



*“Somebody’s got to do it.”*

Artist: Robert Mankoff

# Protecting a safe climate for future generations: lessons from international courts

---

Dr. Katalin Sulyok LL.M. (Harvard)

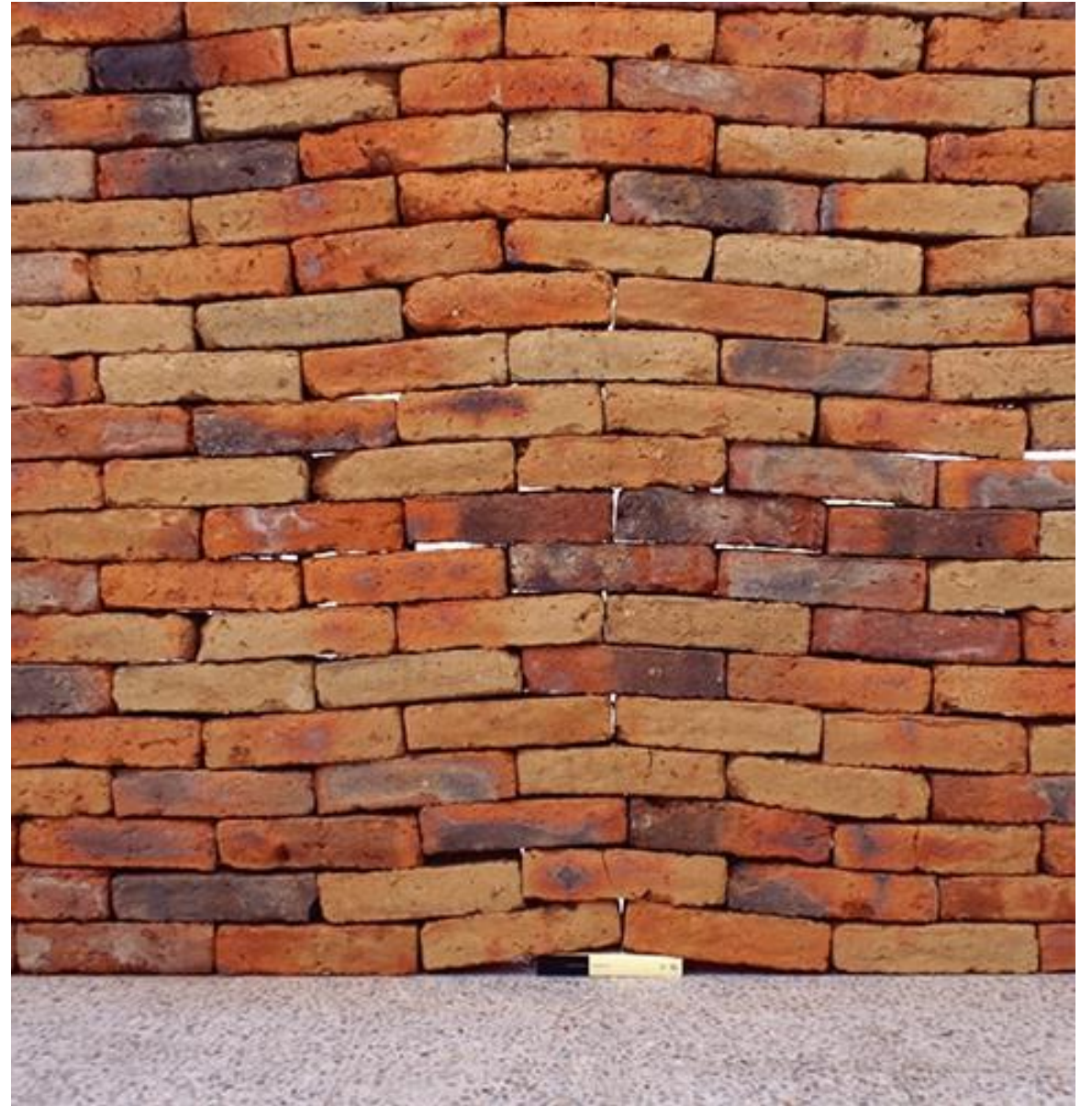
Associate Professor (ELTE University)

Chief Legal Advisor to the Hungarian Ombudsman  
for Future Generations

# Overview

---

- 1) The 'past' of future generations
- 2) The 'present' of future generations
- 3) The possible transformative impact of future generations on climate litigation



Jorge Méndez Blake: 'The Castle' installation

# 1) Future generations – In the beginnings

---

- A moral obligation
- 1972 Stockholm Declaration, Principle 2
  - The Earth's natural resources, including air, water, land, flora and fauna, and in particular representative samples of natural ecosystems, must be protected for present and future generations.
- Cca. 30 international treaties, countless soft law documents
- Neighbouring concepts
- Principle of international environmental law



*"Why should I do anything for posterity?  
What has posterity ever done for me?"*

Artist: Robert Mankoff



# Future generations before international courts: initial practice

---

- standalone, but non-justiciable principle
- „putting in context the importance of the matter” (Human Rights Council, 1984)
- Behring Sea Fur Seals Arbitration (1893) - US,
- Gabcikovo-Nagymaros (1997) - Hungary,
- Port Hope (HRC, 1984)
- Individual opinions of Judge Weeramantry, Judge Trindade

**THE  
FUTURE  
AIN'T  
WHAT IT  
USED  
TO BE**

# Future generations and int'l courts: recent practice

---

- **European Court of Human Rights:** KlimaSeniorinnen v. Switzerland (9 April 2024): violation of Art 8
- "the importance of intergenerational burden-sharing" as a fundamental principle of human rights protection against climate change
- Immediate GHG reductions required of States under Article 8 ECHR
- **Inter-American Court of Human Rights:** Advisory Opinion on Climate Change and Human Rights
- clarify the scope of State obligations towards children and 'the new generations', who are specifically vulnerable to future climate impacts;
- whereas another question addresses problems with intergenerational implications, such as the scope of the duty to prevent slow onset climate impacts



# International Court of Justice and future generations

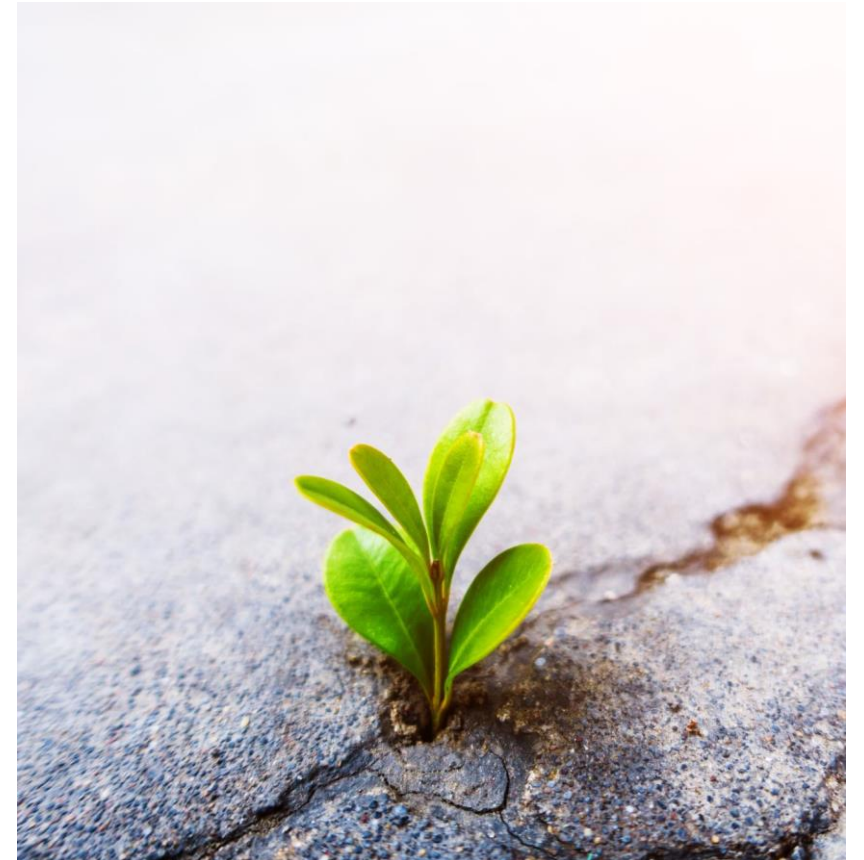
- Pending Advisory Opinion on Climate Change (requested by the UN General Assembly):
  - What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and **future generations**?
  - What are the legal consequences under these obligations for States with respect to States and affected individuals in present and **future generations**?
- Oral hearings start in December



## 2) Future generations: a revival?

---

- 2023: Maastricht Principles of the Human Rights of Future Generations
- 2024: UN Summit of the Future, Declaration on Future Generations
- 41% of constitutions refer to future generations in some form (Araújo – Koessler, 2022)
- Domestic courts started to read intergenerational equity into binding, judicially enforceable obligations
- Enforcing protection for future generations through three main types of legal norms and standards





# a) Extending human rights to the future



## SPECIAL RIGHTS-HOLDERS



Rights of children

UN Committee on the Rights of the Child: *Sacchi et al v Argentina and Others*, 2021



Rights of future generations

Colombian Supreme Court: *Future Generations v. Ministry of the Environment and Others*, 2018



Rights of indigenous peoples

UN Human Rights Committee: *Torres Strait Islanders case*

## GENERALLY APPLICABLE RIGHTS

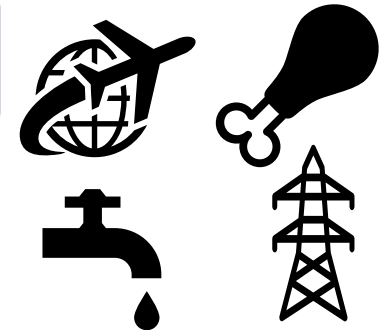
Right to life, right to private life

Dutch Supreme Court: *Urgenda case*



Every freedom right

German Federal Constitutional Court: *Neubauer case*





## b) Duty of care obligations towards the future



### of States:

- Public trust doctrine – States are sovereign trustees with fiduciary duties towards future generations (*Held v. Montana*, *Forest Act case*)
- Stewardship obligations over forests and rivers under constitutional law
- Duty of care over minors under common law (*Sharma v. Minister for the Environment*)

### of corporations: prospects?

- Duty of care under civil codes (*Milieudéfensie v. Shell*, *Milieudéfensie v. ING*)
- Novel duty of care under negligence (*Smith v. Fonterra*)
- Directors' fiduciary and due care obligations under statutory law (*ClientEarth v. Shell*)

# c) Age-based discrimination

---

- Discrimination: states' measures treat similar individuals differently in an arbitrary way (incl. treatment by impact)
- Disparate climate impacts on different birth cohorts
- Age discrimination, birth cohort discrimination
- Domestic: Canada (Mathur, ENV JEUnesse), South Korea, Austria (inadmissible), Italy
- International: Duarte (inadmissible), others are pending before the ECtHR

In a **3.5°C** world, I, as a **21-year-old** from **Europe & Central Asia**, will experience

 **wildfires 1.8×**,

 **river floods 1.4×**,

 **crop failures 1.1×**,

 **tropical cyclones 3.3×**,

 **droughts 4.9×** and

 **heatwaves 19.6×**

more than without climate change.

#myclimatefuture

Do the test  [myclimatefuture.info](https://myclimatefuture.info)



Source: [myclimatefuture.info](https://myclimatefuture.info)

Based on Thiery et al: Intergenerational inequities in exposure to climate extremes, *Science*, 2021



### 3) Transformative potential

- Legal innovations only work when incremental (Craig and Seck, 2018)
- Extending the temporal scope of well-established rule of law obligations through future generations
- Courts inject a long-term perspective into state obligations
- They strike down short-termist policies that are arbitrary towards future generations
- Domestic courts are already responsive, now the question is back before international courts

# Thank you for your attention!

More details can be found:

Katalin Sulyok: Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations, TEL (2024), FirstView

