



**Message from
"Common Home of Humanity"**

30 October 2018

to

**The Secretary-General of the United
Nations
Mr. António Guterres**

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as a contribution to the Report under preparation as per

Resolution A/RES/72/277

"Towards a Global Pact for the Environment"

adopted by the General Assembly on 10 May 2018

1. Introduction

In considering the Resolution entitled “Towards a Global Pact for the Environment” adopted by the General Assembly on 10 May 2018¹, it is urgent that existing gaps in international environmental law be addressed, with a view to adopting an international instrument² to overcome their deficiencies.

The first major gap in international law is the lack of a legal instrument recognizing the Earth System as a legal object, in contrast to the dominant view that regards the Earth System as an “externality.” Our proposal, is based on the recognition that the Earth System is an intangible object of law, whose governance must be organized as a planetary “*condominium*,” in which nation states, international organizations and other international actors have rights and duties. This is the fundamental first step.

2. The context: The Anthropocene

Scientists have identified a new geological time interval, the Anthropocene³, during which human activity has overtaken geological forces in driving the trajectory of the Earth System away from the 11,700-year stability of the Holocene towards hotter, less biodiverse and much more unstable conditions. 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 a legal framework which can promote effective societal decision-making.

One serious structural problem is driving the Earth System close to the point of no return: the prevailing world view that considers nature to be merely a source of energy and raw materials and a receptacle for dumping human waste and emissions. At present, nature only becomes visible and valuable to society and the economy when natural ecosystems are destroyed and transformed into usable products, for example, when forests are turned into lumber. The result is an economic system incapable of sustaining the Earth System in a stable state. As Ostrom⁴ explained so eloquently in her work about those structural conditions which facilitate collective action: there must be a congruence between the rules of appropriation (negative impacts) and provision (positive impacts): that is, any successful management of the commons requires not only rules relative to the use of the commons, but also a permanent system of maintenance and restoration to ensure its long-term sustainability. The benefits (positive impacts) produced by ecosystems on the state of the Earth System can only be achieved when there is global accountability, that is, a structural condition that is capable of changing the dominant rule of destruction and consumption.

¹Resolution 72/277 (<http://hdl.handle.net/20.500.11822/25982>).

²Fernández, Edgar Fernández; Malwé, Claire (2018) *The emergence of the ‘planetary boundaries’ concept in international environmental law: A proposal for a framework convention* *Reciel*, 22 October 2018 (<https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12256>).

³Steffen, W., Crutzen, P.J. and McNeill, J.R. (2007). “The Anthropocene: Are humans now overwhelming the great forces of Nature?” *Ambio* 36: 614-621.

⁴Ostrom, E. et al. (1999). “Revisiting the Commons: Local Lessons, Global Challenges.” *Science* 284(5412), 278–282. doi:10.1126/science.284.5412.278.

Only when we have an economy in which cleaning pollutants from the atmosphere or oceans does not constitute a loss for those who dump them, will we be able to break the current socioeconomic stalemate when it comes to environmental preservation.

This dysfunctionality of our social and economic systems has its basis, in turn, in a legal system that considers the planet to be simply a territory of 510 million km² divided among states, peoples and organizations. In this system, each state has an identified geographic area of jurisdiction, but almost no responsibility for its positive or negative contribution to the functioning of the global common system, the Earth System, on which humankind depends.

3. Toward the convergence of law and science

Scientific research has identified indicators, so-called “Planetary Boundaries,”⁵ which define the limits of fundamental Earth System processes that must not be overstepped 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 borders and beyond all jurisdictions. Non-existence of the Earth System in law, however, legitimizes its unregulated use, degrading and destabilizing our most precious global common good.

This shortcoming does not stem from an intrinsic incapacity of the law: legal science has long recognised the existence of intangible legal assets. Examples include UNESCO's intangible cultural heritage, copyright and intellectual property, and the intangible value of companies where the value of assets such as brand or reputation are often incomparably higher than the value of tangible assets.

By establishing a legal division between tangible Earth territory and the intangible asset of a stable and well-functioning Earth System, we can build a sustainable global human system, based on stewardship of the Earth System as its central important goal. Because the bio-geophysical cycles of the Earth System that support life are intangible, indivisible, non-territorial and global, the only way to recognize and protect them is to create a new legal instrument that recognizes these attributes. This can be done through recognition in international law of the entire Earth System in a favorable *Holocene-like* state, based on the scientific concept of “Safe Operating Space for Humankind,” as a Common Heritage of Humankind.

4. The Condominium

We can identify competencies that have been tested in one field of law to solve problems in another. This Common Heritage can coexist with current legal regimes of state sovereignties within the legal framework of the *condominium*, an ownership and management model typically applied to apartment buildings. In the condominium legal model, two different types of legal regimes, common and private

⁵Rockström, J., Steffen, W., Noone, K. et al. (2009). *Planetary Boundaries: Exploring the Safe Operating Space for Humanity. Ecology and Society*, 14(2), 32. Retrieved from <http://www.ecologyandsociety.org/vol14/iss2/art32/> Steffen, W., et al. (2015a). *Planetary Boundaries: Guiding Human Development on a Changing Planet. Science Magazine*, 347(6223). doi: 10.1126/science.1259855

property, can coexist within the same physical space. But the condominium is more than a mere division of spatial elements. It rather recognizes the existence of functional elements, such as common electricity and water systems that have to be maintained and managed in common. With appropriate scaling, this approach could have profound implications for the legal organization of human societies, distinguishing between the sovereign jurisdiction of states over territorial elements and, in a complementary and overlapping way, the safeguarding of indivisible bio-geophysical cycles - that is, the stewardship of the Earth System - thus redefining the world as a Planetary Condominium⁶.

To be more than just an idea, this new framework must be formally recognized and institutionalized. Currently, the only institution with appropriate membership and legitimacy to host such a mission is the United Nations. In order to legally recognize the whole Earth System with all its interconnections, rather than its components (the sea, the atmosphere, biodiversity), and taking into full consideration known difficulties in amending the UN treaty, the UN Trusteeship Council can

A holistic Earth System Accounting Framework (EASF) to monitor the maintenance and perturbation of key Earth System processes could be hosted by the UN Trusteeship Council or by a coordinating platform, offering a global, transparent accountancy system aggregating all positive and negative “externalities” affecting the Earth System⁷.

In summary, the first step is recognition of the bio-geophysical conditions of the Earth System in the Holocene era as an intangible Common Heritage of Humankind. The next step is linking a management system to that Heritage in a condominium-like management system, managed by the United Nations. For successful management, it is necessary to devise a system of accounting, associated with planetary boundaries, that defines the positive and negative impacts of the actions of the sovereign States on the Earth System. It will also be necessary to integrate economic mechanisms that allow for the evaluation of these impacts. This approach has been advocated by several economists.⁸ Recent developments at the international level indicate that this is not a utopian concept. The demand for such a global legal instrument recognizing the Earth System is increasingly urgent, as the climate is rapidly being destabilized; we are already on the path towards the Earth's sixth great extinction event. The time to act is now.

⁶Magalhães, P. (2007). *Earth Condominium – From Climate Change to a New Juridic Conception of the Planet*. Coimbra: Edições Almedina. Magalhães P. (2016), *Earth Condominium: A Legal Model for the Anthropocene*, in Magalhães, P. Steffen, W. Bosselmann, K. Aragão, A., Soromenho-Marques, V. (Eds.). *The SOS Treaty, The Safe Operating Space Treaty: A New Approach to Managing Our Use of the Earth System*. Cambridge Scholars Publishing, Newcastle upon Tyne.

⁷Meyer and Newman. (2018) *The Planetary Accounting Framework: A novel, quota-based approach to understanding the impacts of any scale of human activity in the context of the Planetary Boundaries*. *Sustainable Earth*,1:4, <https://doi.org/10.1186/s42055-018-0004-3>

⁸Mazzucato, M (2018) (<https://www.tandfonline.com/doi/full/10.1080/13662716.2016.1146124>) and his recent book *The value of everything: Making and taking in the global economy*. Allen Lane.

5. In keeping with the above approach, Common Home of Humanity (CHH) with the support of Instituto Internacional de Derecho y Medio Ambiente (IIDMA*) respectfully request that the Secretary-General of United Nations do the following:

- That in paragraph I of the report your excellency is preparing for UNGA Res/72/277, to be submitted to the General Assembly, you identify as a gap in international environmental law the lack of recognition of the Earth System as a legal object. This recognition is necessary to protect it in a favorable state.
- That in addition, the report assesses the need to recognize the Earth System as the Intangible Common Heritage of Mankind and to elaborate a Treaty for the Safe Operating Space for Humankind in which the Trusteeship Council would have a prominent role.

That, in accordance with article 99 of the UN Charter, your excellency bring to the attention of the Security Council the need to protect the favorable state of the Earth System in order to maintain international peace and security.

6. Who we are

The "Common Home of Humanity" (CHH) is a non-profit association with headquarters in Portugal, established to work with governmental, non-governmental, national, regional and international entities, as well as individuals or groups of individuals, aiming to protect the environment on the scale of the Earth System. The Instituto Internacional de Derecho y Medio Ambiente (IIDMA) is a non-profit organization established in 1996 to contribute to environmental protection and the achievement of sustainable development, through the study, development, implementation and enforcement of the law.

CHH project is supported by **Instituto Internacional de Derecho y Medio Ambiente. IIDMA, is a non-profit organization established in 1996 to contribute to environmental protection and the achievement of sustainable development, through the study, development, implementation and enforcement of the law.*

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CHH Milestones...

- 2018, 24th September: Legal constitution of the association "Common Home of Humanity".
- 2016: rotocol Establishing the Steering Committee of the Common Home of Humanity with the Portuguese Ministry of the Environment, the Municipality of Porto, the University of Porto, ZERO - Sustainable Earth System Association, IMARTE and Concept Media. It allowed the development, between 2016 and 2018, of the initiative "Common Home of Humanity," in a global concept, involving the legal, scientific, economic and governmental perspectives;
- 2016: Launch of the book "SOS Treaty - Safe Operating Space Treaty" at the headquarters of the European Space Agency in Paris;
- 2013: International Conference "Educating for the Common Heritage", Serralves Foundation, Porto.
- 2007: Launch of the book Earth condominium: *From climate change to a new legal concept of the planet*. Paulo Magalhães.
- 2002: Perception of the global condominium system as a way of managing the common goods and solving the great challenges of humanity's survival on the planet.

CHH Future Milestone

- 2019 September: International Conference: The Earth System and International Law, Porto, Portugal.

Please see attached the CHH's Statutes (English and Portuguese version).



**A Planetary Condominium
based on knowledge.**