identical size and purpose—yet differing entirely in

72. ANDERSON, *supra* note 70, at 3.

style, sophistication, and subject matter, creates a larger effect. When we observed these displays, people paused silently, with curiosity and smiles, as they attempted to decipher the paintings.

More broadly, the unevenness in quality and sophistication among the murals serves as a testament to the challenges of intergenerational relationships that manifest in each workshop. Polished final products may simply reflect the asymmetrical power relation between adult organizers and child participants. Similarly, rough and seemingly rudimentary murals may suggest a lack of active conversation and collaboration between adults and children. What is displayed in a Kids Guernica exhibition, therefore, is a demonstration of not only the diversity of forms of intergenerational relationship but also of the consequences of these relationships. The murals serve as the concrete results of specific intergenerational collaborations juxtaposed to one other.

In Nagasaki, this display of murals of uneven quality entails particular significance for the question of intergenerational relationality. Kids Guernica in Nagasaki is an extension of the powerful local intergenerational concern with the problem of how to pass on atomic bomb survivors' memories of the atomic bombing and their longstanding commitments to the elimination of nuclear weapons to the next generations. This is a concern that has preoccupied many involved in the organization of the annual commemoration for several decades, and the urgency of the concern is amplified each year by the annual speech appealing for peace and the elimination of nuclear weapons by the increasingly aging representative of local atomic bomb survivors. Kids Guernica, and children's involvement in it, may be regarded as an example of the determination on the part of the next generations to inherit atomic bomb survivors' memory and commitment and pass them on to the future.

Yet, in our observation, Kids Guernica adds a different vision to, and even challenges, this intergenerational project, and its temporal orientation. It seems to indicate that the burden of the obligation to pass on and inherit memory across generations does not rest solely on aging atomic bomb survivors or on the younger generations, but on the actual quality of intergenerational relationality.

In Kids Guernica, therefore, the problem of the intergenerational transmission of commitment to a non-nuclear future, that is, the problem of post-memory, is juxtaposed to other more immediate and practical issues of intergenerational relationality. Kids Guernica refocuses the question of the relationship between generation and genealogy on the practical challenge of collaboration between adults and children or across generations. What is at stake is not so much the actual transmission of memory or trauma as the negotiations associated with working together on a large canvas and completing/finishing the work within a limited amount of time (a workshop or two). In Kids Guernica workshops, the temporal problem of the first generation passing and associated obligation for the second and later generations to inherit the first generation's memory and commitment is replaced by the practical temporal constraint of the workshop in which adult

organizers and child participants need to complete a large piece of artwork within a limited amount of time.

If the Chicago resolution seeks to bring issues, people, and organizations together to achieve a single goal—the U.S. ratification of the TPNW—the Kids Guernica project, which, it is worth noting, developed in tandem with the campaign for the ratification of the TPNW, takes a different path. Rather than organize a coalition of young and old towards a singular political goal such as ratification, it embraces difference and multiplicity in goals, in a messy, nonsystematic, and unpredictable fashion. If, as we saw, the TPNW offers a vision of a future goal—a nuclear-free world—Kids Guernica murals present diverse and ever-changing loci of futurity. The ultimate stated goal of Kids Guernica is not in fact even a nuclear free world, but rather something more amorphous and greater, beyond the elimination of nuclear weapons, that is, peace. Kids Guernica asks adults and children first to make peace with one another, but in their own uneven terms.

III. TOWARDS INTERGENERATIONAL JUSTICE IN INTERNATIONAL LAW

The traditional building blocks of international law—nation-states—are abstract and eternal. In recent years considerable progress has been made to bring into view other kinds of international actors—from international institutions to issue networks—but as these new actors enter the international legal plane their new identity tends to shed one of the most common sociological features of institutions, that is, how they reproduce themselves from one generation to the next. At the other end of the spectrum, progress has also been made to bring history into view in international law—to show how international law is influenced, as well as how it manages and transforms history. Yet what remains absent in most historical debates is an appreciation of intergenerational relations in international law: how and when generational differences become salient, how the interests of generations may come into conflict, and how the seeming perpetuity of nation-states masks processes of constant recreation, as one generation transmits political commitments and historical memory to the next, and as each generation considers what it owes prior and future generations in its actions in the present. This is curious because in so many of the most urgent areas of international law, such as the race to slow climate change, youth are providing new leadership and framing their interventions in directly generational terms.

The result is an odd formulation: on the one hand, the total disregard for generation in mainstream international law in favor of a vision of eternal nation-states, while on the other hand, at international conferences, generational conflict provides the energy and the story line but proceeds from a given and totalizing assumption of generational contest and conflict. What is lacking from both perspectives, from the perspective of Kids Guernica, is a commitment to intergenerational justice: a commitment to a messy, indeterminate middle zone of generational dialogue, struggle, and collaboration.

Despite the absence of generational analysis in international legal debates surrounding nuclear weapons, the effects of nuclear testing and nuclear warfare are

matters of generational justice. The environmental impact of nuclear testing spans many generations, and many victims fear that the health effects of exposure to radiation from both testing and nuclear bombings are transmitted from one generation to the next. Activists are aware that the generation that experienced the bombings of Hiroshima and Nagasaki, and the generation that grew up under the cold war threat of nuclear war, when ordinary citizens were routinely exposed to apocalyptic images of nuclear warfare and were regularly enlisted in civil defense exercises, is now passing. A younger generation has grown up without a consciousness of an immediate threat of nuclear war, and except for communities with direct experience of the bombings or nuclear testing such as Nagasaki, New Caledonia, or Bikini Atoll, the elimination of nuclear weapons is less of a political focus among younger generations in many parts of the world than issues of climate change, inequality, or racial justice. The Kids Guernica art project we have described picks up on and amplifies the issues of intergenerational justice swirling in and around activist communities.

Factually speaking, the law and policy regulating nuclear weapons is also deeply generational. The new Nuclear Ban Treaty is the work of a self-described new generation of activists and experts who understand themselves to bring new perspectives, values, and concerns than the aging community of activists and experts working in and around the more established non-proliferation regime. As we have seen, the Nuclear Ban Treaty explicitly frames the issue of nuclear weapons as a matter of generational relationships.

It has been said by critics of the TPNW that unlike the NPT, which envisions a gradual reduction in nuclear weapons over time, the TPNW naively calls for the immediate elimination of all nuclear weapons. Yet the nation-states and activists that led the campaign for the ratification of the TPNW are aware that without the support of nuclear states, nuclear weapons will remain permissible *de facto* if not *de jure* under international law. Yet the orientation of the Nuclear Ban Treaty is therefore not toward the immediate present at all, but rather toward the future. After the demonstrated limitations of the technocratic NPT process, moreover, hope for immediate results from that process have faded. One purpose of the treaty, then, is to reignite the passions of a new generation of activists around nuclear disarmament, and to lay the groundwork for a future free of nuclear weapons. We have seen how, in the local context of Chicago municipal politics, an intergenerational perspective broke through deadlocks and stale debates and made possible a new coalition of young and old activists and new perspectives on the importance of bringing an end to nuclear weapons.

The central legal question in nuclear disarmament now concerns the relationship between the two treaty regimes—the older NPT framework and the newer Nuclear Ban Treaty. As we have seen, the new treaty offers a different theoretical framework—humanitarian law rather than national security—a vision of nuclear disarmament as a matter for all nation states and not solely the nuclear powers, and a more pluralistic vision of the collaborative roles of nation states and transnational issue networks. The Nuclear Ban treaty itself asserts that the two

regimes are complementary, although the communities of experts who participate in both frameworks have not always embraced this view.

A perspective from intergenerational justice provides unique purchase on the relationship between the treaties. First, we can observe that, factually speaking, the two treaty regimes are two communities of experts who understand themselves as separated by a generational divide.

From this perspective, the question of the relationship between the treaties becomes an opportunity for an exercise in intergenerational justice, a potential zone of intergenerational peacemaking. That is, the legal question of the relationship between the two treaties becomes a sociological and political question of how two generations of experts might work together towards a shared goal of disarmament.

Here, Kids Guernica offers an unexpected model: The experience of Kids Guernica is that intergenerational justice emerges from the engaged practice of difference, from the limits of linkages between issues and communities, from lack of understanding, as much as from harmonization and negotiated agreement. As we saw, much of the language of “future generations” that graces the preambles of international treaties is so vague and generalized that it is not operational as international legal commitments or as perspectives for engagement across generations. The approach of Kids Guernica is precisely the opposite: putting aside grand and vague questions of the nature of peace, or disarmament, or of the relationships between children and adults, the artists (both children and adults) set themselves a concrete and time bound task: to complete a specific mural of a specific size, within the given constraints of time. As we saw, the results of these exercises in concrete intergenerational justice were a range of uneven and different canvases—reflecting different circumstances and differing approaches to intergenerational collaboration.

In much the same way, while the two treaties and associated communities of experts have many theoretical differences, both regimes set the stage for a number of concrete projects where potential collaboration could substantially further the cause of nuclear disarmament. For example, Article 6 of the nuclear ban treaty concerns “victim assistance and environmental remediation” for the “use or testing of nuclear weapons.” It commits state parties “with respect to individuals under its jurisdiction” to “provide age and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.”⁷³ This quite expansive definition of the rights of victims and the obligations of states to provide compensation and reparations would represent a substantial step towards justice and much-needed assistance to disproportionately impacted communities. Although it seems unlikely that nuclear states and nuclear umbrella states will ratify the treaty soon, one could imagine that many of these states—or rather the communities of experts within those states working within the NPT regime—might

73. Treaty on the Prohibition of Nuclear Weapons, art. 6(1), July 7, 2017, 729 U.N.T.S. 161.

find the political will to work with local communities and with organizations involved in the Nuclear Ban Treaty to leverage and expand existing compensation schemes to benefit victims. The same might be true of obligations under the Nuclear Ban treaty to engage in environmental remediation in areas of nuclear testing, or of the obligations of states that have tested nuclear weapons to provide technical and financial assistance to small states which have been sites of nuclear testing so that environmental remediation can occur.⁷⁴

Such projects might put aside questions of harmonization in international law to engage in more concrete, achievable and arguably significant state actions. What is important here is that each of these projects not only necessitate collaboration among different generations of experts; each is also a project of intergenerational justice. Given that so much time has passed since the bombings of Hiroshima and Nagasaki or the testing at Bikini Atoll and elsewhere, assistance for victims of testing and nuclear bombings, or environmental remediation is now by definition a matter of intergenerational reparations. Unlike the vague notions of “future generations” that now increasingly appear in international documents, however, what is at stake in the question of how to bring together these two treaties are a series of concrete generational identities and problems: how specific nuclear experts can reach across the generational divide to collaborate; what kind of compensation and reparations to present generations might best recognize and respond to the devastation to communities a generation ago and their ongoing impacts on present generations of those communities.

74. *Id.* at art. 7(6).