

Planetary Condominium: a legal framework for Earth System Stewardship

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As long as our economic frameworks don't measure the work of nature in maintaining a stable Earth System, no progress can be expected when it comes to addressing climate change and ecosystem degradation. In turn this failure of our economies depends on a gap in our legal systems, whereby the functional integrity of the planet is invisible. How could we, then, best give legal visibility to the work of nature in maintaining a stable Earth System? One step forward would be to establish the Earth System as an intangible Common Heritage of Humankind. To ensure that this new common heritage can coexist with the legal regimes of state sovereignties, we could draw from the legal framework of the condominium, where functional integrity coexists with spatial separation – recognising the Planet as a global condominium, or common home for humanity.

Scientists have identified the current period as a new geological era, the Anthropocene¹, where human activity has overtaken geological forces in defining the trajectory of the Earth System. However, even as our influence on the planet has risen to such a level, and even as our understanding of the Earth as a single system is rapidly improving, we still do not know how to translate this into efficient societal decision-making.

One structural problem is driving us close to the point of no return: our economy considers nature merely as a source of raw materials and as a waste deposit. Because the work of nature in maintaining a stable Earth System is mainly intangible, it is considered as an “externality”, and invisible to the economy. At present, the value of nature only becomes economically visible through the destructive transformation of natural ecosystems into products, as, for instance, when forests are turned into wood. The result is an economic system incapable of sustaining a stable state of the Earth System. As Ostrom² very well explained, any successful management of the commons requires not only rules relative to their use or appropriation, but also a permanent system of maintenance and restoration to ensure long-term functionality. Registering the impact of economic activity on the state of the Earth System through a global system of accountancy is a structural condition required to change the dominant rule of destruction and consumption. The only way to break the current socioeconomic inertia when it comes to environmental preservation is an economy in which cleaning pollutants from the oceans and atmosphere, or developing technology to remove excess CO₂ accumulated in the atmosphere, does not constitute a loss for those who do it.

This dysfunctionality of our economic system, in turn, has its basis in a legal system that considers the planet merely as a territory of 510 million km² divided among nation states. Each nation state has

an identified jurisdiction, but no responsibility for its contribution to the functioning of the global common system on which we all depend. This territorially obsessed view excludes the most remarkable and vital expression of nature — the Earth System as an indivisible, global intangible good, serving as the “software” that not only supports life but requires a well-functioning biosphere.

Scientific research has identified indicators, the so-called ‘Planetary Boundaries’³, which define the limits that we must not cross if we are to maintain a “Safe Operating Space for Humanity”. This measurable safe space is intangible and non-territorial, and constitutes a global common — it exists both across and beyond all jurisdictions. The legal non-existence of the Earth System, however, makes it invisible to the community of nations and our economy – thus legitimizing its unregulated use and the consequent tragedy affecting our most precious global common good.

This shortcoming does not stem from an intrinsic incapacity of the law: legal sciences have long recognised the existence of intangible legal assets. Examples include UNESCO’s intangible cultural heritage, copyright and intellectual property, or the intangible value of companies – where the value of assets such as brand identities is often incomparably higher than the value of tangible assets. The analogy between these intangible legal objects and the Earth System is crucial — not only to represent the global and indivisible functionality of the Earth System in international law, but also to give economic visibility to the real value of the intangible services provided by ecosystems.

By establishing a legal division between the tangible Earth territory and the intangible asset constituted by a stable and well-functioning Earth System, we can have a structural support to build a sustainable global economy that is based on the

stewardship of the Earth System as its central and most important goal. Because the biogeophysical cycles of the Earth System that support life are intangible, indivisible, non-territorial and global, the only way to recognise and protect them is to create a new legal instrument that can capture and represent these properties. Our objective is to achieve this through the recognition in international law of the entire Earth System – in a favorable Holocene-like state – as a Common Heritage of Humankind.

In order to ensure that this new common heritage can coexist with the legal regimes of state sovereignties, we propose to establish it on the basis of an existing legal framework used in situations that offer an analogy with the challenge we consider. The condominium – an ownership model typically applied to apartment buildings – is the only existing legal model that is not limited to a division of spatial elements but also recognises the existence of functional non-spatial elements, such as common electricity and water systems. In a condominium, two different types of legal regimes (common and private property), overlapping but well-defined, can coexist within the same physical space. With appropriate scaling, this approach could have profound implications for the legal organisation of human societies – distinguishing between the sovereign jurisdiction of States over territorial elements and, in a complementary and overlapping way, the safeguarding of indivisible biogeophysical cycles or the stewardship of the Earth System – thus redefining the planet on a legal basis as a Planetary Condominium^{4,5}.

To be more than an idea, this new framework must be formally recognised and institutionalised. Currently, the only institution with appropriate membership and legitimacy to host such a mission is the United Nations. In order to act upon the whole Earth System rather than its components,

and taking into full consideration known difficulties in amending the UN Charter, we propose that the UN Trusteeship Council be revived to serve the mission of humanity’s Common Heritage. Other solutions could also be acceptable if the process of institutionalisation proves to be faster and more effective. Part of the work required would involve developing a holistic Earth System Accounting Framework (EASF) to monitor the maintenance and perturbation of key Earth System processes. This could take the form of a coordination platform, offering a global transparent accountancy system aggregating all positive and negative actual “externalities” that every nation produces in the Earth System – and include the proposition of an intangible natural GDP for each nation state.

Recent developments at the international level indicate that this may not be a pure utopian prospect. The Millennium Development Goals (MDGs), focused primarily on the needs of poor countries, were succeeded by the Sustainable Development Goals (SDGs), which proposed a wider set of goals for all countries. We could envision that a subsequent process would yield yet a more holistic global approach. Overcoming the current siloed-approach, focused on individual states and artificially divided elements of the Earth System, to recognise the Earth System as a single functional system. As such, we suggest the full implementation of our proposed global governance model by 2030, as the core of the post-2030, post-SDG global agenda. Accordingly, the first step – legal recognition – should ideally be achieved by no later than 2023-2024.

The legal concept of Common Heritage of Humankind can be the locus for the social existence of this vital good – a well-functioning Earth System. It offers a positive approach based on the need to build a new Common Heritage, and simultaneously offers a message of hope that it is possible to reverse the current pathway towards a Hothouse Earth scenario⁶.

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