

A European Ombudsman for the Rights of Future Generations

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Introduction

Throughout human history, a sense of responsibility for the immediate future, namely the future of our own children and grandchildren, has always been an inherent part of human nature. The next generation has always represented hope, continuity, and progress. Each generation has taken pride in leaving a heritage which the next generation could use to advance society.

This was possible for many people in earlier generations. The future appeared stable and predictable. During the last century, human population was too small and human technology not powerful enough to alter planetary systems radically. It was not until we gained access to vast energy resources that we acquired the power to destroy the ecosystem.

At the dawn of this new millennium, the future no longer appears either stable or predictable. We do not know what life will be like for the next generations. We all recognise the signs of the global crisis now approaching. Global warming, depletion of the ozone layer, continued population growth, massive loss of species and biological diversity, acceleration of deforestation and desertification – these are all threats which will soon lead to breakdowns in vital support systems for life on earth.

What Future for the Future Generations of the European Union?

According to the Treaty establishing the Constitution for Europe, the Union's objective is "to promote peace, its values and the well-being of its peoples". Reflecting the will of the citizens and States of Europe to build a common future, the Treaty refers also to justice and solidarity between generations as one of the main objectives of the European Union. The Union's objective is not only to foster among the current generations "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities," but also to transmit these fundamental values to coming generations. The peoples of Europe, in creating an ever closer union among them, are committed to share a peaceful future based on these common values. As the preamble of the Charter of Fundamental Rights states, it is therefore the Union's moral duty to preserve, develop and transmit these common values to generations yet to be born, while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the members States.

Looking toward the future, the EU is facing on the international scene many uncertainties about international peace, security and stability. Moreover, the EU is facing fundamental socio-economic and political challenges concerning the achievements of its targets, goals and objectives. Reflecting on these challenges and uncertainties, it is natural that one would raise questions and concerns about the future of the EU. What is the future of the European Union? What quality of life will be enjoyed by posterity living in the Member States? Who can guarantee human rights, democracy, security and peace of the future generation of the European Union? The European Union has 450 million inhabitants living in 25 countries. Do current generations living now in Europe have any obligation at all to coming generations? Can future generations who will live in the Member States of the EU in the future claim anything from us as their right?

What will be Europe's place among the superpowers of tomorrow and what alliances will emerge? How can Europe contain nuclear proliferation and the use of weapons of mass destruction by unreliable and unpredictable regimes? What will be the effect of biotechnology and life-sciences on the future of Europeans? How can Europe defend its citizens against new threats of terrorism, organised crimes or uncontrolled migration? What can Europe do to prevent a clash of civilizations or dangerous divisions between rich and poor countries?

To meet these challenges, close international cooperation is required and Europe can play an important role. The EU is resolved be more actively involved in meeting the concerns of its current and future people who definitely all aspire to live in peace and security, to meet their social needs, to enjoy economic opportunities and to preserve a healthy environment for themselves and future generations.

Evidently, these apprehensions indicate that it is not only the issue of globalisation which needs to be given top priority by European institutions, but also the widespread concerns about the unprecedented consequences which current decisions and policies could have on the quality of life of far-distant unborn generations. In subsection five of the preamble to the Treaty establishing a Constitution for Europe, we read that this scenario entails "responsibilities and duties with regards to other persons, to the human community and to future generations". An increasing awareness to intergenerational relationships is also reflected in the EU's aim to enhance prosperity, solidarity and security for all Europeans living now and in the future. The present generation has the responsibility not to pass on to posterity burdens unnecessarily and to secure to future generations the enjoyment of the same freedoms and choices that we have. The challenges facing us are so wide and so complex that they can only be tackled in partnership not only by involving the active participation of as many European citizens living now as possible, but also by the setting up of an institution or mechanism to represent the yet unvoiced claims and interests of posterity.

Towards a sustainable Europe

The European Union is firmly committed to sustainable development and wants to set a positive agenda for change. Sustainable development – meeting the needs of the present

generation without compromising the ability of future generations to meet their needs – is a fundamental objective of the European Union, but it is also a global challenge faced by all nations around the world. It raises the question of how to reconcile economic development, social cohesion, North/South equity and protection of the environment. Its importance is reflected in the EU Treaty and taken up by the Constitution, which challenges the Union “to work for the sustainable development of Europe based on balanced economic growth and price stability, a high competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.”

It is an overarching concept which underpins all Union policies, actions and strategies and requires economic, environmental and social policies to be designed and implemented in a mutually reinforcing way. Sustainable development offers the European Union a positive long-term vision of society that is more prosperous and more just and which promises a cleaner, safer, healthier environment; a society which delivers a better quality of life for us, for our children and for our grandchildren.

That is the main reason behind the European Union’s bold decision taken at the start of this millennium to engage itself in a compelling agenda for change, to ensure that we face up to unsustainable economic, social and environmental trends. In 2000 the Lisbon Strategy set out an ambitious agenda of economic and social reforms to create a high dynamic and competitive knowledge-based society. In 2001 a broad Strategy for Sustainable Development was launched by the European Council in Gothenburg and in 2002 its external dimension was defined in Barcelona, ahead of the UN’s World Summit on Sustainable Development in the summer of 2002. Each of these steps has been accompanied by important decisions and actions to fulfil the commitment made.

Article II-97 of the Charter of Fundamental Rights of the Union states that “a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principles of sustainable development”. Such an importance given to sustainable development by the European Constitution reflects the European citizens’ widespread awareness of the importance of high environmental standards for their health, well being and overall quality of life. Current generations are demanding these standards both in their own interest and the interest of future generations. Europe’s future requires a long term vision and action across a wide range of politics. Though growth and more jobs are needed to improve and secure future prosperity, a cleaner and healthier environment is also required. Europe’s future prosperity and quality of life will depend on the current generations’ capacity and commitment to change their production and consumption patterns and to decouple economic growth from environmental degradation.

With rapid demographic changes, the next decades will put enormous and increasing pressure on the world’s resources, whether in terms of climate change, natural resources, biodiversity, or the wealth gap between North and South. Member States must take action today in order to preserve for tomorrow the delicate economic, social and environmental balance governing the globe. Europe’s future can only be seen in this global context.

Action on these issues cannot be confined to the Union alone. Sustainability remains a global challenge. This requires an integrated approach and reflects the fact that with globalisation and increasing interdependence, the EU can only deliver fully on its key internal priorities if it succeeds at the same time on the world scene.

The European Union's successful approach to sustainable development depends on the achievement of the following three goals: first by setting a broad vision of what is sustainable. Secondly, the EU should seek to improve the way in which we make policies, focusing on improving policy coherence and making people aware of possible trade-offs between contradictory objectives so that informed policy-decisions can be taken. Third, it addresses a limited number of trends that are clearly not sustainable, such as the issues of climate change and energy use, threats to public health, poverty and social exclusion, ageing societies, management of natural resources and land use and transport.

Understanding the importance of and the interrelationship between these three pillars of sustainable development is crucial.

The Precautionary Principle and Future Generations

The precautionary principle's main objective is to offer a guideline for risk management. This principle was enshrined in the 1992 Rio Conference in its principle 15, which states that: "where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Environmental protection requirements must be integrated into the definition and implementation of other policies." The Maastricht Treaty gives specific indication on the Community policy on the environment, by saying that "It shall be based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay." The European Community officially endorsed the precautionary principle in Article 174 of the EC Treaty.

The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU. It is clear that the applicability of the precautionary principle is not limited only to environmental risks.

This principle can alternately be applied in an active sense, through the concept of "preventative anticipation", or a willingness to take action in advance of scientific proof of evidence of the need for the proposed action on the grounds that further delay will prove ultimately most costly to society and nature, and, in the longer term, selfish and unfair to future generations. The precautionary approach ought to be central to current thinking and policy-making regarding health, safety and environmental issues for the benefit of both present and future generations. The precautionary principle embodies more than any other legal principle the spirit of sustainability. It provides legal tools to

restrict potential risk exposure to future generations. It also provides incentives for developing less harmful substitutes and less pervasive waste or emissions.

The importance given to the precautionary principle by EU institutions and policy-makers at all levels needs to be institutionalised and backed by an appropriate mechanism. Since this principle is mainly concerned with the future impact of today's decisions and policies, time is ripe enough to set up a mechanism within EU institutions to speak on behalf of future generations. Concern for posterity is already reflected in many principles and values which are endorsed in the European Constitution. What remains to be done is now to take the courageous step to give a voice to the voiceless in EU institutions.

Transmitting Values to Future Generations

The EU is sometimes mistakenly identified as only a geographical entity or common market, established to enhance intra-European economic integration. While the EU is certainly both of these, it is in reality much more. Since its inception in the 1950s on through today, the EU has been a community based on the shared values that guide Member States and their citizens as they live, work, and interact with each other, with their neighbours, and with the wider world. In fact, one can say that the Constitutional Treaty is truly a treaty of values. Over the past half-century, the EU has enlarged its membership from six Member States to 26. But while the EU assumed new responsibilities in a range of policy areas, the fundamental values embraced by its founding fathers have not changed.

The EU which is a knowledge society requires understanding of values which was its most precious characteristic. The present generation has the responsibility to transmit these values to posterity. Europe must nurture its values and ensure that that education is designed in such a way as to transmit these values to coming generations. For example, tolerance, respect and generosity must be central to educational systems. They are essential both to promote peoples living together in the European Union and to their acting in solidarity with the rest of the world.

Future generations have a right to live in dignity and to enjoy freedom, peace, security, justice, democracy, equity and respect of human rights. They need to voice their concern and interest in order to keep the moral consciousness and conscientiousness of the current generation to continue to preserve these values and to transmit them from one generation to another in order to be enjoyed by all posterity. The setting up of a mechanism where future generations will be now represented in our discussions on the importance and safeguarding of these fundamental values would be a step in the right direction.

Founding the EU on Intergenerational Solidarity and Justice

It is a well known fact that nature's resources are limited and will be needed also by future generations. Environmental deterioration, too, will limit the possibilities for future generations to attain an acceptable quality of life. The yet-unvoiced claims of future

generations must therefore be taken into account in the distribution of the world's resources.

Solidarity is the soul of the European Union. In its draft constitution, the European Convention has established solidarity as a key value. Solidarity means to provide assistance to others out of an awareness of being linked to others. This belonging together is not based solely on economic or geographical factors. Values and culture are at the heart of Europe's sense of unity.

The Charter of Fundamental Rights of the Union linked the concern for sustainable development with the principle of solidarity. Sustainable development cannot be implemented with a sense of intra- and intergenerational solidarity. As art. II-97 states: "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". This principle reflects a sense of solidarity with future generations. However, account must also be taken of solidarity to all humankind by its contribution to the sustainable development of the whole of humanity.

The European Union has obligations of solidarity among member states. The Union has responsibility to eliminate the inhuman differences in living standards which currently exist within Europe. As a power influencing the world economy, the European Union has universal obligations. The EU has a duty towards the poorest countries and regions in the world.

Human beings have differed greatly in the accounts they have given of the concept of 'justice'. They have spelt out the meanings and the practical implications of such phrases as 'giving everyone his due' in many different ways. But they have always agreed on a number of basic points.

The first is that justice is essential to human conviviality; secondly, that justice is not merely a matter concerning the relations between one individual and another; in traditional terms, "commutative justice". It also implies duties of individual towards the community or communities to which they belong; in traditional terms, "social justice". Thirdly, the concept of justice is logically connected with the concepts of "equality" and "proportion"; hence the requirement that an individual contribute to the welfare of the community has particular relevance to the question of proper conduct towards the needier and weaker members of humankind.

Social justice refers both to the duty of every member to contribute to the common good of the community, and to the responsibility of the community to all its members, with particular regard to those in a disadvantaged situation. Social justice demands the respect of everyone's right to share in the common good.

Social justice appeals to the principle that a community has the moral duty to give particular help to its handicapped or weaker members - not in terms of 'desert' or 'reward' for their

contribution to the productive process, but simply because of human solidarity. Future generations can also be seen as 'handicapped', and the claim to reserve resources for their quality of life is based on similar ground to that on which it is argued that the State is bound in justice to make welfare provisions for the aged, the physically and mentally handicapped, and so on.

The resources of the earth belong to all generations. No country, continent or generation has an exclusive right to the natural resources of the earth. These resources have been handed over from past generations; it is therefore our responsibility to pass them on in good and enhanced condition to posterity. We have an obligation grounded on social justice to share the common heritage with all the present population as well as with future generations. Social justice forbids any generation to exclude other generations from a fair share in the benefits of the common heritage of humankind. In other words, social justice demands a sense of solidarity with the whole family of humankind. We have an obligation to regulate our current consumption in order to share our resources with the poor and with unborn generations.

Future Generations' Participation in EU's Governance

It is a fact that economic, technological, cultural, environmental and political changes are taking place so rapidly that it is very difficult to predict what kind of world we shall have in 10 or 20 years' time, let alone in the far-distant future. Nonetheless, we must prepare for the future and try to find solutions to problems at as early a stage as possible. Otherwise we shall merely be unable to cope with the new challenges. Prediction, preparation and taking matters in hand are virtuous things. We must grasp the helm of the future. This is a goal which all State members of the EU had adopted to ensure success in the coming millennium.

At the Millennium Summit General Assembly of the United Nations in September 2000, world leaders, including EU Head of States, committed themselves to the Millennium Declaration of the United Nations that sets key objectives for the 21st century. The Declaration embodies an unprecedented consensus, outlining a common vision of peace and security, development and poverty eradication, securing human rights, democracy and good governance. While controversies range as to which of these objectives must come first or which is more important, most would agree that all of these elements are needed, that none of these factors would be effective without improved 'governance' which shapes how resources are used and who has a say in decision-making.

It is evident that good governance is essential for successful development. Governance is defined as the manner in which power is exercised in the management of a country's affairs at all levels. It comprises mechanisms, processes and institutions, through which citizens and groups articulate their interest, exercise their legal rights, meet their obligations and mediate their differences.

Some critics claim that the concept of 'good governance' is too narrow for the purpose of achieving the goals of the Millennium Declaration. They claim that the concept of

‘humane governance’ or ‘democratic governance’ is more adequate because it is more people oriented, focused on human rights and global security, and more suitable to redress ‘inhumane governance’ reflected in five major problems, namely, the failure to meet basic human needs; discrimination and denial of human rights to women, indigenous people and others; failure to protect the environment and to safeguard the interests of future generations, lack of progress in abolishing war; and failure to achieve the spread of ‘transnational democracy’. Humane governance is a set of social, political, economic and cultural arrangements that is committed to making rapid progress in these areas.

It is interesting to note that the concept of humane or democratic governance maintains that the needs of future generations should be reflected in current policies. As Amartya Sen has stated, democracy is one of the great values that the current generation will hand over to future generations. However, posterity will appreciate more and more our democratic heritage that will be handed over them if we give them the opportunity to be represented now in our institutions of governance in order to voice their opinions and concerns about decisions and policies that will affect their wellbeing. Avoiding short-term perspectives in policy-making is a key challenge for governance. Globalisation demands governance. The problems are interrelated and cannot be dealt with in isolation, even by the most powerful countries. However, since our relationships extend to coming generations, they also have the right to participate in the governance of EU institutions and local governments because our actions have far-reaching consequences into the future. All relevant stakeholders, including future generations, should be involved in managing the development process.

Extending the Role of the European Ombudsman

Our responsibilities towards future generations have already been endorsed in many treaties, resolutions and declarations of the European Union. However, recognition of our responsibilities to far-distant unborn generations alone is not enough! There must be an implementation of this moral principle. Time is now ripe enough to translate words into concrete actions. The appointment of a "Guardian" to alert the European Community of the threats to the well-being of future generations would be the most appropriate step in the right direction to safeguard the quality of future life.

It is a long-established tradition in almost all civilised societies of the world that persons who are declared legally incompetent, such as minors and the mentally infirm, are protected by a set of institutions from those who might either advertently or inadvertently exploit their disadvantage. For instance, some other individual or group is charged with the responsibility of acting as proxy, or an advocate, on behalf of the person whose ability to represent his or her own interests is non-existent or impaired.

In this respect 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 contemporary also gives credence to the idea of a proxy for future generations where contemplated policies could impose substantial long-term risks.

One of the institutions of the European Union which could take the role of a ‘Guardian’ for future generations is the European Ombudsman which was created by the Maastricht Treaty in 1992. Its role is to defend the rights and interests of current generations in European institutions. The basic philosophy underlying the mandate of this institution could be reinterpreted to extend its mandate in time to include in its mechanism the defense of the rights and interests of future generations.

The European Parliament elected the first European Ombudsman in 1995. The Charter of Fundamental Rights of the Union, in art II-103, states that any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Its role is to investigate and report on complaints about maladministration in the activities of institutions and bodies of the European Union, such as the European Commission, the Council of the European Union and the European Parliament. Its role is also the promotion of good governance in general. The Ombudsman usually conducts inquiries on the basis of complaints but can also launch inquiries on its own initiative. The Ombudsman has wide powers of investigation. The Community institutions and bodies must supply him with the information he requests and give him access to the files concerned. The Member States must also provide him with information that may help to clarify instances of maladministration by the Community institutions and bodies. If the case is not resolved satisfactorily during the course of the inquiries, the Ombudsman will try to find a friendly solution which puts right the case of maladministration and satisfies the complainant.

Many of the complaints lodged with the European Ombudsman concern administrative delay, lack of transparency or refusal of access to information. Some concern work relations between the institutions and their agents, recruitment of staff and the running of competitions. Others are related to contractual relations between the institutions and private firms, for example in case of abrupt termination of a contract.

The Ombudsman cannot deal with complaints concerning national, regional or local administrations of the member States. Maladministration means poor or failed administration. This occurs if an institution fails to act in accordance with the law, fails to respect the principles of good administration, or if it violates human rights. Some examples are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information and unnecessary delay.

The European Ombudsman could be transformed to include in its mandate the protection of the rights and interests of future generations. From investigating only complaints of maladjustments in the institutions and bodies of the European Union presented by current citizens, the Ombudsman could also extend its role to protect the ‘common heritage’ of Europeans. With this extended mandate, this European institution will act as the moral

conscience and the 'guardian' or trustee of the future generations. This European institution should hold in trust the common heritage and common interests of the Europeans, mainly: environment, sea, rights of peoples, human rights, and take charge of the implementation of the decisions adopted and directions taken in these areas by other European institutions. The dynamic transformation of the mandate of the European Ombudsman is stimulated by a world vision which no longer concentrates solely on present-day situations but transcends self-interest and examines issues beyond our immediate human condition. The notion of an Ombudsman for future generations informs the logic necessary for wider parameters in the assessment of the here and now for it brings the notions of space and time together. It is a measure of the inter-generation solidarity for which we all strive in the creation of a truly dignified humanity.

Thus, I believe that the philosophical and moral bases of the European Ombudsman are very broad, and that the proposed extension of its competence would be perfectly in line with these bases. It would be an opportunity to respond to novel demands. The authorised person or an organ ("Guardian") appointed in the institution of the European Ombudsman to represent future generations at various EU fora, particularly would be entitled:

- to appear before institutions whose decisions could significantly affect the future of the species to argue the case on their behalf, hence bringing out the long-term implications of proposed action and presenting alternatives. His role would not be to decide, but to promote enlightened decisions. Thus, the Guardian would have the power of advocacy, to plead for future generations. He would only have the right to put forward arguments on behalf of future generations.
- to introduce a new dimension - that of the *time* horizon - into the resolution of issues traditionally confined to the here and now. The greatest danger to future generations is that living resources essential for human survival and sustainable development are increasingly being destroyed and depleted. Future generations are seriously threatened to inherit a poor quality of life. The Guardian would face the burden of opposing the firmly established attitude of our civilization in discounting the future.

The appointment of a Guardian would be a true achievement for the interests of those generations yet to be born in the European Union!