This speaker was not able to provide us with a summary of her presentation. This text corresponds to the abstract published in the website of the conference www.futuregenerations-law-conference.com

Biography

Marisa Matias is a researcher at the Centre for Social Studies and has a PhD from the School of Economics, University of Coimbra. Her areas of interest are the relationships between environment and public health, science and democracy. She became a member of the European Parliament in 2009 and is currently Vice-Chairwoman of the Delegation for Relations with the Maghreb countries. She also sits as a full member on the Committee on Industry, Research and Energy.

CONFERENCE PAPERS

The Role of the State in the Protection of Future Generations

by Judge (ret.) Shlomo Shoham

Facing the future that awaits us beyond the horizon, taking responsibility for the generations to come, it is time for all states to find the most effective way to create a desired future on planet earth.

I will focus on the need for Sustainability Units to be part of the constitutional structure in democracies, and how to establish such units within the governance structures. The most important goal of foresight bodies is to influence the state and its institutions, prompting each to act in a visionary way and to take long-term considerations into account. Yet this kind of long-term thinking is too often precisely what decision-makers lack – indeed, the lessons of future-oriented thinking are frequently neglected in favor of pressing political interests. Any discussion on the correct model for a sustainability unit must thus take the following factors as practical constraints:

a) Decision-makers and policymakers may seem to agree that conduct based on vision and foresight is desirable. However, foresight is sometimes in opposition to the hidden interests and motives (both personal and political) of the political system and its leading figures. It is these less obvious themes that determine the political agenda.

b) Decision-making and implementation processes in democratic systems are not rational, striving to reach and manifest logical, optimal solutions. Rather, they fluctuate between a model of "finding a satisfactory solution" and one of "organic chaos." The precise balance will be determined by each country's social and political structures, cultural tradition, and leaders' ability to govern.

c) Our experience in Israel perhaps showed an extreme example of both constraints. Despite phenomenal progress in Israel's mere 60 years of existence, the country's democratic government is subject to a multiplicity of fragmented and conflicting interests. The ability of the government and the political system to rule and act is relatively low. I learned that a successful sustainability unit must be modelled in a way that allows it to address this present-day political reality as well as to think about the future.

d) To this end, I claim that the secret to success is behavior emphasizing both of these goals. I therefore suggest a model in which sustainability units of all kinds are composed of two sub-units, one for content and another for impact management.

e) The rationale for this division is grounded in the often-imperfect processes of political decision-making. A sustainability unit will be influential only if it meshes with the way decisions are actually made.

f) All democracies, virtually by definition, show some level of fragmentation, conflict of interest, and resource constraints. Political pressure often pushes leaders to act from short-term, compromise goals rather than long-term vision. Orderly decision making is very rare.

g) Sound decisions are made and good policy is carried out only when the three elements – problem, solution, and incentive – appear or are exposed simultaneously. Sustainability units in governmental bodies should be constructed so they can recognize and address each element in a way that maximizes the influence of their recommendations.

h) A successful sustainability unit will have a specific relationship to all of these elements of decision-making, each of which is worth examining:

i) Problems: The unit should serve as an auditing body that forms an integral part of the legislative branch's supervisory authority over the executive branch. It should express its opinion on decisions that are in some sense damaging in the long-term view. In addition, the unit should be able to describe or anticipate problems that may occur in the absence of futures thinking – especially since crucial decisions are often a product of short-term thinking.

j) Solutions: The unit should serve as an advisory body that creates contingency plans and offers solutions created through futures thinking and long-term consciousness (not necessarily as a response to existing problems).

k) Incentives: The unit should be able to manage political stimuli in order to create incentives for decision-makers to act. It should draw attention to problems and its own solutions, thereby sensitizing decision-makers to the long-term consequences of their actions or, alternately, their inaction. In so doing, the unit facilitates timely change and helps prevent extreme situations from evolving into a crisis.

l) A body that addresses only a subset of these elements will have difficulties in carrying out its task. The most exquisite sensitivity to problems and the most brilliantly conceived solutions will be useless if the incentives to act are not in place.

m) Legal authority of the unit: The legal authority of the sustainability unit naturally has great significance in determining the way it operates. Any implementing law should thus be designed to give the unit sufficient range of action and authority – all in accordance with a given country's regime and governing system. This said, I believe there is advantage in positioning the sustainability unit in the legislative branch, as an integral part of parliament (or at least an established part of the State Comptroller's Office, which deri-

ves its authority from parliament). This makes the unit independent of the executive branch, allows it to audit government policy with respect to issues of sustainability, and allows for direct influence on legislation. Creating this kind of unit as an independent authority within the government structure might seem an advantage, providing greater influence over the executive branch's daily activity. However, under this model, the unit is apt to be worn down by the bureaucracy that rules in government offices, and to lose its power when faced with the survival behavior of the executive authority.

n) Ability to influence decision-makers: Content units should choose issues that have the potential to create a change in decision-makers' awareness, inspiring a desire to act with consideration of the future. The unit's greatest challenge will be in changing politicians' tendency to act and think of the short term. Choosing the right subject will help create a slow, cumulative change in awareness, which will ultimately change the character of decision-makers' activity.

Resistance to change

A sustainability unit dedicated to future thinking, and thus to beneficial policy transformation, will inevitably meet resistance to change. Research literature on public administration deals extensively with this subject, deriving motives that can be characterized as:

- organizational and governmental conservatism;
- structured concern and fear of change;
- the fear of loss of authority, prestige, or power;
- the desire to avoid unnecessary turmoil. An assimilation unit must understand these various components of resistance to change, and work to create an environment of incentives that overcome them. In practice, policy implementation will largely take place in one of two ways: either top-down, driven by a senior policymaker with the power to effect change; or in a "garbage can" sense, in which an unusual set of problems, solutions and incentives must be supplemented by a change of consciousness in the public and media. Both models are worth examining in some detail, as they will require the assimilation unit to pursue different approaches.

Top-down change: Working with change agents

The public administration ranks of any country will contain few true change agents – decision-makers with the ability to understand the need for, and the power to implement change. The role and classification of these figures will change from country to country, and from time to time, depending heavily on the personalities of the staff active at any given time.

During the Israel Commission's tenure, we learned that the number of decision-makers who are anxious to use their authority to make change is inestimably greater than the number who use their authority appropriately, and even more than those who overuse their authority. This is even truer for non-elected civil servants, who serve in their positions for many years.

I suggest a values-driven approach to developing an infrastructure for influencing change agents. Helping these individuals see the linkage or harmony that exists between future-oriented interests and their own true interests is a crucial component of this infrastructure. The key to this is the understanding that long-term considerations are crucial for good management practices in the present, and that ignoring these considerations will ultimately harm those most dear to us, including our children and grandchildren.

Incentives for change: Leveraging alliances

Often, decision-makers will prove reluctant to implement change, or the dynamics of political power will keep specific change agents from being effective. In these cases, the Commission assimilation unit's role will be as a catalyst, helping to create a broader environment in which change becomes possible.

In some cases, this can mean enlisting the support of influential bodies to which the government is obligated by geopolitical forces. In others, it might mean turning to solutions that have been successfully implemented in other countries.

By developing working relations with parallel bodies elsewhere in the world, a sustainability unit can gain status and world recognition that can help attract the attention of its own governmental decision makers, and mobilize public opinion in support of an idea the government refuses to accept. Today's technology makes it possible to recruit substantial world support, even for ideas beneficial primarily to the sustainability unit's own country or society.

Decision-makers, and particularly politicians who must seek re-election, often pay close attention to public feelings. If broad public support for a given solution has been cultivated (or even if decision-makers just think that such support exists), this can afford the opportunity to enlist decision-makers' support or help change their thinking on a subject they rejected in the past.

Incentives for change: Gaining legitimacy and public attention

The creation of public discourse around an issue, examining future-oriented problems and solutions, is a critical tool in the development of public support. This public discourse itself provides a setting for public criticism, which becomes an important stage in the recruitment of public opinion.

The development of joint projects with the public or with public opinion makers is a good platform for creating connections that lead to public trust. Civil society has developed quickly and powerfully in recent years, and more and more non-profit organizations are carving out spheres within which civil society can evolve and express influential opinions.

As much as possible, the sustainability unit – through its assimilation sub-unit – must work in harmony with civil society on every subject it addresses. This increases the power of its statements, and provides a significant channel of influence for civil society itself.

In parallel, the unit must develop an orderly system of consultation with academia, scientists and universities. One of the greatest absurdities of the democratic state in the 21st century is that the wealth of knowledge generated within academic settings, is often left outside the decision-makers' circle of influence.

In our experience with the Israeli Commission, we found this resource to be extraordinarily fruitful, precisely because of its traditional underuse. Academic researchers and scientists are often frustrated that their knowledge and research results have such small influence in the decision-making process. The sustainability unit can become their mouthpiece, bringing previously untapped knowledge to policymakers before critical decisions are made.

While it is true that many parliaments have science and research units, these units are sometimes sterile. Their role within the legislature is often pro forma, making it difficult for them to take a stand, and their opinions are often ignored in favor of populist measures.

Incentives for change: Working with the media

The media has a decisive role in 21st century democracy. Its influence on decision-making processes is extremely strong, and quite often, it disturbs the proper balance among the authorities. It is important to remember that from time to time, the media determines its own positions and is not satisfied with simply delivering the objective news. This obligates any sustainability unit to invest considerable thought in its own media relationships.

On the one hand, broad, positive media coverage of the unit's work will help expand its influence. On the other, sustainability units will by nature seek to deepen public discourse, and to bring long-term considerations and externalities into the decision-making process. This poses a problem for any such unit, however, as many of these things are not easily rendered in the visual language of the media.

To improve ratings, the media focuses on immediate drama and anxiety. By contrast, sustainability units should deal with implications for the future, with finding creative solutions not in the realm of danger and drama, but in the thoughtful creation of our own future. We are rarely speaking about a cocked gun at a person's head, but of future dangers.

However, through creativity, daring and original thinking, these structural difficulties can be overcome. A way can be found to tell the story of our children and grandchildren in a life-embracing and heart-warming manner.

Biography:

Judge (ret.) Shlomo Shoham served as the first Commissioner for Future Generations and as a legal advisor to the Constitution Law and Justice Committee in the Israeli Parliament.

Shoham was a lecturer in the Law Faculties of the Universities of Tel Aviv, Jerusalem and Bar Ilan on range of subjects on Human Rights and Criminal Law. He also taught Emotional Intelligence at the executive MPA program at the Hebrew University in Jerusalem and Meditation and Bio-energy for thousands of people worldwide.

In recent years, Shlomo was an honorary fellow of the Bertelsmann Foundation, within this framework he wrote his book on Future Intelligence.

Shoham teaches future-oriented Educational Leadership at the Lewinsky College and Holistic Leadership to teachers of the Reidman College in Tel Aviv.

He is the founder of the Centre for Sustainable Global Leadership which will train promising young leaders with the greatest potential to create global transformation.

Fourth Panel "Intergenerational Justice and Constitutional Law: Prof. Dr. Francisco Pereira Coutinho, Dr. Emilie Gaillard Sebileau, Sándor Fülöp and Judge (ret.) Shlomo Shoham

CONFERENCE PAPERS

French Constitutional Law and Future Generations – Towards the implementation of transgenerational principles?

by Dr. Emilie Gaillard Sebileau

In 2005, an Environmental Charter was adopted in order to integrate new fundamental rights and duties for the environment and future generations. In 2008, an official committee presided by Mrs Simone Veil was commissioned to examine whether or not, the preamble should be reformed so as to take bioethical issues into account.[1] Even though the Committee decided not to change the preamble, this was rather due to the fact that French constitutional law has a large spectrum of possibilities in order to adapt to bioethics issues. Nevertheless, as many members of the executive clearly expressed their will to protect future generations, the question of implementing justice through constitutional principles now clearly has to be examined.

Are there, in French constitutional law, sufficient provisions to provide a juridical defence of future generations? Should they be considered as a new entity protected by constitutional law? Are new revisions really necessary? Last, but not least, are there transgenerational principles capable of implementing a juridical protection of future generations?

Contrary to widespread opinion, the implementation of justice towards future generations may be possible, in many ways *de lege lata*. However, from the constitutional imaginary to the normative implementation of French constitutional law, it is an epistemological break that must first be described. We have inherited a limited temporal matrix in which the social contract is supposed to take place.[2] This philosophical perception has been inserted deeply into the heart of the French constitutional imagination. If Article 6 of the 1789 Declaration of the Rights of Man and Citizen states that "*Law is the expression of the general will*", it is evidently that of actual people. Moreover, it involves the notion that drafters of the constitution and legislative powers do not have the legitimacy to endow laws for future generations. If not, the fundamental law would be synonymous with illegitimacy. In this context, no law for the future may be formulated as it would be contrary to the freedom of individuals. The full cycle has occurred when reading Article 5 of the 1789 French Declaration of the Rights of Man and Citizen which sets out that "*The Law has the right to forbid only actions which are injurious to society*". Given that the XIXth century's society was not in touch with future generations,