



# Effective multilateralism for an intergenerational covenant: Via universal rights or national interests?

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## ABSTRACT

For more than three decades, scholars and global policy making circles have been discussing intra- and intergenerational global solidarity, and the need for an institution to ensure a voice for future generations in contemporary global policy making. With the announced 2024 Summit for Future Generations expected to adopt a *Pact for Future Generations* and create the position of a UN Envoy for Future Generations, these efforts seem finally close to fruition. This article discusses these recent evolutions in a theoretical international legal perspective, noting that an international constitutionalist perspective permeating the *Our Common Future* (1987) but especially the *Intergenerational Solidarity and the Needs of Future Generations* (2013) report of the Secretary General seems to have been replaced with a more nuanced approach, with an implicit positivist underpinning, in *Our Common Agenda* (2021). After explaining why positivism works better than constitutionalism in the intergenerational project, the article proposes that under the positivist paradigm, the announced 2024 *Pact* does not have to be the end of the road in operationalising intergenerational justice. National constitutional and institutional advancements may in the end lead to an intergenerational covenant, a concept also sketched out in this article.

## 1. Introduction

The UN General Assembly's decision (UNGA, 2022) to convene a Summit of Future Generations in New York, in September 2024, may well represent the fruition of four decades of efforts to create a global institution to defend the rights of future generations. The summit will adopt a *Pact for Future Generations* (UNGA, 2022). Further, the Secretary General has confirmed that he will appoint a UN Special Envoy for Future Generations (UN Secretary General, 2021; UN Secretary General, 2023).

These are remarkable events, given that the need for a global institution to defend the rights of future generations has been debated since the 1980s. The Experts Group on Environmental Law of the World Commission on Environment and Development recommended in 1986 the appointment of an international ombudsman charged with “representing and protecting the interests of future generations” (Munro & Lammers, 1987: 16). In her influential work on generational thinking, Professor Brown Weiss argued that the world needs ombudsmen “responsible for ensuring that the planetary obligations and rights are observed, for responding to complaints, and for alerting communities to threats to the conservation of our planetary heritage” (Brown Weiss, 1989: 124). Shortly after, Malta submitted, in a preparatory meeting of the United Nations Conference on Environment and Development (Rio de Janeiro), a proposal to create a Guardian for future generations, arguing that “[t]he appointment of an advocate to alert the international community of

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threats to the well-being of future generations would be the most concrete step in the right direction to safeguard the disadvantaged members of the human species” (Preparatory Committee, 1992). The proposal however did not make it into Agenda 21 and the Rio Declaration on Environment and Development, the official outcomes of the Rio Conference. The Rio+20 Conference, held in 2012, also generated much debate around the need for an institution to defend the rights of future generations, with numerous proposals and submissions coming from NGOs, policy makers and scholars (Ward, 2012; Horn, 2013; Anstee-Wedderburn, 2014). Again, none of these proposals made it into *The Future We Want*, the official outcome of Rio+20.

While *The Future We Want* did not make any reference to a representative of future generations, it did invite the UN Secretary General to submit a report on “promoting intergenerational solidarity for the achievement of sustainable development” (UNGA, 2012: [86]). The ensuing report proposed the appointment of a High Commissioner for Future Generations, who would advocate for “the moral imperative of leaving behind a healthy world in which future generations will live out their lives” (UN Secretary General, 2013: [56]). This new institution would also undertake research and offer advice to the UN and to states (UN Secretary General, 2013: [63]), but no reports from the member states would have been required. Moreover, the design of such global representative for future generations was explicitly contrasted with the case for national institutions for future generations, acknowledging “the political dynamics, responsibilities and powers of national institutions” (UN Secretary General, 2013: [58]).

However, until the publication of *Our Common Agenda* in 2021, the UN had shown little appetite for creating such an institution, even in the minimal form envisaged by the Secretary General in 2013. Similarly, proposals put forward for a Global Convention on Future Generations (Gardiner, 2014) or a World Court of Generations (Tonn, 2018) have not generated traction. In contrast, national institutions for future generations (IFGs) continued to be created (e.g., Cordonier Segger et al., 2021; Linehan & Lawrence, 2021). Although the life of some of these national IFGs has been short, their future appears promising (e.g., Smith, 2019; Boston, 2021; Radavoi & Rayman-Bacchus, 2021). With the recent renewed impetus at the UN built around the concept of “effective multilateralism” (UN Secretary General, 2021; UNGA, 2022; UN Secretary General, 2023), the progress at national level is certainly relevant, since the states that already created institutions for the future will bring to the table both their experience and their interests in preserving the interests of their future generations.

This essay has two complementary aims, one explanatory and one propositional, involving the social and political analysis of the treatment of posterity, methodologically similar to Glynos and Howarth (2007) distinction ‘between questions of fact and questions of critique and normative evaluation’. The explanatory argument (Section 2) locates the decades of failure to institutionalise concerns for future generations at a global level in the weakness of constitutionalism as a theory of international law. The new arguments put forward in *Our Common Agenda* (2021), involving ‘networked’ and ‘inclusive’ multilateralism, suggests the same conceptual weakness, being manifestations of institutional constitutionalism, and therefore unlikely to adequately deliver the Secretary General’s (UN Secretary General, 2021: 68 [107]) anticipated ‘effective’ multilateralism.

Our propositional endeavour (Section 3) argues that to be *effective*, multilateralism needs to be built on the self-interest of states. To this end we explore harnessing the self-interest of individual states towards the adoption of an intergenerational treaty, conceiving of its manifestation in three senses: [1] that “effective multilateralism” would lead individual states to commit to protecting their future generations such that all parties to the treaty commit to protecting their own future generations; [2] that the creation of national IFGs, over time, could diffuse beyond the borders of the individual state, bringing gradual and widespread acceptance of IFGs and accompanying institutional change; and [3] that the adoption by the 2024 Summit of an “action-oriented *A Pact for the Future* (UNGA, 2022:2), could initiate ‘meaningful change’ of the type envisaged for example by the United Cities and Local Governments (UCLG) (UCLG, 2022). We argue that such undertaking should be grounded in a positivist approach to international law, seeing international law as an expression of the will and agreement of states. This might create the premise for an intergenerational convention following the human rights model but expressed in not only spatial, but also temporal terms. Thus, while the concept of human rights involves *intragenerational* universality, an *intergenerational* convention extends this formula to include posterity.

It is beyond the scope of this paper to examine the controversies surrounding the concepts of intergenerational equity and justice, such as the nature and justification of our responsibilities to people in the distant future, including contractual, stewardship, common heritage of humankind, human rights theories, needs theories.

## 2. Constitutionalism and global intergenerational justice

### 2.1. The limits of solidarity, intra- and inter-generational

In pressing the importance of promoting intergenerational solidarity for the achievement of sustainable development, the Secretary General’s 2013 report noted that “many of us tend to care most deeply for those closest to us in time and space, that is, our immediate family, friends and those from groups with which we identify. [but] globalization and the information and communications revolution have tended to shrink space in recent decades, arguably extending our sphere of strong empathy” (Secretary General, 2013: [13]). From this optimistic account of global *intragenerational* solidarity, the report builds the case for global *intergenerational* solidarity based on sameness, showing that solidarity bounds us humans all together regardless of where and when we may have been born. The report mentions several international instruments as further manifestations of intergenerational solidarity (the United Nations Framework Convention on Climate Change (1992) and the Convention on Biological Diversity (1992), among many others). The report also points to long established cultural evidence of intergenerational solidarity, as well as a strengthening commitment to safeguarding future generational rights in the form of numerous policies alongside the Sustainable Development Goals (UN Secretary General, 2013: [2]). Still, the report acknowledges that a heightened concern for intergenerational solidarity is relatively new in legal and political terms, and examines various institutional options for translating the claimed solidarity into concrete measures for giving a voice to

future people. The report was however the last important high-level political attempt to keep the global IFG on the UN's agenda, until the recent push for the 2024 *Pact for Future Generations*. The momentum for the creation of an ombudsperson or a high commissioner for future generations at the UN seemed to have dissipated for almost a decade following the 2013 report, despite strong support for national IFGs, shown for example in the form of [Budapest Memorandum \(2014\)](#) alongside the work of numerous scholars (e.g., [Boston \(2017\)](#); [Tonn \(2018\)](#); [Smith \(2019\)](#)).

The Secretary General's 2013 report had suggested that distinguishing between intra- and inter-generational solidarity is unhelpful, on the supposition that all generations care for each other, regardless of time and place ([UN Secretary General, 2013: \[8\]](#)). This supposition of sameness in the understanding of intra- and inter-generational solidarity was attractive but problematical because it suggests the two phenomena belong to the same category. This is not necessarily the case here; as [Klein \(2014\)](#) argues, there is a sharp distinction between *feeling* and *evidence* (of sameness), but the report offers no evidence of sensitivity to such distinction. Sameness implies the notion of a universal community exemplified by [Fine \(2018\)](#) cosmopolitan view of humanity. Sameness also presupposes an international community with an identity imagined and enacted through a constitutive function ([Addis, 2009](#)), but this ignores controversies around constitutional pluralism (e.g., [Loughlin, 2014](#); [Kelemen & Pech, 2019](#)).

Going further, the report's understanding of solidarity is not articulated, which is problematical. It seems to overlap with [Fine \(2018\)](#) assessment of cosmopolitan solidarity, with recognition of individual rights being central for both. However, whereas Fine identifies compassion alongside rights, the Secretary General highlights "moral intuition", observing that "many of us tend to care most deeply for those closest to us in time and space, that is, our immediate family, friends and those from groups with which we identify" ([UN Secretary General, 2013: \[13\]](#)).

Both the Secretary General and other advocates of a global representative for future generations may be overly optimistic about the extent of global solidarity, both intra- and inter-generational. Evidence abounds highlighting the stubborn gap between pious commitment to future generations' rights and interests and practical action, evidenced in the accelerating degradation of ecological conditions and resources ([McMaster, 2008](#)) and growing inequality ([UNDESA, 2020](#)). Even if commitment to intergenerational solidarity is in motion, however slowly, and people of the present do sincerely wish to defend the rights and interests of those in the future, the creation of an IFG at the UN would have little chance of success because rights-based (as opposed to interest-based) decision-making in international law is rare (e.g., [Higgins, 1995](#); [Chen, 2015](#)). Advocates of solidarity as a mechanism for protecting future generations, who would draw on a rights-based approach, overlook that international law is largely subject to national interests, and as [Goldsmith and Posner \(2005\)](#) note, "a part of international politics and not a way of eliminating it".

In another reading of solidarity, loyalty is critical, as the pursuit of shared interests and an expectation of mutual support. Building interpersonal connectedness or loyalty is a uniquely human drive, however loyalty is graduated. [Oldenquist \(1982\)](#) for example argues that individual loyalty is nested, strongest towards close family, moving outwards through a progressively weak sense of attachment with those for whom reciprocal relations feel weaker, typically some community, and finally all members of humanity.

In present times of cultural globalisation, [Habermas \(2001\)](#) sees solidarity as reflexive, discursive, non-naïve, based on shared ideals and common interests (e.g., safeguarding the global commons) rather than on affectiveness. One of the main advocates of democratic, civic solidarity, [Habermas \(2001\)](#) shows that citizens develop a sense of attachment to fellow citizens via participation in civic-democratic practices like voting, deliberating on political matters, or protesting. These bonds extend transnationally, as "the artificial conditions in which national consciousness arose argue against the defeatist assumption that a form of civic solidarity amongst strangers can only be generated within the confines of the nation" ([Habermas, 2001: 102](#)). However, Habermas, like other theorists of modern solidarity (e.g., [Stjernø, 2015](#)), seem to base their arguments on a homogenised and essentialised view of the European experience ([Conversi, 2013](#)), taking this to be generalisable to all nations, ignoring historical, religious, political, cultural and other differences between proximate states and with further regions of the world (e.g., [Makarychev, 2018](#)). Further, as [Birnbacher \(2009\)](#) observes, "[m]oral emotions such as love of humanity, a sense of justice and international solidarity are readily affirmed in the abstract but rarely lived in the concrete". With direct reference to Habermas's theory of solidarity, [Lesch \(2019\)](#) argues that "[w]hile shared discourse cultivates a basic level of tolerance, it fails to inspire moral commitment and motivation. It lacks the power to transport us beyond our narrow interests, be it to redistribute resources, admit refugees, or help our neighbours".

Transnational solidarity, in other words, is most often declared but not lived. Russia's invasion of Ukraine in early 2022 provides a contemporary example of how solidarity is subject to national interests. While most Western countries and individuals rushed with help of all sorts, China and India, totalling more than a quarter of the world population, have remained silent. Even Western states struggle to remain united, as true solidarity leads to unconditional political action on the terms of the one in need. While the leaders of Ukraine seek immediate military and political support, Western governments initially responded with economic sanctions against Russian entities, supplying so-called defensive arms, hosting millions of Ukrainian refugees, verbal manifestations of sympathy for the victim of the aggression, and condemnation of the (Russian) aggressor. Western nations have been unevenly hesitant in providing so-called offensive military armaments.

Transnational, let alone universal intragenerational solidarity, is therefore a weak foundation for intergenerational solidarity. If we are not willing to intervene on behalf of desperate people of the present, there seems little hope of us acting on behalf of people of the distant future, unless we feel the pull of emotional bonds (filial, friendship, piety). Indeed, as Oldenquist's model of concentric circles show, intergenerational solidarity is selective, prioritising ties with those we consider to be family and members of communities to which we belong or feel an emotional bond. [Passmore \(1974\)](#) similarly sees our potential benevolence to future generations as a 'chain of love', comprising the love we have for our direct descendants, who in turn have love for their own offspring, and so on into the distant future. [De-Shalit \(1995\)](#) proposes a communitarian theory of intergenerational justice, based on a conception of human beings as seeking a moral environment transcending self-interest. De-Shalit suggests the concept of the community be extended temporally rather than spatially, as being 'transgenerational' (De-Shalit, 1995: 16). Further, [Partridge \(1981\)](#) imagines that "well-functioning

human beings identify with, and seek to further, the well-being, preservation and endurance of communities, locations, causes, artefacts, institutions, ideals. outside themselves and that they hope will flourish beyond their lifetimes". Thompson (2009) equally conceives individuals as selves with interests and desires that transcend their lifetimes in both temporal directions, as they naturally desire to fulfil the ideals of their ancestors, and to further perpetuate communities and ideals, in a generational continuum. Finally, Wade-Benzoni (2006) shows that mortality cues motivate humans to connect with, and be generous towards, what they perceive as enduring social entities (family, church, nation), pursuing a subconscious need of symbolic immortality within those entities.

In sum, there are grounds to suggest there exists a latent communitarian (local, national) but less so global solidarity with future generations of the type claimed by the Secretary General. Furthermore, even if communitarian solidarity exists as fuel for action (say, widespread popular activist movements petition the United Nations to act to protect the rights of future generations), action would not necessarily follow.

## 2.2. The limits of international constitutionalism

Constitutionalism advocates the application of constitutionalist principles in international law, in order to improve effectiveness, and justice and fairness in the operation of international law, similar to the role of constitutionalist principles like the rule of law in domestic jurisdictions (e.g., Peters, 2009; Kleinlein, 2012; Klabbers, 2019). Just as domestic constitutions are built on the common values of a certain group, international constitutionalism is inspired by a few basic values held in common by all humanity. International constitutionalism is in a binary relationship with domestic constitutionalism, extracting its principles from what is common to constitutions throughout the world, but also imposing on these constitutions certain principles agreed upon by all governments as universal. The corollary of this binary relationship is that the state is no longer the central actor (as it is in positivism and in some realist theories) but mostly an instrument of the international community in implementing its core legal values, some of which are now enshrined in international human rights law (Tomuschat, 1999). That is, international constitutionalism is to a large extent an epitome of naturalism, the theory claiming that international law is, or should be, built on what is right. Important for our argument, what counts as right has been proposed by Klabbers (2017) as being rooted in Aristotelian ethics, especially the virtue of empathy.

If international constitutionalism were an 'ontological reality', following Klabbers (2019) reading of De Wet (2006), in that there existed structural and substantive norms, then the creation of an institution for future generations at the United Nations would be straightforward. Institutionalization of intergenerational solidarity would be achievable along the lines suggested by Gardiner (2014), one proponent of a convention for future generations:

[C]oncerned individuals, interested community groups, national governments, and transnational organizations, should initiate a call for a global constitutional convention [for] future generations. [It comprises] two components. The first is procedural. in the form of a "call to action", [as] an attempt to engage a range of actors, to accept a set of responsibilities, and, [suggests] how [they should] discharge those responsibilities. The second component is substantive. [to] push for the creation of a constitutional convention at the global level, to pave the way for an overall constitutional system that appropriately embodies intergenerational concern.

However, international constitutionalism is an ontological reality of international law only in some very limited manifestations, mostly related to the roles of the United Nations and its organs as vaguely similar to national structures: the United Nations Charter as a *de facto* constitution of the international order, the UN General Assembly as a 'world parliament', and so on (Fassbender, 1998). Other empirically observable markers of international constitutionalism are the limitations to state sovereignty meant to accommodate the protection of human rights, and the legalisation of international dispute settlement, with many courts and tribunals now having quasi-compulsory jurisdiction (Peters, 2009).

These instances only reveal limited values and principles that operate in the life of international intercourse, therefore international constitutionalism seen as an ontological reality has numerous critics (e.g., Klabbers, Peters, & Ulfstein, 2009; Krisch, 2011; Kleinlein, 2012). Klabbers (2019) concedes that international constitutionalism may have achieved some success in the first decade of the 21st century, as an ideological counterbalance to aggressive neoliberal globalisation, but now is in retreat as it is seen as no longer necessary since globalisation appears to have lost its momentum. Interestingly, Klabbers' temporal localisation of constitutionalism coincides with the heydays of the intergenerational ombudsperson debate. Krisch (2011) more directly rejects international constitutionalism as idealism, noting that the world is highly pluralist, therefore in need of political solutions to conflicting values and norms, rather than of utopian adherence to allegedly universal values. Other scholars similarly argue that international constitutionalism is more 'a frame of mind' (Klabbers et al., 2009: 10); 'a perspective. or at least a vision' (Kleinlein, 2012: 80); that is, a desideratum rather than an ontological reality. In a global order of pluralism and epistemological scepticism (Levine & McCourt, 2018), reading the UN Charter as a world 'constitution' seems anachronistic and increasingly out of place, even as it continues to help define human rights imperatives and desiderata.

In short, international constitutionalism, based on commonly held national values and interests, has become less valued in a now more pluralist world. Accordingly, sincerity of intergenerational empathy (that people of the present care about posterity rights) will not suffice to realise protections for future people. Rather, a critical mass of states must agree on the project of a global (at the UN), or at least transnational (via a multilateral treaty) institution for future generations. The presumption of solidarity is embedded in *Our Common Agenda* and articulated in its formulation of networked and inclusive multilateralism. Both seem aligned with international constitutionalism involving appropriate procedural and substantive components:

Multilateralism that is more *networked* draws together existing institutional capacities, overcoming fragmentation to ensure all are working together towards a common goal. It goes beyond traditional silos, ...and enhances coordination between regional and global actors and action. Networks ...[allow] for variable participation by a wide range of actors...[and] groups, growing over time (UN Secretary General, 2021: [105]).

...

More *inclusive* multilateralism is marked by a genuine possibility for States from all regions and of all sizes to engage in collective action... It also means inclusion of a diverse range of voices beyond States. including... subnational authorities (cities and local and regional governments), civil society [organisations], and grass roots movements, (UN Secretary-General, 2021: [106]).

As *Our Common Agenda* argues, these are necessary mechanisms, “anchored within the United Nations” (UN Secretary-General, 2021: 4), [but] “[u]ltimately multilateralism [needs to be] more effective in delivering on its promises”. (UN Secretary-General, 2021: 68 [107]). The Secretary General also highlights the essential role of funding and financing.

Arguably this call for international solidarity, while recognising the force of globalising expectations in shaping and helping enforce compliance with international norms, overlooks the fact that the world order is to some extent anarchical, as evidenced by including decolonisation and emerging nationalism, state hegemonic influence including on multilateral organisations. Modern nation states have become more numerous, more confident and strident in projecting their own values and interests, and likely to prioritise concern for their own future generations. Given this turn, achieving any commitment to IFGs and perhaps to an international treaty (via effective multilateralism) suggests the need for a political strategy based on building a critical mass among consenting and self-interested states.

### 3. Positivism and intergenerational justice

#### 3.1. National protection of future generations

From an international legal positivist perspective, initiatives gain international traction when states either want them or have no objection to them. Classical international legal positivism that emerged in the 19th century grounded the power of law in that it is “made by man and, by extension, human collectivities called states” (Onuf, 1982: 2). Given state centrism in the international order, positivism further assume states to be the only legitimate rule-makers, who act via signing treaties and creating customary law. No state however has so far raised any concrete initiative to protect future generations in the universal understanding of the concept, despite encouragement from the UN Secretary General in the (2013) Report.

At national level however, political action in numerous jurisdictions indicate increasing concern with the fate of future generations. From only a handful at the end of the 20th century, now 41% of the world’s constitutions include either general clauses speaking of future generations, or at least specific clauses on ecological or financial intergenerational justice (Araújo & Koessler, 2021: 4). Further, numerous constitutions entrench institutions which, although not directly concerned with futurity, could easily take on, following constitutional amendments, additional roles in support of future generational interests, such as Ombudspersons and Human Rights Committees (Tonn, 2021). Finally, non-constitutionally entrenched IFGs have been created in Finland, Hungary, Germany, Tunisia, Wales (Boston, 2017), and the trend seems likely to continue. In 2022, the Wellbeing of Future Generations Bill, which prescribes the creation of the Future Generations Commission of the United Kingdom, passed the House of Lords, and at the time of writing was at the stage of 2nd reading in the House of Commons. The proliferation of national institutions for future generations is explicitly acknowledged by the UN Secretary-General (2023):13 as one reason for appointing an Envoy for Future Generations “to serve as a voice for future generations in the United Nations system. This proposal is not new, but (.) it is one whose time has now come, with many precedents at the national level (.)”. Admittedly, the precedents referred to by the Secretary-General have not always been successful, for reasons related inter alia to their overly ambitious design (Radavoi & Rayman-Bacchus, 2021). However, there is an increased concern at national level with the fate of future generations, which will likely be more significant with the announced UN Pact for Future Generations.

Factors other than a particular concern with futurity of the nation may be at play in the adoption of relevant law, constitutional provisions, and the creation of national IFGs. For example, trends in furthering clarity around ‘non-justiciable’ rights (social, economic, cultural) (e.g., Langford, 2009), and in our changing understanding of ‘environment’, including the nature of environmental regulation (retrospective vs prospective) and structural challenges to transforming law from mitigation to adaptation (Ruhl, 2010). Further, institutional convergence associated with globalisation (e.g., Drori, 2008; Höllerer, Walgenbach, & Drori, 2008) may suggest that some mimetic, unwitting isomorphism would help catalyse the process of spreading the IFG concept throughout jurisdictions as different as, say, the UK and Tunisia. Such catalysts however do not negate the fundamental role played, in the creation of national IFGs, by the interest of states in securing the rights of their distant successors. With or without external influences, constitutional stipulations of future generation rights and the creation of national IFGs reflects a genuine interest among many political communities for the wellbeing of their own distant successors.

Nation states are artificial constructs enabling social, political, and economic activity and interests to be pursued among largely consenting populations. Yet the borders of nation states are also equivocal (Vasquez, 1995), both practically and ethically, enhancing as well as restricting political responsibility for the ‘pursuit of a decent life’ for all (Agnew, 2008: 183; Seglow, 2005: 329). Still,



peaceful coexistence among and within today's neighbours is no guarantee of future relations. Future generations of a country may be in an ongoing territorial conflict with a neighbouring state (Vasquez, 1995), or be nervous of any neighbour seemingly in a state of chaos, poverty, or decay, that might, as Fukuyama (2004) notes, "commit human rights abuses, provoke humanitarian disasters, drive massive waves of immigration, and attack their neighbours". Sometimes these conflicts are, or become, interstate, and therefore multilevel. Even here solutions exist. For example, Nash (2019) finds ample evidence that interstate agreements have been used to resolve intrastate conflict. National governments 'should serve rather than undermine human dignity' (Agnew, 2008: 176), notwithstanding ethno-political arguments for preserving the way of life of the particular nation state (including provision of public goods) on the one hand, and the 'global moral obligations of more affluent states' towards developing states on the other hand (Bader, 2005: 342). Set against these arguments about the rights and obligations of the individual state, and assuming inter-state judicial reciprocal respect and responsiveness, each state should *ipso facto* also have an interest in the wellbeing of future generations in neighbouring countries, in the region, and ultimately in the world.

These observations suggest that it is at least likely that neighbouring states will be subject to policy diffusion processes based on an inherent process of learning from each other, but also on the force of external economic incentives (competition), on pressure from international organisations or more powerful neighbours (coercion), and on 'perceived appropriateness of policies' (emulation) (Gilardi & Wasserfallen, 2019: 1245). One result of such diffusion processes may be a predisposition of states towards entering into negotiations for an international instrument for future generations, of the type envisaged by the (UN Secretary General (2023): 15):

At the intergovernmental level, I urge Member States to take meaningful steps to safeguard the interests of future generations and to preserve their ability to effectively enjoy their human rights, drawing on the models that now exist at the national level. I invite Member States to consider two specific steps in this regard, namely: (a) to adopt a declaration making concrete the commitment to future generations; and (b) to establish a dedicated intergovernmental mechanism for debating and sharing best practices.

The pact, declaration, and intergovernmental mechanism for debating mentioned by the Secretary-General are laudable steps, and invite consideration of whether this development might progress towards the adoption, anytime soon, of a treaty on future generation. This could be promoted and built under the auspices of the United Nations at the initiative of the states that have already taken steps to protect the interests of their future generations, the same states that will likely be active in the intergovernmental mechanism mentioned in the above quote from the Secretary General.

For our purposes, insofar as the first two types of multilateralism in *Our Common Agenda* (networked and inclusive), enable (or at least do not disable) national self-interest, the treaty would most likely be an expression of effective multilateralism. In other words, while Gardiner (2014) sees the nation state's approach based on interests as problematic and instead appeals to their moral conscience, we argue that an appeal to state interests alongside minimal moral humanitarian standards is more likely to deliver a Covenant for Future Generations.

### 3.2. An intergenerational covenant for future generations?

Reflecting on the preceding arguments, an intergenerational covenant might comprise three parts: an underlying operating principle, substantive areas that will likely be covered, and the method of implementation.

The *underlying operating principle* of the Covenant for Future Generations (ICFG) would be similar to the unique design of the human rights treaties, especially the International Covenant on Social, Economic and Cultural Rights (ICESCR), where each country commits to all the other member countries to respect the rights of its own citizens and future generations, and not to interfere in the interests of other countries, receiving in exchange the respect of the international community. The only difference to the template would be the addition of a temporal dimension: each party to the Covenant commits to the other member countries to respect the rights of its own future generations. As in the international human rights treaties, the rhetoric of the ICFG would be impossible to reject without losing face in the international arena: what decent country would admit they do not care about their own futurity?

Furthermore, the formulation in Article 2 of the International Covenant on Social, Economic and Cultural Rights (ICESCR) seems suitable for adaptation into the intergenerational covenant: "to take steps, individually and through international assistance and co-operation, to the maximum of its available resources, to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means.". The formulation "to the maximum of its available resources" in particular seems fit for the intergenerational context in light of the wide differences among nations in terms of economic development potential and cultural background.

The *substantive areas* to be covered by the ICFG are those already mentioned in the constitutional provisions for future generations, in which Araújo and Koessler (2021) found that most coalesce around one of three themes. First, most constitutions articulate the need to protect the environment for future citizens, or emphasise natural resource scarcity and sustainable exploitation. Second, several constitutions provide for the protection of societal values of various sorts, from honouring a society's millenary heritage to ensuring the health and well-being of future generations. Finally, the constitutional provisions of three countries – Bhutan, Kenya, and Zimbabwe – commit to not burdening future generations with today's financial debts.

These themes, especially regarding the environment, are well covered in a multitude of international treaties, but they do not have future generations' rights as their main concern. Indeed, environmental provisions have long preceded, in constitutions, those on future generations, which may make redundant their addition to the comparatively recent future generation clauses. Still, as (Araújo and Koessler (2021): 16) observe, constitutions have begun to justify the need for environmental protection, and of natural resources,

in terms of supporting the interests of future people; a merging of interests that represents a shift in thinking about the needs of both environment and humanity within constitutions. Going further, the ICFG should more comprehensively acknowledge the intertwining of human population demands and environmental limits. Indeed, with its broader ambit and focus on the interests of distant future generations, the intergenerational covenant would provide national forums for candid and public debates about seemingly intractable challenges, including population increasing for some nations while decreasing for others (UN Population Division Report, 2022), and their implications for education and health care, sustainable consumption trends, and regional security (Radavoi, 2017; Le Page, 2022). Similar to the UN SDGs, some principles and targets could be agreed at an international level, and integrated with the inter-related matters of environmental protection, resource scarcity, overconsumption, overpopulation and so on.

The *implementation* of the intergenerational covenant should promote cooperation rather than coercion, to make the treaty appealing to states that would otherwise be concerned with a potential loss of sovereignty. Coercion via sanctions of the type encountered in cases of human rights violations, or humanitarian interventions justified under the so-called ‘responsibility to protect’, should therefore not be contemplated under the Covenant. At the same time, periodical self-reporting, incorporated in all the major human rights treaties, would be too weak a mechanism of monitoring and implementation. Instead, an effective approach would involve peer reviewing, which, in international law, is the “monitoring of a country’s performance or practices in a particular field by a team composed of civil servants and officials from ministries and agencies in the relevant policy field from other countries and organized under the auspices of an international organization” (Dimitropoulos, 2016: 277). Mindful of the strategy already outlined, of holding mutual respect among states caring for their respective citizenry, peer reviews would be implemented with the goal of helping the reviewed state comply with established standards and principles (Pagani, 2002: 15). This echoes the enthusiastic commitment made by IFGs in several states “to actively encourage and help Governments and Parliaments to begin effective reforms in governance and decision-making that would help them to better address present-day realities and future challenges” (Budapest Memorandum, 2014).

While peer reviews can face challenges like deference (in the hope that when roles change, the reviewer will similarly refrain from a critical approach) and limited follow-up enforcement mechanisms (Domínguez-Redondo & McMahon, 2014), they are nonetheless effective in facilitating evolutionary progress towards the goals agreed, as shown by the peer review mechanism employed by the OECD since its birth (Pagani, 2002). The successful implementation of mechanisms like UN Human Rights Council’s Universal Periodic Review (UPR) since 2003, and the African Peer Review Mechanism (APRM) since 2008, has also shown that peer reviews as monitoring systems are effective in reducing conflict and in minimising North-South cleavages (Domínguez-Redondo & McMahon, 2014; Dimitropoulos, 2016).

Cooperation among states and monitoring participation progress through peer review of willing states in this international convention would give states a sense of pride in being able to demonstrate commitment to their future generations, while concomitantly scrutinising what other states are doing in this regard. The mechanism would not expose low performing countries to severe external criticism, but rather to support and encouragement.

As in the human rights treaties’ system, monitoring and peer review would not necessarily ensure compliance. States may feel pressured to join the convention via the process of global-level acculturation (Goodman & Jinks, 2005), but then inadvertently fail to comply due to lack of resources. Similar to the case of human rights treaties, inability rather than unwillingness should in part account for the gap between ICFG commitment and compliance. Further, and again like the human rights treaties, the Covenant implementation will unavoidably experience variable implementation of measures specific to each of the substantive measures mentioned above.

Yet there are also aspects that differentiate the intergenerational covenant from the human rights treatise regarding compliance. Observers have noted that countries with democratic systems of governance tend to be more compliant with the human rights treaties, commonly as a corollary of liberalism, while illiberal democracies and authoritarian countries often join these treaties for strategic reasons (e.g., Hathaway, 2002; Neumayer, 2005). For the ICFG however, the type and quality of governance would not invoke unduly burdensome commitments since countries care for their futurity irrespective of these variables. A more important difference is that a country breaching a human rights treaty only offends internationally agreed norms but does not directly affect another country unless the victims of human rights abuses are foreigners. This is not the case with breaches of the intergenerational covenant. Politically destabilising a country, or massively polluting the land or a lake, have transboundary consequences that extend in time to decades or even centuries. Given this crucial difference, the ICFG could perhaps consider, at least at a later stage, mechanisms of implementation that are more confrontational than those imported from the human rights model (self-monitoring, peer monitoring, treaty body reporting etc.). A form of an arbitration system may be designed in which the future generations in one country could bring a claim against the subsequent generation in a country that consistently ignores the principles laid down in the ICFG.

#### 4. Conclusion

Since the 1980s there has been much political policy and academic debate about securing global representation of future generations, in the form of an institution under the UN umbrella. Over the last decade that interest has waned. However, the 2021 report of the UN Secretary General, espousing a turn to “effective multilateralism”, shows the United Nations revisiting the topic. Set against this background, we pursue two goals, the first evaluative, and the second propositional. The explanatory and evaluative goal argues that the failure to establish an international institution for securing future generations’ rights lies in the weakness of constitutionalism as a theory of international law.

We put forward two reasons why global constitutionalism provides a weak foundation for securing future generations’ rights. First, global solidarity, while seen by the UN Secretary General as the fuel for the operationalisation of intergenerational equity, seems

insufficient motivation to ignite action to support current generations in need, and even less so for securing the needs of people from the distant future in distant countries. Second, even if there were universal intergenerational solidarity and somehow a broad cross section of the world's population is keen on protecting future generations, this is unlikely to force action. Essentially the creation of such a global institution - in a constitutionalist reading of international law - does not necessarily stimulate change.

For now, reining constitutional pluralism leaves individual nation states to voluntarily come together to initiate and realise such a goal. National interests eclipse any sentiment of global moral obligation, and this suggests scope for a positivist approach. In a positivist understanding, international law is whatever the states can agree upon, and they normally agree on issues in their individual interest. Considering the proliferation of national institutions for future generations, one aspect of interest to nation states is the wellbeing of their own future generations; these confirm theoretical studies that intergenerational solidarity works, or can work, at national level. Recognising that maintaining such wellbeing depends in part on conditions in neighbouring states, enlightened self-interest leads states concerned with their own futurity to initiate negotiations with peers for an intergenerational covenant. Such negotiations could be effective, leading to meaningful change, if grounded in the Secretary General's argument for multilateralism that is networked and inclusive.

Moving to our propositional goal, and inspired by recent moves at the UN, suggests that a declaratory Pact for Future Generations (expected to be adopted at the 2024 Summit for Future Generations) could be at some point followed by a (binding) Intergenerational Covenant Future Generations. The article outlines the main elements of such international treaty: its underlying operating principle, its substantive areas of interest, and its implementation mechanism. The operating principle would adapt the template successfully used in the International Covenant on Social, Economic and Cultural Rights (ICESCR). Individual states would commit to securing the needs of their future generations, in exchange for other nations who are parties to the Covenant committing doing the same for their own future generations. The substantive areas of interest focus on protecting the environment for future generations, but also other aspects of sustainability like financial debt, population change or resource management. While most of these aspects already exist in other treaties and agreements, the ICFG would provide an opportunity for binding many aspects to the concerns of future generations. Implementation would require participating nation states to self-report, allow monitoring by peer states, and use a peer review system to facilitate compliance. This would necessarily imply the creation of an international institution, perhaps a world commission for future generations charged with the coordination and cooperation of national IFGs.

The ideas and arguments put forward here for a positivist reading of international law are not an attempt to replace constitutionalism, nor an attempt in anyway to define or confine emerging initiatives of individual states. Rather, we suggest, protections for future generations would be more effectively served by a panoply of measures (treaties, agreements, charters, etc) involving a diverse array of multilateral agreements. The adoption of an intergenerational treaty, as proposed here, could conceivably deliver the three manifestations noted earlier: effective multilateralism whereby participating states commit to protecting their respective future generations; diffusion beyond the borders of the individual state, bringing gradual and widespread institutional buildup; and initiate meaningful change in the sense envisaged in the United Cities and Local Governments' 2022 Pact for the Future of Humanity.

## Declaration of Competing Interest

None of the authors has any interest to declare.

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