

TOGETHER FIRST

A global system that works for all

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Global catastrophic risks mitigated	Risk multipliers managed	Implementation timeframe
Climate change	Conflict or political violence	Short
Eco-system collapse	Institutions that lack inclusivity or accountability	
	Poverty and inequality	

From the tragedy of commons to the common heritage of humankind

This proposal presents a new model for fair and global governance through a decision-making structure based on improved scientific knowledge of the state of Earth System functioning. A stable climate is a visible manifestation of a well-functioning Earth System. The Earth System is an intangible asset that works as a single integrated system at planetary level sustaining all forms of life. In the absence of a legal regime that regulates its use, the Earth System has been progressively used as 'no man's land', operating in a free-for-all scenario, where there are neither restrictions on its depreciation, nor compensation for those who maintain or recover it. The outcome is the tragedy of this intangible global common, which the most visible manifestation is climate change. To this day, the positive impacts made by ecosystems as well as by human action that contribute to the maintenance of a well-functioning Earth System, are economically invisible since they are produced in an intangible global common good that is not legally recognized. The outcome is that although technological solutions do exist, the necessary legal framework and social institutions required to restore the well-functioning of the Earth System are not in place. The recognition of a common good within and outside the States is the required evolution of international law with all legal and economic implications resulting from the management of a Common. The new proposed model for global governance comprises the adoption of a new international legal framework that recognizes the Earth System as a common heritage of humankind as well as the definition of the Earth System Accountancy Framework as an integrated core system that comprises key five elements – science, law, accounting, governance and quantification – working together to restore, repair and promote the sustainable use of the Earth System.

DETAILS

Throughout the history of the planet, the Earth System has existed in various states, with transitions in between them, but has always functioned as a single integrated system at planetary level.

A stable climate is a visible manifestation of a well-functioning Earth System. When the issue of climate change entered into the UN agenda, one of the first questions raised was: What is climate from a legal point of view? On 12 September 1988, the Ambassador of Malta requested the inclusion of an additional item, "Declaration proclaiming climate as part of the Common Heritage of Mankind", in the Agenda of the 43rd session of the UN General Assembly. The UN resolution passed considered climate as "common concern of humanity" although nobody knew what did it mean from a legal standpoint. 25 official climate negotiations have already happened with no practical results. Without legally defining and recognising the climate as a "common good" that must be protected and restored, endless negotiations without results will continue.

Because the Earth System was until recently not scientifically defined and because it is not restricted to the traditional territorial global commons but also spans areas subject to national jurisdiction, the Earth System is still ignored by international law although it exists in the real world and constitutes the support system for all life on Earth. The global functioning of the Earth System cannot be appropriated by any state as it is materially and legally indivisible. From a legal standpoint it can be classified only as an intangible asset.

A well-functioning state of the Earth System can be subject to qualitative depreciation through a wide range of human pressures. Its stability can be disrupted.

In the absence of a legal regime that regulates its use, the Earth System has been progressively used as 'no man's land' where there are neither restrictions on its depreciation nor compensation for those who maintain or recover its functional aspects. The outcome is the tragedy of this intangible global common, of which the most visible manifestation is climate change.

It is now possible to qualitatively define the key processes that underpin the functioning of the Earth System – the planetary boundaries – and to quantitatively measure the conditions required to maintain a well-functioning Earth System. This is the safe operating space for humankind.

Returning to a well-functioning state of the Earth System demands the reduction of the greenhouse gas emissions, the removal of CO₂ excess from atmosphere, as well as actively restoring and protecting the biosphere, which is essential for maintaining the Earth System in a Holocene-like state.

To this day the positive impacts that contribute to the maintenance of a well-functioning Earth System are economically invisible since they are produced in an intangible global common good that is not legally recognized. The outcome is that, although technological solutions do exist, the necessary legal framework and social infrastructures required to restore a well-functioning state of the Earth System are not in place.

This qualitative condition of safety and stability, although intangible, is measurable and identifiable. It is not only possible to distinguish it from the territorial space of the planet, but also to consider it as a set of separate legal entities – the biogeophysical global-scale cycles and energy flows of the Earth System on one side, and the physical planet and the space of territorial sovereignties of the States, on the other side.

This means that it is scientifically possible to define the common good that should be the object of international law and shared governance. This good, by being global and indivisible, should belong to all humanity – the intangible

Common Heritage of Humankind.

Under this proposed legal object of international law, an accounting system should be established, so the negative impacts that contributed to the depreciation of the Common Heritage and the positive impacts that contribute to its maintenance in and restoration to favourable conditions can both be accounted for.

The fundamental role of ecosystems in the stabilization and well-functioning state of the Earth System is incomparably higher than the value of the commodities that can be extracted from it. Nevertheless, this natural “work” is ignored by international law and invisible to economies and societies.

Only by legally recognizing the ultimate global common good where the benefits produced by ecosystems can be internalized and accounted for, is it possible to recognize the true value of the “work” of nature and reward economically the intangible life-supporting function it provides, without the need to destroy it.

The economic visibility of positive impacts on the Earth System is the opportunity to break the current vicious cycle of increasing destruction and to foster the evolution of a legal framework designed for building a sustainable, regenerative and redistributive economy that is able to reduce pollution, and to produce, restore, maintain and renew the core natural services provided by the Earth System. Around this intangible Common Heritage an economy can be built where natural intangibles that support life are recognized and respected and new forms of cooperation and inclusive multilateralism could be designed and developed. A planet with an Earth System in a non-favourable state for humankind cannot serve as our home. Our common home is an intangible, well-functioning Earth System, within which human societies, as an integral and interacting components of a complex and adaptive Earth System, should be organized to maintain a favourable state of the system. Common Home of Humanity is committed to work to achieve a legal solution for the climate that is able to trigger the basis for a economic system that respect the Earth System as our Common Home. The Common Home of Humanity is considered by top-scientists of Earth System sciences as “ One of the most innovative of all new approaches is the Common Home of Humanity, which proposes formal, legal recognition of a stable and accommodating state of the Earth System itself (i.e. a Holocene-like state, as defined by the planetary boundaries) as the intangible, natural heritage of all humanity.

<https://www.nature.com/articles/s43017-019-0005-6>

For more information, see:

<https://www.commonhomeofhumanity.org>

WIDER IMPLICATIONS

Alleviating poverty and inequality

In the base of this proposal is the creation of a new legal framework for climate that will enable to adoption a new economic model that respects the nature and the limits of the planet and its resources and it will ultimately tackle the roots causes of poverty and inequality. There are several reports linking environmental degradation with poverty and inequality. Creating a system that is based and designed for protecting the commons will permit the adoption of concrete national and local solutions to reduce poverty and inequality. For instance, economic and legal measures aimed at combating land and ecosystems degradation as well as to promote its restoration, will reduce

desertification, reduce environmental migrants and increase food production. In reducing the vulnerability of the ecosystems, this new governance proposal will also reduce the environmental vulnerability of the poor, those most affected by environmental degradation. The definition of a new economic model will also facilitate the creation of new opportunities for small ecosystem-friendly business to thrive, that can be a source of income for poor communities. The maintenance of a balanced Earth System will enable the most vulnerable communities to continue to access to services provided by nature, such as clean water, air, wood, food and fish. The global system of accountancy and compensation for the positive contributions to the maintenance of the well-functioning of the Earth System can and should arrive to the populations living in the ecosystems that produce these services of global interest. By this way we are not only alleviating the poverty of these populations, but also moderating inequalities between developed and non-developed areas, that usually have ecosystems that provide benefits of common interest

Enhancing inclusivity and accountability in national and global governance

This proposal is designed to create a legal framework that, in practical terms, will create the required conditions to build a network of partners and stakeholders both at the national and the international level, that will work together on the restoration and maintenance of the Common Heritage. The adoption of a new legal framework that recognizes the Earth System as a common heritage of humankind and the implementation of a new model that is necessary for the planet to survive, requires involvement of States, International Organizations, NGOs, Universities, companies and individuals. In this sense, because all the results of the individual or collective activities will become visible through the national eco-balanced and, the global level, through the ESAF – (Earth System Accountancy Framework), the system of accountancy of positive and negative impacts on the nine planetary boundaries, on the same common good – the common heritage will be the platform for enhance inclusivity and accountability. The emergence of TRUST does not only depend on the good will of people. The Gordian knot of Global Governance is the definition of the object of governance itself. The definition of the common good that should be managed, is the first step to achieve one collective action. Social sciences have already defined the structural conditions needed to build confidence. Any successful management of the commons requires a congruence between appropriation rules and provision rules. The introduction of the positive pressures in a global system of accountancy is a structural condition that is required to create a system where all participants feel that their own interests are safeguarded, as well for shifting the dominant rule of destruction and consumption. A favourable legal environment is the most basic requirement for any human enterprise. It is urgently needed a friendly legal framework for governing the commons.

Reducing conflict and political violence

One structural condition for a collective action to become possible is HOPE, and the existence of a possibility of a successful outcome, with positive impacts for all participants. Only through a system of accountancy, where all the core drivers that determine the state of the Earth System are included, measuring both positive and negative pressures, it will be possible to address the globality and interdependence of the problem, and to open the door for a possible an more equitable solution, with greater justice between north and south, between developed and developing countries.

This system accountancy will have cascade effects not only in the Earth System functioning, but also, and mainly, in

all the social system. For this proposal to be more than an idea, it must be institutionalize itself. If we combine the idea of heritage with the idea of an international authority (should be UN with new competences for managing the use of the Common Heritage) and place relative competences on it – not many are needed, apart from certain ones to establish a multilateral framework that enables a collective action, it would resolve many of the current tensions. By designing the legal and economic measures to tackle climate change and by creating the Earth System Accountancy Framework, this proposal will reduce not only intra-state conflict, but also conflicts on a national scale. The existence of a clear legal framework that is supported by a governance structure that recognizes the independence of nations in their decision-making processes, and is empowered to implement a planetary accounting will contribute to peace and stability at international and national levels, in the sense that ensures a fair and equitable solution for the common good. Conflicts and Political violence can only be reduced, if we tackle the structural conditions that are at its origin.

THEORY OF CHANGE

Implementation strategy

In over 40 years of international environmental and climate negotiations, there has been a systematic omission of the most basic requirement that makes possible any human enterprise: an appropriate legal framework. When, in the 1980, the issue of climate change entered into the UN agenda, the first question that it was raised was: what is climate from a legal point of view? At first sight, this question seems to be a theoretical matter. However, looking deeply into it, it has significant practical effects, because the answer is structural for all the remaining discussions ahead. And this discussion it is at the root of 25 years of negotiations without practical results. There is a lack of political and high-level conscious that without solving the structural question of the legal definition of what is climate, and to which it belongs, there is no solution for making possible one collective action. Common Home of Humanity plans to continue to work to overcome this obstacle, as follows:

1- International Conference - the proposal is based on the adoption of international legal solutions that necessarily require the establishment of a multilateral forum of discussion, the involvement of States, International Organizations, NGOs, universities, companies, as well as individuals. For this purpose, the Common Home of Humanity, an international NGO based in Portugal is organizing the upcoming International Conference “Earth System the Common Heritage – The need for a new legal approach for Climate Emergency” that will take place in Porto, Portugal from 8 to 10 October 2020. The purpose of the conference is to launch the discussions that will ultimately support the adoption of a new UN international legal framework that recognizes the Earth System as a Common Home of Humankind as well the definition of the Earth System Accountancy Framework.

<https://www.thecommonheritage-conference.com/>

2- Dissemination of information and knowledge: After the conference, Common Home of Humanity will established a detailed plan to continuing to work with States, universities, companies, individuals and NGOs to disseminate information, and support forums of discussions, trying to influence the UNEA5, that will take place in Nairobi in

February 2021, in the context of the commemoration Stockholm+50, as stated on A/RES/73/333, UNGA Resolution. This set of initiatives are aimed at disseminating knowledge of the Earth System functioning and to discussing two important factors for the success of this proposal: the conceptual and legal challenges that require an evolution of national and international law and the adaptation challenges imposed by this new approach.

3- Social media: In addition, the implementation strategy comprises the use of social media to create a network of key stakeholders and to make information, knowledge and discussions open to all.

4- Foster partnerships: The Common Home of Humanity is going to work together with the existing international forum of discussions, namely those regarding the Global Pact in order to pave the way for a more productive discussions in Stockholm 2022 that will enable the signature of a strong political declaration that will endorse this new global governance proposal.

Political will exists to realise this proposal

Discussions around climate change and strategies to tackle its effects have been in international agenda over the last 40 years, without success. Several international conferences were organized, annual conferences of parties, different political declarations were signed, but no practical solutions were found. The crisis escalate to the degree of international emergency, which is at the TOP of political agendas.

At the European level, the European parliament has formally declared a global “climate and environmental emergency”. It has urged all EU countries to commit to net zero greenhouse gas emissions by 2050. European Commission presented the roadmap for European Green Deal, including the plan approve an European Climate Law. UN Secretary General has urged the States, companies and individuals to take action against climate change in order to protect it for present and future generations.

The political will exists, what does not exist is the conscious that without solving the structural question of the legal definition of what is climate, and to which it belongs, there is no solution for making possible one collective action. Economics has already defined the structural conditions needed for successful management of common goods. Why can't we apply them to our most vital global common - the Earth System? To possible make a sustainable economic transition that everyone believes is necessary, to accomplish the exponential roadmaps to scaling to halve emissions by 2030 or to implement to nature-based solutions, the most basic requirement for any human enterprise is necessary: a favorable legal framework. The first condition for successfully managing a common good is to define it and legally recognize its existence. The second is consistency between the rules for its use and the rules for its maintenance and restoration, that is, the maintenance of the common good shall be compensated and its use shall be penalized.

What if political will does not exist yet

When the issue of climate change entered into the UN agenda, one of the first questions raised was: What is climate from a legal point of view? The discussion started in 12 September 1988, when the Ambassador of Malta, requested the inclusion of an additional item “Declaration proclaiming climate as part of the Common Heritage of Mankind”, in the Agenda of the 43 session of the General Assembly. Although this proposal seems a purely theoretical matter, it has significant practical effects because is structural to all subsequent discussions. The fact that climate exists inside

and outside the States, transform this proposal in the most outstanding challenge that international law has ever faced, once it implies a new type of legal object for international law, and its management has large implications in the present economic framework that is conceived to operate under the paradigm of division and appropriation, and not for the management of common goods. The solution at that time was the creation of an indefinite concept, as a mere "concern", empty of practical meaning. This legal gap has serious effects all over our social-ecological system, once there is an intimate connection between legal structures and economic models, as well as between economic models and biogeophysical cycles. These interconnections cannot be meaningfully separated from one another.

Until today, no evolution on the concept of "Common Concern", has been reached resulting in with 25 years of endless and wreck negotiations. The pressure of climate emergence from the new generations on the street will reach a point where it has to be understood that only a new structural approach, and therefore legal with all its economic consequences, can provide an answer to this question. Our strategy is to prepare this moment, and promote it as soon as possible.

MITIGATING RISKS

Mitigating climate change

The recognition of a new international legal object – the well-functioning the Earth System as a Common Heritage of Humankind and the establishment of the Earth System Accountancy Framework will be the legal framework to promote the adoption of different actions to mitigate climate change. Examples are the creation of a formal system where all the intangible positive and negative "externalities" are captured and accounted for, and the establishment of a global planetary quota consistent with the preservation of the Earth System Holocene-like conditions (safe-operation-space for humanity). The legal recognition of the Earth System as Common Heritage and the creation of a legal and an economic system that addresses the positive and negative impacts made on the functioning of the Earth System will support the developed of different types of nature-based solutions. In addition, the Geo engineering solutions also require a legal framework, that will define what are the activities that are beneficial and not, as well as which will be the system of compensation of these benefits on the Common Heritage. All activities that affect – positively or negatively – the functioning of the common Earth System are now properly framed, and there are instruments to promote their restoration and disincentives for negative activities. It cannot be expected investment and improvements in a good that "does not exist" from a legal point of view and that belongs to no one. Reducing emissions to the required scale and removing excess CO₂ into the atmosphere means that these positive acts on the common good shall be accountable and economically visible. With this approach on the positive side of producing benefits of the common heritage, the negative side of reductions of emissions will be tremendously affected, once the truly costs of these negative activities will start to become visible.

Mitigating eco-system collapse

It is the Intangible Heritage, which can be represented in and by language and law, which holds the key to the construction of other types of tangible heritage.

Thus, to understand the relationship that exists between the tangible and the intangible, two categories of ontology can be used: the difference between *natura naturata* (tangible, corporeal nature) and *natura naturans* (intangible incorporeal nature).

Natura naturata must be understood as constituted heritage, whereas the intangible/incorporeal heritage must be assumed as constitutive heritage, as this software of flows and exchanges in the network of energy and matter, which all unites creatures in the (re) production of existence.

Public international law only envisions the world as an tangible greatness, as territory (telluric or maritime), which can be delimited in mapped areas of jurisdiction. What the UN seeks, what humanity needs to survive, is a new law that recognizes this *natura naturans*, this meta-heritage, which are the biogeophysical conditions that allow the existence of tangible heritage – the species and ecosystems and their internal relations. Protecting tangible heritage (through nature reserves or protection of endangered species) is an illusion, if the global biogeophysical cycles are not protected. The first step to mitigate the eco-system collapse is protect the biogeophysical conditions that allow its existence.

In order to avoid this collapse this proposal defends the legal recognition of the common good, including a legal framework for the Planetary Boundaries – a framework introduced in 2009, which defines nine critical Earth System processes (e.g., climate change, ozone depletion, biosphere integrity, and others) whose e–ffective management is key to the maintenance of a resilient and accommodating state of the planet. This scientific framework – The “planetary boundaries”– should be used as the meta-conditions for a human right to a safe, decent, culturally adequate, and resilient living environment to be a reality.