

Reflections on

# EARTH TRUSTEESHIP



*Mother Earth and a new 21<sup>st</sup>-century  
governance paradigm*

## Collective publication

**Authors:** Nnimmo Bassey – Michel Bauwens – Klaus Bosselmann – CURLS2019 summer school – Mayssam Daaboul – Kelly Dorkenoo – Anwar Fazal – Maja Groff – Neshan Gunasekera – Paulo Magalhães – Henry Mentink – Raúl Montenegro – Jessica den Outer – Joel Persson – Jose Ramos – Vandana Shiva – Justin Sobion (Ed.) – Prue Taylor – Dasho Karma Ura – Ole von Uexkull (Prologue) – Alyn Ware – Femke Wijdekop – Hans van Willenswaard (Ed.)



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**Editors:** Justin Sobion and Hans van Willenswaard

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**Book design:** Ree Aswaruangpipop

**Cover design:** Justin Sobion (pen drawing) and Sirinya Boonsit (layout)



BOOKS





WELCOME



**“I breath and therefore I am.”**

**Sulak Sivaraksa**

**“We are the Soil.”**

**Vandana Shiva**

**“Come walk with me.”**

**Maha Ghosananda (1913-2007)**

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# PROLOGUE





# ***After 50 years of failed environmental diplomacy, we need to ask the obvious question: “Who owns the Earth?”***

Ole von Uexkull

**Half a century ago, 122 countries met in Stockholm for the first UN Conference on the Environment. Last June 2022, the Swedish government hosted an anniversary summit with no political clout or ambition. This was emblematic of the failure of 50 years of environmental diplomacy due to the fact that our leaders have consistently avoided the central question – that of justice.**

In his opening speech in 1972, the Swedish Prime Minister chose clear words: “We know that our resources, both renewable and non-renewable, are limited,” said Olof Palme, who had invited the world to Stockholm for the first UN Conference on the Environment. “These simple facts inevitably raise the question of equality, of more equal distribution between countries and within countries.” For the industrialised regions of the world, Palme demanded a “serious cutdown on luxury production.”

There were inklings of a new era in the air. Fifty-four ministers had come to the Swedish capital, and hundreds of journalists from all over the world had been accredited for the “United Nations Conference on the Human Environment”. Before leaving for Stockholm, the Austrian UN Secretary-General<sup>1</sup> had set the bar for what was to be achieved during those days in the Swedish capital. Future generations, said Kurt Waldheim, would look back on the conference as “a turning point in history, when a major correction was introduced in the process of the industrial revolution.”

That was in June 1972. In June this year, 2022, the Swedish government has yet again invited the world under UN auspices. Stockholm+50 was the

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<sup>1</sup> The conference was initiated and prepared by his predecessor UN Secretary-General U Thant, Burma, who retired in 1971 for health reasons.

name of the event, a title meant to remind the world of the birth of environmental diplomacy half a century ago – and about Sweden’s role in it. But this time, there was no sign of any significant vision or ambition. In the bureaucratic lingo of UN diplomacy, the Stockholm+50 summit had been planned “as a contribution to the environmental dimension of sustainable development to accelerate the implementation of commitments in the context of the decade of action and delivery for sustainable development, including a sustainable recovery from the coronavirus disease (COVID-19) pandemic.” A sense of urgency, of a political turning point? Not here.

Put the two together – the sense of a new dawn in 1972 and the lack of vision today – and it becomes clear: environmental diplomacy is at rock bottom. But why?

When environmentalism entered the dominant global consciousness, it was a spectacular challenge to the post-war success story of strong material growth in many places. The year 1972 played a key role in this development. Ten years earlier, the American biologist Rachel Carson had published her famous *Silent Spring*, the first popular environmental book. The connection she described between agricultural pesticide use and the death of songbirds made the general public aware for the very first time that nature was not at our infinite disposal.

The most important event in the run-up to the Stockholm conference was the March 1972 publication of the report “The Limits to Growth”, commissioned by the Club of Rome, which had been founded 4 years earlier. The young systems researchers Dennis and Donella Meadows – he, an economist, and she, an environmental scientist – had calculated the development of world population, food production, industrialisation, pollution and resource consumption using a computer model with their research group at MIT. Their results showed that Carson’s finding about the effects of pesticides on the ecosystem was not an isolated case: Earth was a closed system and humanity was on its way to overstepping its limits within less than a hundred years with catastrophic consequences.

But even though the world was very much aware of these revolutionary findings in June 1972, the Stockholm meeting did not achieve a break-

through on par with its preparatory rhetoric. A decent final declaration was achieved and the UN Environment Programme (UNEP) was founded. But like so many of its successor conferences, Stockholm was marked by disputes about realpolitik. For despite Palme's inaugural truth-telling, the rich countries showed little willingness to share. The poorer nations, in turn – with Indian Prime Minister Indira Gandhi as their most prominent representative at the conference – feared that rich countries would deny them their badly needed material progress, under the guise of their newfound environmental awareness.

Under the impression of the American aerial bombings and the use of defoliants in Vietnam, there was also a dispute about the condemnation of “ecocide” – which remains a yet-to-be-fulfilled demand of the environmental movement until this day. And the Eastern bloc stayed away from the conference altogether in a dispute over the participation of East Germany.

And so, until the end of the East-West confrontation almost 20 years later, progress in environmental policy was mainly made at the national level. It was not until the world met in Rio in 1992 for the “Earth Summit” that there was a new spirit of optimism. The destruction of forests, the hole in the ozone layer and the fear for desertification had made the limits to growth more obvious than ever before, and there was considerable public pressure for an economic order more strongly oriented towards environmental protection. This time, some of the most important truth-telling was delivered by a 12-year-old girl. In her speech to the delegates, the Canadian Severn Suzuki demanded that those who had more than enough needed to share with others.

### **Conferences and “blah, blah, blah”**

The Rio Conference adopted documents that still shape international environmental policy today, including the Framework Convention on Climate Change, which led to the Kyoto Protocol in 1997. But once again, there was no change to the economic system. Because in the meantime, another project had gained strength. The neoliberal economic order, tested by Ronald Reagan and Margaret Thatcher at the national level in the 1980s, set out for its international triumph. The yardstick here was not system

boundaries and sharing, but eternal growth, unleashed through the elimination of regulatory restrictions.

This ideology became a resounding success. With the WTO founded in 1995 and hundreds of bilateral trade agreements, a global economic and trade regime was created that had everything the sustainability agenda lacked: enforceable rules, strong institutions and, not least, a supportive global elite. The globalisation of the 1990s became a project of excess, defying natural boundaries by continuing its destructive growth into the last intact ecological spaces of the planet.

International environmental and climate protection, on the other hand, remained subordinate, as the failed climate conferences in Johannesburg (2002) and Copenhagen (2009) demonstrated – in grotesque disproportion to the desperately acute need for regulation. Even the 2015 Paris Agreement was only made possible by foregoing any binding effect from the outset. Following the motto of Rio, “Think globally, act locally,” Right Livelihood Laureate Hermann Scheer therefore characterised the tortuous procedure of the climate conferences as “Talk globally, postpone nationally.” Greta Thunberg, another Right Livelihood Laureate, later spoke of the “blah, blah, blah” at such conferences.

Both express the feeling that the things that should be addressed – and decided – at the international climate and environment conferences will not even be put on the agenda. It seems that international environmental diplomacy has forfeited the interpretive space cautiously opened up in 1972 in favour of a description of reality that is not its own. A phrase like Palme’s dictum of a “more equal distribution” and “cutdown on luxury production” would no longer find a place at environmental conferences today. And that is the core of the problem.

The insights of 1972 should have completely changed our understanding of the world, but they are largely ignored until this day. Their historical significance is no less profound than the Copernican revolution. Before 1972, man was smaller than nature. Nature was out there, it was hostile and boundless, and man held his own against it. After 1972, it is not nature that is our enemy, but we ourselves have become our own enemy if we do not respect its limits.

This change of perspective turns many former certainties of human existence upside down, right up to the Western concept of property, which is still considered sacrosanct. According to the famous theory of private property by the English philosopher John Locke, the appropriation of land was justified by the fact that the owner “mixed” his labour with the natural resource of land. But even the liberal Locke, in his 1689 *Second Treatise of Government*, formulated an important proviso. For the appropriation to be legitimate, he demands that there has to be “enough, and as good, left in common for others” – a condition that is no longer fulfilled on a limited planet.

The concept of *homo economicus*, depicting man as a self-interested being optimising his own benefit with cold rationality, also falls short in a limited world – and has been proven wrong in the real world over and over again. The Senegalese economist and public intellectual Felwine Sarr for instance points to cooperative economic models in African societies that do not know the concept of unlimited growth. “*Homo africanus*,” he writes in his book *Afrotopia*, “is not a *homo economicus* in the strict sense.”

But how can it be that Western economic thinking, which originated in the context of a supposedly unlimited world, during the reclamation and enclosure of agricultural land in rural England and the open frontier of North American colonisation, still holds us captive today, despite its obvious fallacies?

### **The demands have become unmistakable.**

The answer to this question has the shape of a champagne glass and is rooted in economic interests. The height of the glass describes the global distribution of property – the poorest at the bottom, the very rich at the top. The width of the glass, in turn, indicates CO<sub>2</sub> emissions – from the tiny narrow stem of the lowest groups to a slight widening halfway up to a sweeping width only in the upper tenth. According to Oxfam, the richest 10 per cent of the world’s population are responsible for half of the emissions, while the poorest 50 per cent are only responsible for 10 per cent. The richest 1 per cent cause twice as many emissions as the poorest 50 per cent of the world’s population.

The glass can be represented with many parameters – the shape is always similar. Income and resource consumption, for example, are distributed similarly to CO<sub>2</sub> emissions. When it comes to wealth, the injustice is even more extreme: according to the Credit Suisse Global Wealth Report, the world's 1.1 per cent dollar millionaires own almost half of global assets.

To these people, the idea of limits to growth must seem like a fatal misconception: they have been able to record the greatest material gains and multiply their wealth over the past 25 years. That is why the ecological transformation is in the interest of many, but NOT in the interest of all.

If one assumes that political influence increases significantly the further we go up the wealth distribution, then it becomes clear why there is so little political interest to question the growth narrative. After all, the wealthy part of humanity is least affected by climate and environmental crises and has better means to protect themselves and their loved ones. During the Covid crisis, the ten richest men in the world were able to double their wealth, while 99 percent of the world's population is now economically worse off than before the crisis.

The myth of infinite growth is still the most important justification for the continuation of this radically unequal distribution. As long as the losers of unequal distribution see only themselves as responsible for their own material advancement, they will not perceive the excessive consumption of resources by others as a problem. If, on the other hand, the realisation prevails that the cake is in fact limited, then Palme's demand for equality is the logical consequence.

That should have been the seismic shift in the way we understood the world in 1972: On a finite planet, extremely unequal control over its vital resources can never be legitimate. Indian lawyer and Right Livelihood Laureate Ritwick Dutta, who represents the poorest of the poor in the struggle against the takeover of their land by the coal and mining industries, calls this concept simply "ecological democracy". For even more than the right to vote in elections, control over local resources determines the fate of these people. Just as the democracy movement fought for the equal distribution of political rights, today we must fight for people's equitable control of vital natural resources.

This could not have been expected from the anniversary conference in Stockholm. But the demands have become unmistakable. The Indian peasant protests last year, the resistance of the Yanomami Indigenous people against overexploitation of the Amazon, the Ugandan campaign against the EACOP pipeline: millions of people worldwide are fighting for climate and environmental justice. Fifty years after the world community invoked the “One Earth” in Stockholm, our best hope for its future rests on them.





# INTRODUCTION





# INTRODUCTION

## Reflections on EARTH TRUSTEESHIP. *Mother Earth* and a new 21<sup>st</sup>-century governance paradigm

In 2022 the Earth Trusteeship Working Group (ETWG), which consists of 12 core members located around different parts of the globe, decided to publish this book.<sup>1</sup> The aim of this publication is to promote “Earth trusteeship” as a model of planetary governance to a wider audience. The chapters within this publication demonstrate how the concept of Earth trusteeship coincides with a number of initiatives and developments – both old and recent – which have shaped (and continue shape) the landscape of international environmental law, ecological law and human rights, including: the Universal Declaration of Human Rights, the Earth Charter, the UN Secretary-General’s 2021 report entitled *Our Common Agenda*, the Stockholm+50 conference, a Global Pact for the Environment, Earth System governance, Our Common Heritage, Climate Justice (with a special focus on the decision made by the government of Vanuatu and other core states to proceed to the International Court of Justice for an Advisory Opinion on the rights of present and future generations to be protected from climate change), the global movement for the Rights of Nature, *governing the Global Commons and Public Goods*, Peace building, the UN Decade on Ecosystem Restoration (2021-2030), Education for Sustainable Development (ESD) and UN Reform.

Within the pages of this publication, one immediately encounters the fact that the idea of “Earth trusteeship” was launched and endorsed, within the framework of “The Hague Principles”, by a number of professional organi-

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<sup>1</sup> The core members of the Earth Trusteeship Working Group are: Vongthep Arthakaivalvatee, Professor Klaus Bosselmann, Professor Emilie Gaillard, Neshan Gunasekera, Mike Hayes, Dasho Karma Ura, Professor Paulo Magalhães, Justin Sobion, Prue Taylor, Alyn Ware, Hans van Willenswaard and Wallapa van Willenswaard,

sations and experts in the fields of human rights and environmental law. The timing was perfect and intentional. It was the 10 December 2018 – the 70th anniversary of the adoption of the Universal Declaration of Human Rights (UDHR). The place also was fitting – The Peace Palace, at The Hague, widely perceived as the centre of international law and global peace.

This publication comprises a rich diversity of scholarly and creative contributions from Right Livelihood Laureates, academics, scholars, individuals, Youth, and members of civil society. Whilst the focus of this book is on Earth trusteeship, contributions are made in a broad perspective including indigenous worldviews, Earth Democracy, Restorative Justice and the constitution of Bhutan. The collection of diverse articles found within this publication not only stimulates a cross-fertilisation of ideas, but also illustrates to the reader that Earth trusteeship is interlinked with other concepts and thereby plays a tacit role in our daily lives. For example, Earth trusteeship seeks to continue what the Earth Charter started two decades earlier. A central notion of the *Earth Charter* is the “community of life” of which humanity is part. Fully in line with the *Earth Charter*, the core message of Earth trusteeship (through The Hague Principles) is that, as humans are members of the community of life (or Earth community), this defines what responsibilities we have for each other and other members of the community.<sup>2</sup> Earth trusteeship therefore is not an end in itself, but seeks to work with all other models of global governance to secure a better planet for the future generations.

In publishing this book, it would be remiss of us if we did not pay tribute to those who have left us and who have laid the “cornerstone” of Earth trusteeship. One person is Judge Christopher G. Weeramantry – a former Vice-President of the International Court of Justice (ICJ) and a Right Livelihood Laureate. Judge Weeramantry in the Gabčíkovo-Nagymaros Project case, referred to the phrase “the principle of trusteeship of earth resources” three times in his Separate Opinion.<sup>3</sup> Although his Separate Opinion did not expressly convey who would take on the role of this trusteeship,

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<sup>2</sup> Klaus Bosselmann “Opening of Earth Trusteeship Forum” (Peace Palace, The Hague, 10 December 2018). [www.earthtrusteeship.world](http://www.earthtrusteeship.world)

<sup>3</sup> Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7 at 102, 108 and 110.

Judge Weeramantry acknowledged that this principle is “the first principle of modern environmental law”.<sup>4</sup> We would also like to acknowledge the tireless work of Polly Higgins<sup>5</sup> a Scottish barrister and author who referred to a “worldview based on trusteeship and the wellbeing of future generations, as a new paradigm in which we take care of our land and recognise the inherent value of life.”<sup>6</sup> A gross violation of this responsibility amounts to “ecocide” – a term which is increasingly perceived by environmentalists, lawyers and policymakers as amounting to a crime against humanity.

In closing, we take this opportunity to refer to the Declaration on Education for Earth Trusteeship proposed by the current Co-Chair of the ETWG Neshan Gunasekera, and signed at Wongsanit Ashram, Thailand on 22 February 2020. An excerpt of this Declaration states:<sup>7</sup>

*It is vitally important to alert all Earth citizens to their responsibilities as trustees for current and future generations, of life on our planet home. Education for Earth Citizenship is necessary for all people of all cultures and religions, across all generations. This aspect tends to be neglected in educational curricula throughout the world.*

We see the intention of the signatories of this Declaration as being consistent with this publication – whose purpose is to exchange, educate and engage others on the importance of Earth trusteeship as a future tool of planetary governance. With the resurgence and growing interest in trusteeship in general – as evidenced by Kofi Annan who embraced the idea of a “new concept of trusteeship” for the global commons<sup>8</sup> and the UN

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<sup>4</sup> At 102 and 108.

<sup>5</sup> Scottish barrister, author and environmental lobbyist. She sadly passed away 21 April 2019.

<sup>6</sup> Polly Higgins “What will your legacy be?” Resurgence Issue 270, Jan/Feb 2012 <https://www.resurgence.org/magazine/article3554-what-will-your-legacy-be.html>

<sup>7</sup> At the occasion of the “40 Years Right Livelihood Award Conference”, 20-22 February 2020. Neshan Gunasekera is the legacy holder of Right Livelihood Laureate C.G. Weeramantry.

<sup>8</sup> Renewing the UN: A Programme for Reform – Report of the Secretary-General A/51/950

Secretary-General António Guterres, who proposes a “repurposed Trusteeship Council”<sup>9</sup> – there is no doubt in our mind that Earth trusteeship is a subject that needs to be further examined and explored. One way to do this in a time perspective proportionate to the complexity and profundity of the challenges would be a three-year period of intensive Earth Trusteeship *Dialogue*.

It is our hope that the words between these pages bring a renewed consciousness and understanding about our relationship with the Earth.

## **Earth Trusteeship Working Group**

**Neshan Gunasekera, Co-Chair**

**Dasho Karma Ura, Co-Chair**

**Justin Sobion, Coordinator**

**March, 2023**

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(1997) at [85].

<sup>9</sup> “Our Common Agenda – Report of the Secretary General” (The United Nations, 2021) at 4, 7 and 45.

# PREFACE





# Preface

Is Earth Trusteeship important? Is it fundamental? Is it urgent?

The importance and intrinsically fundamental character of Earth Trusteeship have been apparent to the editors of *Reflections on Earth Trusteeship. Mother Earth and a new 21<sup>st</sup>-century governance paradigm* from the onset. The purpose of this book is to share the insights on human beings as Earth trustees from a broader, participatory, perspective. By bringing these *Reflections* together, we aim to contribute to “open coalition networking” towards the *UN Summit of the Future*, to be held in September 2024.

That articulating Earth Trusteeship – in particular undertaken by Klaus Bosselmann and Justin Sobion in their articles and by all authors throughout the book more implicitly – would become extremely *urgent*, however, came as a surprise. Since the failure of the Stockholm+50 conference, June 2022, (Ole von Uexkull, Klaus Bosselmann), suddenly unexpected progress was made. It all happened in half a year: *Earth4All* was published by the Club of Rome<sup>1</sup>; the recognition of the loss and damage principle<sup>2</sup> came as a result of the climate change COP27 in Egypt; the commitment to the *30x30 framework* (30% protected area 2030) was agreed during the biodiversity COP15, by Kunming-Montreal<sup>3</sup>; initial recognition of ecocide as a crime received important support<sup>4</sup>; and the *common heritage of humankind* principle was adopted as part of the High Seas Treaty concluded in New York. The latter recognition is the subject of a passionate *Reflections* article by Paulo Magalhães titled *Stable Climate: A Common Heritage of Humankind*.<sup>5</sup>

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<sup>1</sup> Earth for All. A Survival Guide for Humanity, A report to the Club of Rome, 2022.

<sup>2</sup> See the article of Kelly Dorkenoo and Joel Persson; as well as a reference to the work of Jaap Spier, Professor in tort law, in the article of Hans van Willenswaard.

<sup>3</sup> A critical review follows later in this Preface.

<sup>4</sup> European Parliament’s Committee on Legal Affairs, 21st March, 2023. Article by Femke Wijdekop.

<sup>5</sup> Thanks to Paulo Magalhães and partners the principle of Common Heritage of Humankind was not only included in the new Climate Change Act of Portugal, it finds inroads in the whole community of Portuguese-speaking countries.

On top of this came the request by consensus (no vote was needed) by the UN General Assembly to the International Court of Justice, The Hague, (World Court) to render an Advisory Opinion (ICJAO) on the legal responsibilities for climate change. The ICJAO was accepted on 29 March 2023, just days before this book went to press. It was a huge achievement for the Pacific Island Students Fighting Climate Change, for Vanuatu as a pioneering small island state, and for the World's Youth for Climate Justice as a global representation of young people's voices. Alyn Ware, the author of a broadly supported article proposing *Eight Policy Initiatives*, provided important legal and motivational advice to the ICJAO activists.

In the same Action section as Alyn Ware's, Prue Taylor contributes her engaging article on this adventurous Pacific-led ICJAO campaign. The article is titled *How to be Good Ancestors: Taking Climate Change to the World Court*. Now that the ICJAO Resolution is adopted, it is apt at this juncture, to elaborate on whether Earth Trusteeship can provide "food for thought" for all those intricately involved in the International Court of Justice (ICJ) climate process.

Four years ago, 27 law students from the University of the South Pacific (USP) sat in a classroom in Vanuatu to discuss the idea of persuading leaders of the Pacific Island Forum to take the issue of climate change to the ICJ. The state of Vanuatu, a tiny archipelago comprising some 83 islands in the South Pacific Ocean, heeded to this voice of the youth. Like David taking on powerful Goliaths, Vanuatu challenged the other 192 UN Member States to join its ranks to take the world's biggest problem to the world's highest Court. On the 29th March 2023 – and after one and a half years of campaigning and political negotiations – Vanuatu successfully led a global coalition of 132 co-sponsoring countries to unanimously adopt a UN General Assembly Resolution calling for an Advisory Opinion on climate change from the ICJ. Now that the ICJAO has become a reality, it provides a window of opportunity for us as global citizens, members of civil society, academics, and international lawyers, to be creative about the role that Earth Trusteeship could play within the ICJAO.

There are two principal questions that are tabled before the ICJ for its consideration. Question (b)(ii) touches upon the rights of future generations to be protected from the adverse effects of climate change<sup>6</sup>. On the subject of

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<sup>6</sup> Request for an advisory opinion of the International Court of Justice on the obligations of

future generations, The Hague Principles which establishes the concept of Earth Trusteeship, state the following:

We all belong to the community of life, the Earth community, which determines *what rights and responsibilities we must recognize and honour for each other, for future generations, for all living beings and the Earth, our home* (emphasis added).

Earth Trusteeship requires the present generation to hold the Earth in trust for future generations. As a governance concept, Earth trusteeship is guided by the fulfillment of ownership responsibilities for the benefit of others, i.e.; the wellbeing of future generations<sup>7</sup>. As Prue Taylor expresses in her article “it is the explicit inclusion of ‘future generations’ that offers some important legal opportunities of direct relevance to Earth Trusteeship.”

Earth Trusteeship also aligns itself with the theory of intergenerational equity, which calls for a minimum level of equality among generations<sup>8</sup>. In other words, each generation is entitled to inherit a planet at least as good as that of previous generations<sup>9</sup>. In the ICJ decision of *Pulp Mills on the River Uruguay* Judge Trindade acknowledged that it could hardly be doubted that intergenerational equity forms part of international environmental law<sup>10</sup>. In a similar manner, Judge Weeramantry, sitting as a Vice-President of the ICJ referred to the “principle of trusteeship of earth resources” as the first principle of modern environmental law in the *Gabčíkovo-Nagymaros Project* decision<sup>11</sup>. These two examples indicate that the ICJ has already developed jurisprudential views that are consistent with the philosophy of Earth Trusteeship. The jury is still out, and it is not far-fetched. An argument could be

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States in respect of climate change GA Res A/77/L.58 (2023).

<sup>7</sup> Earth Trusteeship Working Group “Initial Concept Note for Discussion” (Draft 4), 15 July 2020.

<sup>8</sup> Edith Brown Weiss In *Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (The United Nations University, Tokyo and Transnational Publishers Inc, New York, 1989) at 24–25.

<sup>9</sup> Weiss, at 24–25.

<sup>10</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep, Separate Opinion of Judge Cançado Trindade at [122].

<sup>11</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7 at 102.

mounted that Earth Trusteeship could contribute, in a meaningful way, to the ICJAO process since it sets the tone on the duty of states as trustees of the Earth for present and future generations.

Remarkably, developments since Stockholm+50 were anticipated, and often actively promoted by the authors of this book from a broad spectrum of inter-disciplinary and inter-cultural research and civil society interaction. The common message of the authors of *Reflections*, however, – they did not all know each other before entering the discourse – is that these developments, hope-giving as they are, are not enough, can still go totally wrong or remain powerless if not accompanied by further visionary law and governance innovations. *Reflections on Earth Trusteeship* could be pivotal.

Meanwhile, extreme weather keeps devastating the Earth, the IPCC Report<sup>12</sup> concludes that insufficient progress is being made. In contrast, fossil fuel corporations make more profit than ever while war and competition divert the attention from “saving the Earth” to “fighting for own, exclusive, interests”. But can war also be “A Good War”? – a concerted effort to establish or defend principles and practices for the common good – argues Maja Groff while referring to Seth Klein<sup>13</sup>

If we want change, we must organize ourselves with extraordinary dedication.

Raúl Montenegro, from an evolutionary biology perspective of thousands and thousands of years, warns of a nuclear war induced by the Principle of Concentrated Power and the act of homogenization.

Earth Trusteeship co-creates a new 21<sup>st</sup>-century governance paradigm because “we as trustees equally belong to the Earth, the Earth does not belong to us, nor to a few”. Mother Earth holds the Earth on her lap and provides parental security. We are duty-bound to reciprocate the care she extends to humanity and the community of life. This is our sacred trust.<sup>14</sup>

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<sup>12</sup> Intergovernmental Panel on Climate Change: AR6 Synthesis Report: Climate Change 2023, March 2023.

<sup>13</sup> Seth Klein (2020), *A Good War*, Toronto, ECW Press.

<sup>14</sup> Earth Charter: “The protection of Earth’s vitality, diversity and beauty is a sacred trust.”

“Earth Trusteeship is the art of guarding the earth with consciousness, trust and love.”

expressed one of the participants of CURLS2019 summer school during the Earth Trusteeship Forum at Chulalongkorn University, Bangkok. The CURLS participants (Chulalongkorn University Right Livelihood Summer School) together contributed a poem full of empathy and understanding.

Vandana Shiva translates this sense of meaning concretely into *Earth Democracy*, defined by 8 characteristics. And Michel Bauwens et al. envision a *commons-driven economy* and culture, which, in full agreement, according to Hans van Willenswaard, is an essentially feminine scenario, distinct from present macho scenarios determined by neo-liberalism and communist capitalism. If the commons-driven economy would get due space and support to develop, this would not result in the replacement of existing systems but in more balanced scenarios based on liberalism and socialism of integrity, in dynamic interaction with a commons sector.

Femke Wijdekop argues that ecocide as well as loss and damage can only be addressed adequately if we apply the principles of *restorative justice*. Its purpose is not to punish but to heal. Nnimmo Bassey says “Restorative justice is the pathway to a truly just future”. Whereas in his poem he gives way to his raw despair:

“Wrap Mother Earth in endless bales of smog?  
Whose task is to pile the climate debt  
And whose lot to be the carbon slave?”

As editors of this remarkable book, we are medium to trailblazing academia-civil society knowledge-in-action production. *Reflections on Earth Trusteeship* contributes modestly, but substantially, to co-emerging transformation breakthroughs. The book burns in our hands. We are very keen to present it to you.

Earth Trusteeship pre-supposes that nature is a living being, rather than a thing, or complexity of things only. Earth trustees derive their responsibilities and rights from being part of this living being and its multiple interconnectedness. Earth Trustees are duty-bound to care for those parts of nature that cannot express themselves beyond their existence as such.

Where Western science has separated humanity from nature, the undivided worldviews (not ignoring distinguishability nor discernment) of indigenous people open perspectives to other ways of seeing reality. Various authors connected to New Zealand: Alyn Ware, Prue Taylor, Klaus Bosselmann, Justin Sobion; as well as the author of the article on Rights of Nature Jessica den Outer, all point to this important contribution of the Māori worldview to modern law and governance innovation. It is important to recall this in more detail in this Preface.

In Aotearoa<sup>15</sup> New Zealand, the idea of granting rights to nature has been undoubtedly pioneered by the indigenous Māori. In Māori worldview, Papatūānuku (the land or Mother Earth) gives birth to all things of the world and imparts many blessings to her children.<sup>16</sup> Ranginui, the sky father, was torn away from Papatūānuku, the Earth mother, and formed the vault of the heavens.<sup>17</sup> It is this Māori cosmology and worldview, together with Treaty of Waitangi settlements, that inspired a legislative pivot towards the rights of nature in New Zealand. This was first made evident in 2014, when New Zealand passed the Te Urewera Act which declared Te Urewera, a rugged primeval forest and ancient homeland of the Tūhoe (Māori tribe), “a legal entity” which has “all the rights, powers, duties, and liabilities of a legal person”.<sup>18</sup> The Act goes on to acknowledge the Tūhoe as the “tangata whenua” (local people) and “kaitiaki” (guardian) of Te Urewera.<sup>19</sup>

Three years later, in 2017, New Zealand became the first country in the world to grant a river legal human status.<sup>20</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act describes Te Awa Tupua as “an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporat-

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<sup>15</sup> Aotearoa is the indigenous Māori name for New Zealand.

<sup>16</sup> “Story: Papatūānuku – the Land” Te Ara <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>17</sup> “Story: Ranginui – the Sky” Te Ara <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>18</sup> Te Urewera Act 2014, s 3(5), s 3(8) and s 11(1).

<sup>19</sup> Section 3(6).

<sup>20</sup> “New Zealand River First in the World to be Given Legal Human Status” (15 March 2017) BBC News <[www.bbc.com](http://www.bbc.com)>.

ing all its physical and metaphysical elements.”<sup>21</sup> To appreciate the profound connection that the Whanganui iwi (Māori tribe) have with the river, the Act proclaims (in both Māori and English): *Ko au te Awa, ko te Awa ko au*, which means, “I am the River and the River is me.”<sup>22</sup> Similar to Te Urewera, Te Awa Tupua (which includes the Whanganui River and its physical surroundings) is declared a “legal person” having “all the rights, powers, duties, and liabilities of a legal person.”<sup>23</sup>

In 2017, the Taranaki iwi and the government of New Zealand also signed a Record of Understanding to declare the renowned Taranaki mountain in New Plymouth, a legal person.<sup>24</sup> On 31 March 2023, six years after the Record of Understanding was signed, a Treaty of Waitangi settlement was attained where Mount Taranaki (formerly Mount Egmont) and the national park’s peaks would jointly become a legal person named Te Kāhui Tupua.<sup>25</sup> These three examples, with perhaps more to come, indicate that there is a continuing movement within Aotearoa New Zealand to bestow legal personality on natural spaces and landscapes that are sacred to the Māori.

Māori worldviews have also been recognised in the international arena. Jacinda Ardern, a former Prime Minister of New Zealand, championed the use of the Māori term *kaitiakitanga* during her speech at Climate Week at the United Nations in New York. She explained it in the following manner:<sup>26</sup>

It (*kaitiakitanga*) means guardianship. But not just guardianship, but the responsibility of care for the environment in which we live, and the idea that we have a duty of care that eventually hands to the next generation, and the one after. We all hold this responsibility

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<sup>21</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 13(c).

<sup>22</sup> Section 13(c).

<sup>23</sup> Section 14(1).

<sup>24</sup> Ngā Iwi o Taranaki and The Crown Record of Understanding for Mount Taranaki, Pouākai and the Kaitake Ranges (20 December 2017) at cl 5.2.2.

<sup>25</sup> Robin Martin “No More Egmont’: Taranaki Maunga Officially Welcomed at Treaty of Waitangi Settlement” *The New Zealand Herald* (online ed, Auckland, 31 March 2023).

<sup>26</sup> Jacinda Ardern “Kaitiakitanga: Protecting our Planet” (Climate Week, United Nations, New York) 25 September 2018.



*Sobion*  
21

Kaitiakitanga. Ink drawing by Justin Sobion.



in our own nations, but the challenge of climate change requires us to look beyond the domestic. Our duty of care is as global as the challenge of climate change.

The Sixth Assessment Report of The Intergovernmental Panel on Climate Change (IPCC) also acknowledged that Māori are grounded in Mātauranga Māori knowledge (body of knowledge originating from their ancestors), which is based on the preservation of human–nature relationships and ecological integrity.<sup>27</sup>

The most vital challenge that binds all articles together is land and “natural resources” management. Both Anwar Fazal and Henry Mentink refer to M.K. Gandhi. Anwar is the Founder of Right Livelihood College. He avoids diving into the specifics of the Gandhian approach to trusteeship and rather “invokes the spirit of trusteeship” in universal terms. Henry Mentink, the “Wheelbarrow Man” creates symbolic action as a tool for change, like Gandhi broke the appropriation of freely available salt by the British to force it into a privilege of the occupying power, and set salt free. Much land today, in particular agricultural land, is under a commercial regime that discourages sustainable and family farming and drives farmers into the arms of what Vandana Shiva furiously calls the “Poison Cartel”. The danger, according to Survival International, a Right Livelihood Award-winning NGO for the protection of indigenous peoples, is that the 30x30 frame adopted at the COP15 biodiversity summit will result in “the biggest landgrab in history”. The impact they fear is conscientiously described in the article of Kelly Dorkenoo and Joel Persson, based on first-hand research in Cambodia. Hans van Willenswaard argues that stopping global “land grabbing” and introducing a healthy Earth Trusteeship regime, would be the last stage of liberation from occupying or colonizing powers – at present represented by sovereign states and corporations with legal personhood using in tandem property laws as an instrument – in a similar way the UN Trusteeship Council guided formerly colonized or occupied territories to independence, until 1994.

That would imply that “trusteeship” itself has to evolve from a rather patronizing system of proxy governance, to Earth System Governance enabling global citizens to realize their intrinsic quality of “equal trustee of the Earth

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<sup>27</sup> The IPCC Sixth Assessment Report – Impacts, Adaptation and Vulnerability (February 2022), Chapter 11, at 1650 <[www.ipcc.ch](http://www.ipcc.ch)>.

caring for the community of life and the wellbeing of future generations”. This cannot be achieved by shock but only by careful dialogue. An important challenge is the eventual amendment of the UN Charter which is considered a taboo. Maja Groff, albeit in a footnote, refers to the agreed obligation of the UN member states to review the UN Charter after ten years.

Henry Mentink, on his wheelbarrow walk to Paris to bring the Earth to the World Heritage Centre, was surprised to be met with loads of people who shared his concerns on the “management” of Earth and natural resources. Michel Bauwens et al. describe the “ups and downs” of the commons movement, in historic perspective, with clear indicators that an “up” would be most appropriate given the state of world.

All these impulses for change pre-suppose constitution-building capabilities, not only in legal terms but in terms of the co-creation of a new world order. In that context, it is most interesting that Dasho Karma Ura from Bhutan, concludes his article *Who Should Own the Earth* with the painting he made of the Zhabdrung (1594–1651), the founder of Bhutan.

Regarding the intended contribution to “open coalition networking” *Reflections on Earth Trusteeship* provides a concise overview of the “open coalition” it is part of: starting with the Earth Trusteeship Working Group (ETWG), supporting partners, the Education for Earth Trusteeship initiative of the Right Livelihood College initiated by Neshan Gunasekera and the impressive number of Right Livelihood Laureates and World Future Council members who work together in the Eight Policies initiative of Alyn Ware.

The Editors hope that this book will contribute to meaningful open coalition networking toward the UN Summit of the Future in 2024; and beyond.

**Justin Sobion** [jsobion@gmail.com](mailto:jsobion@gmail.com)

**Hans van Willenswaard** [hans.creativespace@gmail.com](mailto:hans.creativespace@gmail.com)

## Notes on terminology and language

In our joint efforts towards law and governance innovation, a range of terms are applied, often near-synonymous, partially overlapping, with various nuances and connotations, often depending on context and intention; embedded in various worldviews, national cultures, and languages. Straightforward translation into diverse languages is not always easy.

One of the purposes of an Earth Trusteeship *Dialogue* project would be to arrive at an open consensus about language: a means of communication and awareness building, as well as the expression of well-defined legal principles and regulations. This is an exercise not only in law and governance innovation but also, to a certain extent, in language creation.

Some frequently used terms are:

in English – Heritage Trust, World Heritage (UNESCO), Our Common Heritage (Common Home of Humanity), world, Earth, Planet Earth, Earth System, Earth System Governance (Utrecht University), Trust, trusteeship, Earth Trusteeship (Hague Principles, Earth Trusteeship Working Group); Earth Charter: sacred trust, community of life; in German – Treuhandschaft; in French – patrimoine commun de l'humanité; tutelle; Portuguese – património comum da humanidade (Portuguese Climate Law); Latin - communi hominum patrimonium. And, all in English, on roles: trustee, guardian, steward, custodian.

### Various factors determine how terms and meanings can be formulated:

- Origin: Earth, a heritage from ancestors? from a creator-God or intelligence? “existence” as justification of rights (including Rights of Nature); *inherent or intrinsic* responsibilities and rights; we borrow the Earth from our children? can we hypothesize an “implicate order” (David Bohm)?
- Attribution: are the responsibilities and rights direct elements of human quality (We, the people ... free, with dignity and responsibility, as *trustees of the Earth* ..?); or is an intermediate authority needed, for example the nation-state, which can attribute the right to citizens or not – and impose conditions? confirmation by religious authority? or rights and responsibilities acquired by transaction (commercial ownership)?

- Intention: allows or even prioritizes a particular right to the fulfillment of self-interest (sovereign nation-states; private and corporate ownership)? Does trusteeship, in contrast, implies a duty to serve the interests of others (with rights and benefits needed to realize these responsibilities)? See also the context of protecting, caring for, and cultivating the Earth?
- This leads to the question of who are the beneficiaries as discussed in the article by Justin Sobion: (present and) future generations? Humanity exclusively or inclusive of the “community of life”?
- Role in which rights are executed: as inheritor (owner or trustee) can the inheritor reject the heritage if it amounts to a debt?, guardian (is the guardian part of what is guarded, or not?), steward (employee; under external authority) and increasingly popular use of “steward ownership based on a duty to care”; custodian (under external authority), or trustee under a legal agreement to assume ownership responsibilities? Is trusteeship attributed by an authority (i.e., the nation-state)? Or **recognized** – by international customary law – **as an *intrinsic legal position* and moral quality of all human beings, as integral members of the community of life?**
- Equity: do citizens have equal “Earth rights” or is there a hierarchy? How can citizens organize themselves, in various future scenarios?

## POETRY & IMAGINATION





## Return to Being

A poem by Nnimmo Bassey

The battle rages  
Who must gobble up the carbon budget,  
Wrap Mother Earth in endless bales of smog?  
Whose task is to pile the climate debt  
And whose lot to be the carbon slave?  
Whose land is sacred  
And whose is the sacrificial?  
Colonize the biosphere  
Obliterate the ethnosphere  
Hopes mapped in colonial geographies of death  
Scarified for sport, boobytrapped and floating on blood  
Where are you, trustees of Mother Earth?

Burst the funeral drums,  
Tighten the tourniquets on hard hearts ensconced in hard hats  
Drain the pipelines of caked memories and know  
Fancy names for deadly scourges never made them friendly

Not Ebola. Not novelty in novel coronavirus  
What children have I spawned, Mother Earth groans

The commons enclosed, entrapped for delicate, bloodied trophy hunters  
Civilized kids hooked on zoos incarcerate relatives for a touch of the wild  
All game snatching bread from astonished mouths of orphans  
Now all masked, suited and 7 billion jabs against zoonotic embraces  
Wake up, trustees of Mother Earth!

Hear the footsteps from the receding market squares  
Are you too far gone to hear?  
Hear the rumblings of resistance to naked market forces  
That roasted habitats and habitations  
Lands, seas, and skies grabbed yet dreams cannot be corralled because  
Daughters of the soil are ever alert, awake, hoisting the sky  
And its watery dusts  
Knowledge demonized by demons of market environmentalism  
and brazen extractivism  
As the hunter's bag becomes a weapon of mass destruction  
Bulging pockets hack horns and tusks and an array of idiotic  
aphrodisiacs for limp brains  
Slithering across the Savannah, stomping on our ancestral hearths  
Shall we look, exiled, silent, sullen, sunk and annihilated  
as our trees metamorphose into carbon sinks?  
Take your stand, trustees of Mother Earth!

The dream is gone, the cock has crowed,  
The betrayer seeks a branch to ape a pendulum swing  
And one or two shed a tear for the press  
As the hawk glides softly on the winds of the dirge seeking  
a hapless prey  
Funeral drums burst by pulsating biceps of pain  
Flutes whisper a dirge long forgotten suddenly emerging from the depths  
of years of erased histories  
As daughters and sons of the soil pick up pieces of sacred hills,  
rivers, forests  
Mother Earth awakes, embraces her visible and invisible children  
No more talks, it is time to act  
No more groans, it is time to live the truth  
Blow the trumpet, trustees of Mother Earth  
Time for children of Mother Earth to return to being





Chulalongkorn University Right Livelihood Summerschool CURLS2019 participants.  
Riceplanting exercise on the organic farm of Assoc. Prof. Prapart Pintobtang.

## Earth Trusteeship

poem by CURLS2019 participants (Chulalongkorn University Right Livelihood Summerschool)

All the participants came on the stage and recited a heart-moving poem called “Earth Trusteeship” that they wrote themselves. It goes like this:

Earth Trusteeship is about all the people in the world

Earth Trusteeship is knowledge of what is happening on earth,  
taking the best actions for everyone at every time

Earth Trusteeship is Earth’s vitality, diversity and beauty

Earth Trusteeship is saving our earth for our children to live.  
Believing that we can recover from the disaster that our  
predecessors have created

Earth Trusteeship is creating laws for collective ownership of land  
and resources

Earth Trusteeship is an important weapon which can bring out  
the best in everyone

Earth Trusteeship is relationship between humans and other beings  
nurturing each other with loving kindness

Earth Trusteeship is togetherness in believes and values for making  
the world livable

Earth Trusteeship means recognizing the power we have to shape and be shaped by the world around us

Earth Trusteeship is putting the earth's need above our own desires

Earth Trusteeship is to trust each other with the responsibility of caring for the earth and being aware of this responsibility

Earth Trusteeship is the sense of ownership in responsibility of every human in caring for the Earth

Earth Trusteeship is a process of understanding where are resources coming from and developing awareness and responsibility towards taking care of them

Earth Trusteeship is protection of the nature and environment

Earth Trusteeship is the art of guarding the earth with consciousness, trust and love

Earth Trusteeship is taking care of our mother earth with a loving heart, a critical mind and act with our responsible hands

Earth Trusteeship is realizing the diversity of contributed cultures and experiences

Earth Trusteeship is the responsibility which humans should take in caring for the earth because we are the ones who live on the earth

Earth Trusteeship is conservation of natural resources

Earth Trusteeship is an organization process to protect the earth for the future generation

Earth Trusteeship is bringing people together to take care of mother nature

Earth Trusteeship means learning to love the planet like a mother loves her child

Earth Trusteeship is an interdependent and interconnected concept within humans and animals. Loving kindness and forgiveness have to exist in this for a sustainable Earth



## The Wheelbarrow Walk

In 45 days, Henry walked with his wheelbarrow full of soil to the UNESCO headquarters in Paris to submit the entire Earth to the World Heritage List. He departed on April 22 and arrived at his destination on June 7, 2022.

Henry Mentink lives at the *Veerhuis* (Ferry House) in Varik, bordering the Waal River, a branch of the vast Rhine estuary and lowlands ecosystem. Ferry House became a lively, internationally known, cultural centre – once the home and studio of artist Pieter Kooistra (1922-1998). Here is Henry's story.

## My mission for Earth

Henry Mentink

Eight years ago, an insight set me on a new path for the second stage of my life. It was all about our property thinking. Do we own the Earth or do we take care of it and how? This is how it all ended up with a wheelbarrow walk from Varik, the Netherlands, to Paris.

## My roots

I am enterprising and idealistic and know how to excite people to envision a different society. For many years I have been experimenting in the field of the new economy and society.

As with many, thoughts about this started coming after a change in my life. In my case when I was around 10 years old. John F Kennedy's assassination was the moment in which it became clear to me as an awakening boy that peace was not obvious.

Peace can emerge if we change the rules of living together on earth so that a more dignified human existence can be created with respect for Nature.

I am not an activist, or am I? I take action by being an example. Especially on a small scale and starting with myself, like adopting a child in addition to the three own children we already had. In my working life, I started the first professional Fairtrade shop in the Netherlands and set up the first carshare company. At this moment the biggest one in the Netherlands. I grew up on a farm and studied agriculture and later at Nyenrode Business University.

Peace is closely related to money and the economy. This for me was a reason to write the book *Toward Green Money* in 1996. An economy of sharing, to me, is more than the smart sharing of products and services. Equally important is a different business model for organizations, one that is better suited for this new way of thinking. When sharing cars, one should also share the profit and the responsibility.

Another moment that changed my life was the encounter I had in 1991 with Pieter Kooistra, the man who came up with the idea to lend art<sup>1</sup> and who

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<sup>1</sup> Art library, in Dutch: de Kunstuitleen. For many years a very popular chain of galleries where people could borrow art for display at homes or offices.

conceived a plan for a universal basic income<sup>2</sup>. His creativity runs like a red thread through my actions since then.

Currently, I am in the process of setting up an International Center for the Earth at Veerhuis in Varik. Here I like to explore what else can be shared besides cars and thus take responsibility collectively for a dignified human existence and peace on Earth. The Veerhuis is also the place where the first Village Trade Center in the world has been innovated.

This requires, among other things, a new view on making a business plan. For Pieter Kooistra, I developed the concept of a business plan in a box: a box that invites to develop the inside and outside of an organization, in a balanced way. It is interesting to see what the 'revenue model' on the inside looks like, with Value & Exchange, and the outside with Profit & Loss based on the balance sheet we already know.

The death of my wife Heleen in 2004 was perhaps the most radical moment of change in my life. It brought a great earthly grief together with heavenly happiness; life has its meaning beyond death. An awareness that gained significance for me after my acquaintance with Damanhur, an eco-village<sup>3</sup> in Italy. This remarkable community practices peaceful human co-existence successfully for already over 45 years.

## Peace and ownership

On December 11th, 2014, I was struck by an insight that peace is very closely related to land ownership. The idea included the "assignment" for me to find a thousand people who would each donate 1 million euros to the Earth to take it out of the market economy. No more trading and speculating with land. Clearing the land, so that activities on it were undisturbed by speculators and becoming therefore much more affordable and receptive for care.

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<sup>2</sup> <https://basicincome.org/news/2021/04/think-the-impossible-peiter-kooistra-documentary/>

<sup>3</sup> Member of the Global Ecovillage Network (GEN) <https://ecovillage.org/>

The idea was explained as Exchange Office between Heaven and Earth. The name indicates the notion that you exchange money for the currency of Heaven. That currency is love and peace within you. In other words: give money back to the Earth. Don't look for returns in even more money. But receive love, passion, desire and a harmonious life.

With this plan, I went to Herman Wijffels<sup>4</sup> – he is the most well-known banker in the Netherlands - and asked him if this made sense. During the conversation in his home office, a bird tapped twice on the window, to which Herman said: “That happens often when something beautiful is told here.”

In 2020 we started an action to clear the ground under the Veerhuis through donations. We succeeded, we were able to remove it from the market economy and donated it entirely to the Foundation for Ground of Existence<sup>5</sup>. It can therefore never be bought again and we can focus on caring for the Earth and for future generations in Veerhuis.

## The Wheelbarrow Walk

But how to bring this small step – could I say: this sense of trusteeship – to a broader public to create awareness for the Earth? A team was created and we started a Wheelbarrow Walk initiative “to raise a newfound Awareness for the Earth”. Our beautiful planet in the Universe that makes human life possible. We want to feed the awareness that all that lives forms a cohesive whole. We are inter-beings and inter-connected, not only as humans but also with all our relations, the Earth. Taking care of the Earth is taking care of our home and, in essence, of ourselves and future

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<sup>4</sup> From 1981 to 1999 Herman Wijffels worked for Rabobank ultimately as Chairman of the Board of Directors. Thereafter he became chairman of the Social-Economic Council (Sociaal-Economische Raad, SER). From 2006 to 2008 he was the Dutch representative at the World Bank, He has been referred to as “the best prime minister the Netherlands never had”. He was co-chairman of the World Connectors and until 2017 a Professor of Sustainability and Societal Change at the University of Utrecht. He was one of the initiators of the Sustainable Finance Lab.

<sup>5</sup> In Dutch: Stichting Grond van Bestaan





Lazare Eloundou Assomo, Director of the UNESCO World Heritage Centre, with Henry Mentink in the garden of UNESCO Headquarters, Paris, France. Samples of soil from all over the world were returned to the Earth.

generations. The simple idea was to submit the whole Earth to the World Heritage List of UNESCO in Paris.

While walking with the wheelbarrow full of small bundles, filled with tablespoons of soil from all over the world we saw the Spirit growing. People joined, in their desire to make this change happen. Even the press became actively involved in the Wheelbarrow Walk and published about this Pilgrimage for the Earth daily during our 45-day walk to Paris. The desire to take care of the Earth was gaining momentum with every step we took.

We were grateful and honored to be welcomed by Lazare Eloundou Assomo, originally from Cameroon, Director of the UNESCO World Heritage Centre, Paris, France on the 7th of June 2022.

We offered him soil from all over the Earth which is living proof of people's desire and effort to realize a sustainable way of living, for a Sustainable Future. Now is the time to create a new path for our future.

We are on a journey and you could say we follow in the footsteps of

Mahatma Gandhi, Vinoba Bhave, and Satish Kumar<sup>6</sup>. Vinoba Bhave suggested over 60 years ago that landowners would adopt an extra child, namely the Earth. When the landowner would die the Earth would receive her share of land as if she was one of the children. This led to over 1.500.000 hectares of land being freed. It is not privately owned anymore. It is common land of which the whole village takes care.

In current times new initiatives and organizations that take care of the Earth are initiated and are growing fast. Networks include the Community Land Trust<sup>7</sup>, and Access to Land in Europe<sup>8</sup> with Terre de Liens, Bio Boden, Biodynamic Land Trust, Eco Ruralis among the member organisations.

We want to inspire you to consider the Earth as a common.

### **I want to live on this Earth**

I walk in nature and pay tribute to the splendor of winter freshness. With every step, I enjoy the magical spectacle of the sunlight through the trees. So beautiful! want everyone to see, feel and smell it.

Forests alternate with empty fields waiting for the next season of bountiful harvest. Nature is so powerful, healing, beautiful and pure! Just as she is. Without

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<sup>6</sup> Moved by Love (The Memoirs of Vinoba Bhave) Introduction by Satish Kumar <https://www.mkgandhi.org/movedbylove/intro.htm>

<sup>7</sup> The community land trust (CLT) is a model of affordable housing and community development that has slowly spread throughout the United States, Canada, Europe, and the United Kingdom over the past 50 years (Wikipedia). Community land trusts – or CLTs – are democratic, non profit organisations that own and develop land for the benefit of the community. They typically provide affordable homes, community gardens, civic buildings, pubs, shops, shared workspace, energy schemes and conservation landscapes. Run by ordinary people. They are community organisations run by ordinary people who want to make a difference to their local community, putting control of assets into the hands of local people <https://www.communitylandtrusts.org.uk/about-clts/what-is-a-community-land-trust-clt/>

<sup>8</sup> <https://www.accesstoland.eu/-Our-network->



judgment. If you spend enough time here, you will see the beauty in everything around you.

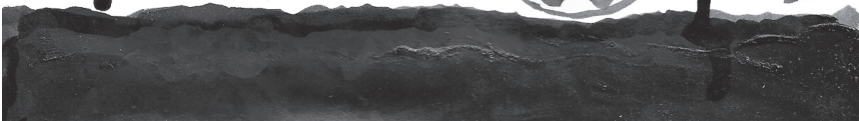
Looking from the *Ferry House*, I am always deeply impressed by a beautiful old tree on the banks of the river Waal, frozen in time, patiently waiting for the spring sun to thaw it. What stories would this old rascal have to tell us? Whom has he met?

**Henry Mentink**  
**Veerhuis in Varik**  
**The Netherlands**

WHAT  
ARE YOU  
DOING  
FOR THE  
PLANET?



sobion  
21



Ink drawing by Justin Sobion, 2021

# INVOKING THE SPIRIT OF TRUSTEESHIP



# INVOKING THE SPIRIT OF TRUSTEESHIP

## ***Can Gandhi's Ideas of Trusteeship Address the Challenges of the 21st Century?***<sup>1</sup>

By Anwar Fazal<sup>2</sup>

Citizens of the Universe,  
Children of Mother Earth,  
Brothers and Sisters,

Assalamualaikum, may peace be upon you.

I start with the word “Peace” because there is no other word in the vocabulary that is more relevant, more important and more necessary during these times.

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<sup>1</sup> Text of the 150th birth anniversary of Mahatma Gandhi Lecture organised by the Indian Studies Center of Chulalongkorn University, Bangkok, Thailand held on 19 July 2019 in conjunction with the Right Livelihood Summer School 2019 and the Earth Trusteeship Forum on “Nature Rights, Global Citizenship and Reclaiming the Commons – The Rise of Earth Trusteeship”. See also Appendix 1.

<sup>2</sup> Anwar Fazal is the founding Director of the Right Livelihood College (RLC), which has nine campuses in partnership with eminent universities in Germany, Sweden, Ethiopia, Nigeria, Chile, North America, India, Argentina, and Thailand. He is a recipient of the Right Livelihood Award, popularly known as the “Alternative Nobel Prize”. He was a founder of the Malaysian Interfaith Network, the Taiping Peace Initiative and the Penang Gandhi Peace Centre (PGPC). He is also a recipient of the Gandhi King Ikeda Award of Morehouse College, USA, and the United Nations Environmental Programme (UNEP) “Global 500 Award”. He also currently serves as Professor at large at the Centre of Compassion Studies, St. Xavier’s University, India. For more information, visit <https://www.rightlivelihoodaward.org/educate/right-livelihood-college/> and <http://anwarfazal.net/>.

## The Triple Peace

“Peace” however, is not just about the absence of war. It is something more proactive, more holistic and deeper. It has three dimensions, all linked together intimately and the vital core of human security and survival. The three dimensions are:

- Peace with ourselves (Inner Peace).
- Peace with other people (Social Peace).
- Peace with the environment (Earth Peace).

Gandhi was a glowing example of listening and doing and being to this triple wisdom. The triple wisdom strategy and action is central and critical in this new age where managing the tensions of diversity and conflict, nourishing a respecting, liberating and creative future, managing the destructive paths of no return will continue to be a great challenge. He spoke of truth and non-violence and of trusteeship and he was addressing equity, building on the element of sharing, caring, and circularity of justice and humanity.

Because of his deepness, his universality, and his holistic approaches, Mohandas Karamchand Gandhi, or what we call him now, Gandhiji Bapuji, I'd like to take his concept of “trusteeship” beyond what was understood and promoted during his life<sup>3</sup>. I believe the world we live in has to take the spirit of trusteeship to a whole new platform of deepness, universality, and the holistic. I shall share my thoughts in the form of a letter to him.

Dear Gandhiji, dear Bapuji, Namaste.

When you were shot on January 30th 1948, I was seven years old and I cried with my parents. We were living in a small town in Malaysia called “Taiping”, which meant “everlasting peace”, but I learnt over the years, more and more that you did not die. A poem by Mary Elizabeth Frye reminded me of the fact that you did not die. The powerful poem goes

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<sup>3</sup> See for example: *Trusteeship. A Path Less Travelled*. Siby K. Joseph, Bharat Mahadaya and Ram Chandra Pradham (Eds.), 2016.

like this:

“Do not stand on my grave and weep.  
I am not there. I do not sleep.  
I am a thousand winds that blow.  
I am the diamond glints on snow.  
I am the sunlight on ripened grain.  
I am the gentle autumn rain.  
When you awaken in the morning’s hush.  
I am the swift uplifting rush.  
Of quiet birds in circled flight.  
I am the soft stars that shine at night.  
Do not stand at my grave and cry.  
I am not there. I did not die.”

Dear Gandhiji, dear Bapuji,

Yes, you did not die. You began a movement that continues to be the many sparks of hope, of islands of action that shares as a growing inspiration to millions of people from Martin Luther King to Nelson Mandela, from the peasants to the intellectuals, to the people of the street.

You inspired:

- Sarvodaya: Justice for all
- Swaraj: Self rule
- Swadeshi: The genius of local
- Satyagraha: Non-violent revolution
- Gandhijir was created later: Action through gentleness

Today we are discussing something very special you gave:

- Aparigraha: Non possessiveness and trusteeship

Dear Gandhiji, dear Bapuji,

Today, like never before, we live in a fragmented and painful situation and I want to share with you how the world is taking trusteeship onto a greater universal and holistic path.

Sadly, we live in a sick world where we are destroyers of Mother Earth, Bumi.

## The 'Sick' Society

Bumi is the Sanskrit word for mother earth, a living, complex sphere. Bumi we are told is 4,600 million years old. If we condense this mind-boggling figure into something we can understand, and assume that Bumi is 46 years of age, we are told that:

- Nothing is known to us about the first seven years of Bumi's life.
- Nothing much is known about Bumi as a teenager or young adult.
- Only at age 42, did Bumi begin to flower.
- Dinosaurs and the great reptiles appeared only a year ago when Bumi was 45.
- The ice age enveloped Bumi only last weekend.
- Modern humankind has been around for four hours.
- During the last hour, we discovered agriculture.
- The industrial revolution began one minute ago.

During the minute, those sixty seconds, we have ransacked the planet in the name of development, sometimes for need, every too often for greed! And as you reminded us, we have enough for everyone's needs but not for everyone's greed. We have caused the extinction of thousands of species of animals and plants. We have accumulated such deadly weapons, some 60,000 nuclear weapons, that can kill us many times over.

Bumi's immune systems are being devastated as:

- Her circulation systems, the water and air are being poisoned.
- Her lungs, the forests, are being wantonly destroyed.
- Her skin, the ozone layer and soil, are being seared and scraped.
- The climate change is heading towards a disastrous collapse.

July 29 will be marking Earth Overshoot Day according to Global Footprint Network. We would have exhausted our need and we are consuming about one and a half earths each year.



Dear Gandhiji, dear Bapuji,

All this devastation is going down paths from which without action, there may be no return. Can we do something to reverse this madness? Can we create a new paradigm of development and happiness that enables peace with ourselves, peace with other people and peace with mother earth? How can we deal with this mega tragedy of the “commons”.

## The ‘Planethood’ Commission

If a “Universal Authority” established an Intergalactic Commission to investigate how we earthlings are managing this planet, the members would be shocked at our irresponsibility – our rating for ‘planet-hood’ would probably be between poor and dismal!

First, they would find an **‘economics’** driven largely by “casino capitalism”, ‘mad’ or speculative money, pornography, gambling, puerile entertainment and various kinds of criminal activities. The greatest growth indicator they find will be the “Gross Criminal Product” – GCP! And they will find mushrooming new cradles of modern civilization – the tax havens (now called “Treasure Islands”), the fiscal launderettes and not to mention, creative accounting. A new world emerges where “Banksters” and “Gangsters” play critical roles.

Secondly, they will find a **‘society’** marked by violence and inequity where we have trillions for space exploration and armaments but not the dollars and cents for basic health, education and shelter for billions of poor. The killing business is growing and growing. We have now as many people who are obese as there are those who are suffering from malnutrition. We have moved to a post-truth society where lies are constructed and becoming the norm in critical areas.

Thirdly, they will find an **‘environment’** so destroyed that the air, water and soil, changing climate often taking paths of no return and leading communities of living things into self-destruction sometimes called “ecocide”. The nuclear paths are devastating. Over US\$ 200 billion was spent clearing Chernobyl. Over US\$ 300 billion has already been spent to deal with Fukushima.

The Intergalactic Commission will find, among the littered landscape, a culture of violence, manipulation and waste. They will diagnose a world struck by a triple evil (WWW).

- Weapons of Mass Destruction.
- Weapons of Mass Manipulation.
- Weapons of Mass Consumption.

Dear Gandhiji, dear Bapuji,

## **What is wrong with Society Values?**

The Commission will speak about the 11 Sins against Humanity, building on a list of seven, that is attributed to you and have been the core of a learning that simply but powerfully teaches us about what is wrong with society:

1. Politics without Principles.
2. Wealth without Work.
3. Enjoyment without Conscience.
4. Knowledge without Character.
5. Business without Morality.
6. Science without Humanity.
7. Religion without Compassion.

Dear Gandhiji, dear Bapuji,

I have taken the liberty to add what your stream of thinking has moved me to. I have added four more to reflect these times:

8. Rights without Responsibilities.
9. Power without Accountability.
10. Development without Sustainability
11. Laws without Justice.

Dear Gandhiji, dear Bapuji,

## What can we do?

The good news is that good people are continuing your values and persistence. You did not die. You did not die. There has been a magnificent proliferation of civil society seeking to make a better world, it's been called "Blessed Unrest" by Paul Hawken\* I can see you and feel you smiling to see the lights still shining, people moving with creativity and courage to move towards the world you envisioned.

Dear Gandhiji, dear Bapuji,

I call this the "Pancasila of changemaking". There are:

- **Projects of Hope.**  
As someone said, "*It is better to light a candle than curse the darkness.*"
- **Supporting Solutions.**  
Good people tell, "*If there is a will there is a way*".
- **Walking the Talk.**  
Good people remind, "*Talk is cheap. Moving into action is a paradigm shift*".
- **Realising the Impossible.**  
Brilliant people like Albert Einstein said, "*A really good idea could be recognised by the fact that its realisation seemed impossible.*"
- **Honouring Courage.**  
Like you said, always "*Speaking truth to power, standing up for your justice.*"

## Seeds of Hope

I remember an interesting story I was told decades ago by a friend from the "appropriate technology" movement. A village was having difficulty drawing water from a stream to irrigate their farms. They created an

\* *Blessed Unrest: How the Largest Movement in the World Came into Being and Why One Saw It Coming* by Paul Hawken, 2007.

ingenious system by transforming the children's playground of swings and see-saws to generate a system that moved water wheels that did the job when the children played on the swings and see-saws!

Such simple and ingenious systems that use natural cycles of movement are a gift to us from nature. Sadly, we have too easily forgotten or ignored them. Instead we move into systems that ostensibly are faster, more efficient but only pass the “bad” costs and often more problems to others, to Mother Earth and to the future! The ongoing global “climate calamity” is one clear manifestation of man's inhumanity to others and to Mother Earth.

Dear Gandhiji, dear Bapuji,

Where do we go from here?

As a “possibilist”, wanting to get things done, I see the greatest opportunity is on rediscovering our roots and our strengths in our natural systems and in reconnecting integrally in our covenant with Mother Earth (the term “Mother Earth” is now United Nations (UN) terminology with April 22 being declared by the UN as International Mother Earth Day!).

I am always mesmerised by the rainbow; it is one of the great wonders of natural systems. Its sheer beauty and colours bring us joy, wonder, curiosity and most of all, hope. The rainbow reminds us of the power and magic of nature, of creation and creativity, of simplicity and complexity and the power of connectivity and eternity.

To inspire me, I always imagine you sitting with the spinning wheel and a rainbow in the background glowing with the colours of inspiration.

The last two centuries of so called “industrialisation” and “modernisation” has been an enigma. While it appears to have brought us “progress” and “speed”, it has showered us with a torrent of toxicity – striking at our soul and our social fabric towards a stark future of what has been already referred to as “eco-cide”, sweeping us sooner than later into ecological self-destruction.

The food systems are growing crazy. As I mentioned, the world has more people suffering from obesity than malnutrition and hunger. We abuse water. We have rising prices of food because we use land and crops to fuel motor cars, one of the world's biggest killers of people – more than all of the people killed in the wars of the “modern” times!

Dear Gandhiji, dear Bapuji,

What would be rainbow technologies?

- I think of the sun as an antiseptic, as vitamin and as solar energy.
- I think of rain and simple water harvesting systems.
- I think of the wind and the waves and the energy they give us. Remember the sailing ships.
- I think of the wheel and the bicycle – the world's most technological bicycle is now made of bamboo! Yes, the bamboo plant whose resilience and tensile power has many uses.
- I think of the power of pendulum and of gravity. Remember the clock and the “dumbwaiter” – a simple lift that used pulleys. Remember the funicular railways that combine wheels and gravity.
- I think of the simple wire spring and winding systems that operated our clocks and gramophones. In recent years, a radio operated by a dynamo spread widely into Africa – replacing the need for cell batteries and reducing toxic waste.

These “rainbow technologies”, and there are more, must become the centre of our lives again. The “appropriate technology” movement and the new “Rights of Mother Earth” movement (see [www.rightsofmotherearth.org](http://www.rightsofmotherearth.org)) must surge forward together led by a vision, mission and passion for clean, green, safer processes that build on natural and human systems. Every technology, every process, every product must go through a deep process of “eco-thinking” and ethics in a comprehensive and holistic way. Each of us can make it happen and together with others unleash the power of many for the transformational change so necessary.

John Schaar once said “The future is not one where we are going to do, but we are creating. The paths are not to be found but made, and the activity of making them changes both the maker and the destination”.

We can make the difference. I share with them the “Pancasila of People Power”:

## The Pancasila of People Power

We need to, most of all, recognize the essence of our power and learn and do what need to be done.

1. The power of “**ONE**” – never underestimate the power of a single individual. Through their example and action, individuals have transformed the world as history shows.
2. The power of “**MANY**” – networking alliances, the “network of networks”, partnerships can build our strength – social movements must link and build on the core values we share. We need those rare talents, of what I call the “transcendentals” – people who bridge movements and issues.
3. The power of “**HALO**” – belief and drawing from natural systems, from, spiritual traditions and globally agreed norms negotiated through the United Nations, can provide powerful universal and inner as well as external strength.
4. The power of “**INFORMATION**” – access to research, education programmes and working with the media can provide the outreach we need for transformation change. Links with the United Nations, its resources, information networks and global agreements need to be better developed.
5. The power of “**SUCCESS**” – every victory, however small, should be shared and celebrated. The glow inspires and grows.

## 7 Ideas for a Simple and Good Life

Dear Gandhiji, dear Bapuji,

You have always reminded us that we must be the change we want to see. I also like to share what I call the “7 Chakras (life forces) of Natural Living”. We need to do more of these simple things that improve our lives so that we can be an example:

1. Breathing.
2. Munching.
3. Walking.
4. Smiling & laughing.
5. Listening.
6. Lifelong learning.
7. Empathy.

Dear Gandhiji, dear Bapuji,

Can we do it? Yes we can! As a poem by a great Sufi Poet, Hazrat Inayat Khan from India who lived in your time over a century ago, reminds us:

“I asked for **strength**,  
and God gave me **difficulties** to make me strong.  
I asked for **wisdom**,  
and God gave me **problems** to learn to solve.  
I asked for **prosperity**,  
and God gave me a **brain and brawn** to work.  
I asked for **courage**,  
and God gave me **dangers** to overcome.  
I asked for **love**,  
and God gave me **people** to help.  
I asked for **favours**,  
and God gave me **opportunities**.  
I received **nothing** I wanted,  
I received **everything** I needed”

**Hazrat Inayat Khan**  
(1882-1927)

Dear Gandhiji, dear Bapuji,

I like to share with all a prayer called the “Chinook’s Blessing” (Appendix) that is pledged to move with you and with the times.

You will continue to inspire us to create a world that moves towards what I call as the triangle or “trinity of goodness”:

1. The culture of balance and harmony.

2. The culture of trusteeship and stewardship of mother earth and all its living beings.
3. The culture of accountability to your conscience and to the future generation.

Dear Gandhiji, dear Bapuji,

Thank you, thank you. You did not die. You continue to inspire us.

Brothers and Sisters.

I want to end with a poem about universal unity that I wrote for a book called "*Prayers for the next Thousand Years*":

Remember We Are One

"We all drink from one water,  
We all breathe from one air,  
We all rise from one ocean,  
And we live under one sky.

Remember we are one.  
The new born baby cries the same,  
The laughter of children is universal,  
Everyone's blood is red,  
And our hearts beat the same song.

Remember we are one.  
Peace be on you,  
Brothers and Sisters,  
Peace be on you."

Thank you. Thank you.



# ANALYSIS



# GOVERNANCE INNOVATIONS TO PROTECT OUR PLANET

## *Observations from the (Interim) Work of the Climate Governance Commission*

Prepared by Maja Groff, Convenor, Climate Governance Commission<sup>1</sup>

### Introduction: Why Global Climate Governance?

In the Our Common Agenda Report,<sup>2</sup> the UN Secretary-General describes our current, shared planetary predicament as the greatest challenge since the Second World War:

*“We are at an inflection point in history... humanity faces a stark and urgent choice: a breakdown or a breakthrough... The disastrous effects of a changing climate – famine, floods, fires and extreme heat – threaten our very existence... Humanity’s welfare – and indeed, humanity’s very future – depend on solidarity and working together as a global family to achieve common goals.”<sup>3</sup>*

Indeed, Canadian thinker Seth Klein has suggested that we view our efforts to address the climate crisis as akin to waging “A Good War,” learning from the lessons of the Second World War, by analogy, to understand the political, social and economic mobilisation necessary in the face of a

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<sup>1</sup> Supported by the Global Challenges Foundation, Stimson Institute and Global Governance Forum. Originally written for the High-Level Advisory Board on Effective Multilateralism, Roundtable 18 February 2022. More information on the Climate Governance Commission (CGC) can be found here: <https://globalchallenges.org/initiatives/partnerships/climate-governance-commission/>.

<sup>2</sup> United Nations (2021) ‘Our Common Agenda. Report of the Secretary General’, United Nations (hereinafter, “OCA Report”). Available at: <https://www.un.org/en/un75/common-agenda>.

<sup>3</sup> Ibid., p. 3.

grave existential threat.<sup>4</sup> Some of the key questions Klein asks include:

*“What did the marshaling of all our economic and human resources look like during the Second World War, and what might a similar deployment look like today? How was it paid for? What kind of leadership did it require? How was public support and national unity secured? What did we do for returning soldiers, and are there lessons for just transition for fossil fuel workers today? What was/is the role of Indigenous people and youth, then and now? And what are the war’s cautionary tales, the warnings of things that brought us shame, that we do not wish to repeat?”<sup>5</sup>*

Klein’s analysis takes a Canadian national focus, whereas a systematic global focus on these questions is required, also with an inquiry into the novel nature of our current shared challenges. And, as the Secretary-General notes, such efforts must be firmly grounded in global solidarity—we must work together as a “global family.” As our shared global governance represents the key frameworks for global solidarity and cooperation, innovative new perspectives, deploying new levels of collective wisdom and ingenuity, will be required to tackle current existential planetary risks. The Climate Governance Commission (CGC) seeks to be pioneering in this respect, aiming to “fill a crucial gap in confronting the global climate emergency by developing, proposing and building partnerships that promote feasible, high impact global governance solutions for urgent and effective climate action to limit global temperature rise to 1.5°C or less.”<sup>6</sup>

Our core global institutions and contemporary global governance approaches are – in fact – still largely responding to the last world war, rather than mobilizing and being fit for purpose to address the truly unparalleled ecological threats we confront, based on objective science.<sup>7</sup>

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<sup>4</sup> Seth Klein (2020), *A Good War*. Toronto: ECW Press.

<sup>5</sup> Ibid. See: <https://www.sethklein.ca/book>.

<sup>6</sup> See: <https://globalchallenges.org/initiatives/partnerships/climate-governance-commission/>.

<sup>7</sup> Indeed, the UN Charter itself has remained unreformed for 76 years, despite its Art.

Further, since the initiation of the CGC (with an initial 2019 strategy session in Seoul at the Global Green Growth Institute (GGGI), headed by Ban Ki Moon) and the wide-ranging expert and stakeholder consultations conducted since then, it has indeed been clear that policy communities are still largely taking a perspective from the nation-state “looking up” to the international. Taking the global perspective of the planetary (and the underlying planetary science) as the starting vantage point is a significant – and badly needed – shift in perspective.

The CGC Interim Report, *Governing Our Climate Future: Interim Report of the Climate Governance Commission* (October 2021) explored a wide range of global governance innovation proposals across various thematic areas implicated in the climate challenge, addressing a range of Klein’s questions; for example, the mobilization of sufficient levels of global finance, facilitating the necessary labour markets transitions at scale, notions of security, legal accountability, international institutional reform, among others.<sup>8</sup> Proposals were grouped under the following categories:

1. Global Economic and Development Dimensions
2. Strengthening International Law
  - a. Enhanced Use of Existing Institutions and New Legal Institutions
  - b. New Legal Paradigms
3. Using Existing Architecture, Reformed and New Institutions
4. “Bottom-Up Pathways”

Some of the proposals set out in the Interim Report are new or relatively new, some are of an older vintage and are well-studied in the academic and policy literature (for example, proposals and arguments on the need for a global environment agency). They include a scope of global gover-

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109(3) which provided for a Charter review conference within 10 years of adoption. For comprehensive proposals on an update of our core global governance architecture, see: Lopez-Claros, A., Dahl, A. and Groff, M. (2020) *Global Governance and the Emergence of Global Institutions for the 21st Century*. Cambridge: Cambridge University Press. Available at: doi:10.1017/9781108569293.

<sup>8</sup> *Governing our Climate Future: Interim Report of the Climate Governance Commission* (hereinafter, “Interim Report”), 2021, is available here: <https://globalchallenges.org/governing-our-climate-future/>.

nance innovation proposals that could theoretically be implemented in the nearer or longer-term,<sup>9</sup> and the Interim Report and the work of the CGC itself has sought to build a powerful, multi- faceted and global “community of practice” that is invested and may already be working on the implementation of many of the proposals featured. Most of the individual global governance innovation proposals highlighted in the Interim Report, if implemented, could alone be transformative to the global climate action landscape.<sup>10</sup>

## Risk Perception/Tolerance and What the Science is Telling Us

It is still unclear that general publics around the world, and policy- and decision-makers – even those involved in climate policy – understand the levels of risk we are currently running in relation to our shared ecological challenges. A Global Challenges Foundation Global Catastrophic Risks Report draws the following comparison between our risk tolerance in international aviation versus in relation to international ecological safety:

*“After years of effort and considerable resources devoted to airplane safety, we have reached a point where 27 planes crash on average every year. If dying in a flight accident was as likely as a 3°C global temperature increase, then the number of people dying in airplanes every year would be 15,000,000.”<sup>11</sup>*

In the Foreword to the CGC Interim Report, noted climate and planetary scientist Johan Rockström summarizes our current predicament – includ-

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<sup>9</sup> Ibid. For example, the “Bottom-Up Pathways” proposals (e.g., mechanism to scale up and diffuse national governance mechanisms like Climate Councils and key “vital policies” across nations, at scale) and various proposals under existing international architecture (e.g., better connection trade and climate regimes), would theoretically be implementable on a shorter scale horizon than, e.g., establishing a new credible and effective global environment agency.

<sup>10</sup> Ibid.

<sup>11</sup> Global Catastrophic Risks 2018, Global Challenges Foundation, p. 24, available here: <https://globalchallenges.org/wp-content/uploads/GCF-Annual-report-2018-1.pdf>.

ing the global governance gap – in the following terms:

*“Humanity is in a dire fix. We are rapidly running out of global carbon space to have any chance of reaching a safe landing zone for the world on a planet with a climate system holding the “well-below 2 degrees Celsius” global warming line. The IPCC AR6 report shows we have reached the warmest temperature on Earth in the last 100,000 years, and that we are being hit by the consequences harder and more often than was earlier expected. Risks of irreversible changes and tipping points can no longer be excluded. At 1.5 degrees Celsius we are very likely committing all future generations to at least two metres of sea level rise. We must admit that 50 years of global governance efforts for climate and ecological safety have so far not generated the sustainable transformation required. New ideas are urgently needed (emphasis added).”<sup>12</sup>*

As Rockström notes, recent extreme weather events and planetary Earth System data have shown— alarmingly – that predicted changes are happening much more rapidly than scientists had previously expected, defying “worst-case climate models.”<sup>13</sup> Planetary (systems) science is advancing fast,<sup>14</sup> but often only to show us how badly we have likely already marred our collective future, and also how much we do not know, for example, about interacting planetary system tipping points, and risks of moving into calamitous “hothouse earth” scenarios.<sup>15</sup>

<sup>12</sup> Johan Rockström, Professor Earth System Science, University of Potsdam, and Director Potsdam Institute Climate Impact Research (PIK). Interim Report, p. 6.

<sup>13</sup> See, for example see: *Canadian inferno: northern heat exceeds worst-case climate models: Scientists fear heat domes in North America and Siberia indicate a new dimension to the global crisis* <https://www.theguardian.com/environment/2021/jul/02/canadian-inferno-northern-heat-exceeds-worst-case-climate-models>.

<sup>14</sup> See for example, the work of Common Home of Humanity, suggesting international legal and governance shifts based on a contemporary scientific understanding of the “Earth System” and deeply interwoven/interacting Planetary Boundaries: <https://www.common-homeofhumanity.org/>.

<sup>15</sup> Steffen, W., Rockström, J., et al. (2018) ‘Trajectories of the Earth System in the Anthropocene’, PNAS, Vol. 115(33), pp. 8252-8259. Available at: DOI: 10.1073/pnas.1810141115.

## Conclusion: Planetary Urgency and Need for Governance Paradigm Shifts

The difficulties of multilateral collective action and resistance to strong global (climate) governance is well known, and as such the CGC Interim Report diagnoses this as a key international climate action gap:

*“The climate governance gap: To bridge the climate policy gap, and ensure effective climate policies at a global scale, purposeful and functional governance mechanisms at a global level are urgently needed. Currently, existing governance structures are not up to the task.”<sup>16</sup>*

The grave and unprecedented concrete circumstances – representing a challenge that humanity has never before faced – beg a series of paradigm shifts in the ways we think about our collective future and our quint-essentially global planetary climate and related ecological crises. One of the fundamental paradigm shifts needed in our thinking is about the possibilities of global climate and planetary ecological governance.

Princeton academic Anne-Marie Slaughter diagnosed more than a decade ago the “globalization paradox” where we, as an international community, are in profound need of more global governance, but harbour a deep fear of it.<sup>17</sup> Such an aversion, given what is at stake, is irrational, yet entrenched – and deeply ill-suited to current planetary crisis conditions. Part of the solution is greater awareness and clear-sighted discussion among policy communities of this blind spot and related psychological or conceptual barriers, as well as building communities of practice and advocacy which can bring a new kind of thinking about global governance innovation to light, and see through high impact steps forward in improving our shared governance.<sup>18</sup> The Our Common Agenda (OCA) Report, in our view, is

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<sup>16</sup> Interim Report, p. 8.

<sup>17</sup> Slaughter, A-M. 2004. *A New World Order*. Princeton, NJ, and Oxford, Princeton University Press.

<sup>18</sup> We would see such civil society platforms as Together First, C4UN, among others, as vital

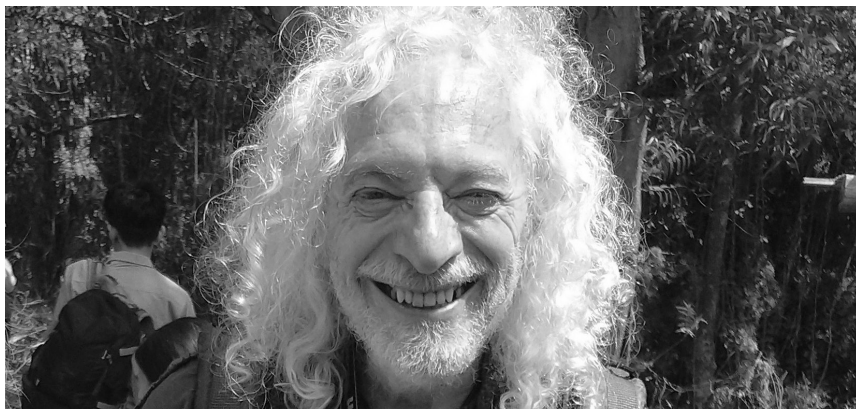


one innovative contribution to these dialogues and to this community of practice, setting forth a number of potentially-bold proposals. It is hoped that yet greater “radical collaboration” can evolve and inspire the work of the UN Secretary-General’s High Level Advisory Board (HLAB) on Effective Multilateralism\* and deliberations at a 2023 Summit of the Future, as well as across the range of international venues concerned with our global ecological future.

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collaborators and interlocutors in this field. See, respectively: <https://together1st.org/>; <https://c4unwn.org/>.

\* The Final Report to be released 18 April, 2023.



## ***Human Behavior, Leaders With Excess of Power and Risks of Nuclear War***

by Prof. Dr. Raúl A. Montenegro, Biologist <sup>(1)</sup>

On Earth all living species become extinct, it is a matter of events, insufficient adaptation, and time. It can be caused by a meteorite, as happened 65 million years ago, by internal circumstances, or because the species are experiments that fail.

Everything indicates that our species and its main experiment, a nervous system that allows the accumulation of culture, generation after generation, seems to hinder our chances of survival in the long term. Instead of prolonging our presence in the biosphere, we are accelerating the inevitable extinction of Homo sapiens. Despite our individual and collective nervous systems, which have allowed us to feed successive technological revolutions, we still do not understand our behaviors, we cannot coexist with biodiversity, and we fail miserably when trying to regulate ourselves.

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<sup>(1)</sup> Prof. Dr. Raúl Montenegro, Biologist.

Email: [biologomontenegro@gmail.com](mailto:biologomontenegro@gmail.com)

Telephone and WhatsApp: +54 9 351 5 125637

Hard mail: José Agusti 7249, barrio Argüello, (5021) Cordoba, Argentina.

Contrary to what we ourselves as humanity admire about our species, intelligence and our increasingly complex cultural evolution, both seem to explain -contradictorily- our high probability of early extinction. Human intelligence is of little use if it is not adaptive. To survive it is not necessary to have armies with soldiers and powerful weapons, but behaviors that allow us to adapt to our serious flaws as an experimental species, and to the biosphere, that we destroy today with suicidal unconsciousness.

Our species, drunk on technology and love of growth, does not seem to realize that the planet where we live is not threatened, and that life, with us or without us, will continue to evolve and survive as long as conditions exist that allow it. The species that is at risk of extinction is ours.

We want the biosphere to adapt to our insane acts without understanding that only by adapting to the biosphere can we live a little longer as a species. Measured in time, there are "successful" species whose morphological characteristics have been maintained with very few changes over millions of years. This is the case of the horseshoe crab, *Limulus polyphemus*, during 445 million years; the cephalopod species of the genus *Nautilus* and *Allonautilus* during 500 million years, or the rare ant *Martialis heureka* during 50 million years<sup>[1]</sup>. *Homo sapiens*, with only about 150,000 years as an inhabitant of the biosphere, can hardly match those records.

With folly and cruelty, sectors of today's human societies continue to annihilate the indigenous communities that had been achieving a prolonged and relatively stable coexistence with biodiversity and the environment.

It is definitely absurd to believe that we can survive on a ferocious planet with blind growth, expanding GM crops, increasing the size of armed forces, and concentrating more and more power in few people and groups.

Poverty and wealth are as unacceptable as wars, genocides, and deliberate suffering of people produced by a lot of large corporations, governments and mafias.

There is a big difference between being an intelligent species, and an intel-

ligently adaptable species. We are an experimental species like any other. But as part of that experiment, we also have the ability to understand how cultural evolution and biological evolution operate.

Humanity is accelerating its extinction by accelerating the extinction of other species and biodiversity, by destroying indispensable ecological arrangements, and by assuming wars, inequity, poverty and wealth as natural situations. A nuclear war would hardly reduce human populations, creating extremely hostile environments for the human survivors. At the same time, the surviving natural biodiversity will face new evolutionary scenarios. The future dominant species will perhaps be the same ones that dominate today, such as bacteria <sup>[2]</sup>, or ants, or any form of life that adapts to new conditions. However, and this is what we do not seem to understand, only natural high biodiversity increases the probability of survival of this biodiversity, and of human species.

It is up to us to decide, collectively, if we want to live longer as a species adapted to ourselves and the biosphere. Or on the contrary, hasten our extinction between luxuries, “glamour” and a nuclear war with no return.

It is time for courage, but also for simple and useful thoughts. As Sandro Pertini told, “sometimes we need to fight not only without fear, but also without hope”. Anyone fights when they know they are going to win. Not everyone fights knowing that there is no hope.

This is not a finished document. This is a document in continuous development. Everyone is invited to contribute, to correct it, and to add issues. At the first page of this document, we include a central address for eventual contributions and criticisms.

## 1. General Scope

1.1 For the first time after the submarine incident and the Cuban Missile Crisis (October 1962), we are facing now an escalation of war which can lead to the use of nuclear weapons. It must not be forgotten that all weapons -and nuclear weapons are no exception- are built to be used. Deterrence works, but until it stops working.

1.2 Global Loss of Biodiversity, Global Climate Change, nuclear war, and viral pandemics, are among the worst threats to the survival of the human species. Climate change cannot be faced globally without devoting the same efforts and priorities to Global Loss of Biodiversity, the eradication of nuclear weapons, and preparedness for future pandemics <sup>[3]</sup>.

1.3 Our planet Earth has a radius of more than 6,300 kilometers and an atmosphere 1,000 kilometers high. The most superficial part of the Earth is the biosphere, barely 20 kilometers thick. Our species and the rest of the biodiversity live there. But no species' long-term survival is guaranteed if it fails to adapt to natural biodiversity and ecosystem limits.

For public purposes, talking about “the planet” is a good instrument of communication. But technically speaking the planet itself it's out of any kind of human menace. The real danger is concentrated in the biosphere. Such thin layers suffered 5 past “spasms” of extinctions during the last 600 million years, most of them linked with the collision of meteorites and other objects from outer space <sup>[4] [5] [6]</sup>. Several authors consider that Homo sapiens activities started the 6th spasm of extinctions <sup>[7]</sup>.

1.4 Our species has a circumstantial and relative success based on “accumulative culture” (each new generation accumulates more information than the precedent), provisional technological success, and destructive exploitation of the environment. But such relative success involves wars that kill people and demolish urban and rural environments, growing poverty, rich minorities being increasingly rich, and cruel human disparities <sup>[8] [9] [10] [3] [11]</sup>.

1.5 Something is definitely wrong when human societies accept poverty as normal, but also when they consider that individuals and economic groups can reach unlimited levels of wealth.

There must be an agreed social balance so that the different people of a country can live with equitable dignity and adaptive lifestyles. Both are desired and main objectives of any human community, and their formats of governance.

The differences between people are part of human social life, but it is not socially intelligent to allow poverty to reach miserable extremes, and the rich to be unlimitedly rich. Unfortunately, such savage inequity continually grows, as well as unashamedly growing military budgets

1.6 Erroneously, human evolution promotes all kinds of exponentials: unlimited growth, unlimited consumption, unlimited ecological simplification - quite different from natural sigmoid curbs: living below carrying capacities, sharing space and time with biodiversity, respecting biosphere limits.

1.7 It is difficult to completely and quickly replace the destructive strategy promoted by large corporations, government complicity, and societies in love with consumerism. Nevertheless, even if we have the ability to destroy on a large scale, we also have the ability to reduce bad exponentials, to be less destructive, and to be more human.

1.8 Our possibility of survival is associated with the continuous multiplication of minor and medium changes that can resist the economic, military and cultural power of those who oppose such changes. Changing the strategy of “exponential curves” for the more sensible strategy of “sigmoid curves” is very difficult, but reducing the slope of exponentials is already a spectacular achievement that can significantly reduce human suffering.

1.9 Every positive achievement, no matter how small, could reduce negative impacts and inequity, and guarantees the survival of environments whose natural high biodiversity can rebuild diversities through ecological succession. At the end of the day humans cannot survive without peace, and without an extended, variable, and rich natural biodiversity.

1.10 In the middle of the year 2022, the continuity of the SARS-CoV-2 pandemic plus the appearance of new and old deleterious viruses; the annually aggravated environmental pandemic, and the pandemic of wars – including the current nuclear war risk – concur simultaneously. We are humans at a crossroads: to live in peace with us and the environment, or to move towards future human extinction.

1.11 Sustainable development was defined in the 1987 Brundtland Report as the development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>[34]</sup>. Globally spread after the 1992 Earth Summit in Rio de Janeiro, such a concept is more and more questionable because human satisfaction can be extended over time with a more gradual destruction of the biosphere. Frequently, the use of concepts such as sustainable development and “circular economy” have been justifying unviable development patterns.

We propose the adoption of a broader criterion, that of “adaptive development”. According to a first definition, this is “a type of development and human lifestyles that, adapted to natural high biodiversity, and eco-diversity, permit the systemic survival over time”.

## 2. The Principle of Concentrated Power

2.1 This year the cruel and violent Russian invasion of Ukraine decided by Vladimir Putin increased the possibility of a World War III and the use of nuclear weapons. Volodymyr Zelenskiy, president of Ukraine, reacted militarily to stop the invasion. Subsequently, Ukraine began to receive military equipment and aid funds from European countries and the USA. Jens Stoltenberg from NATO; Joe Biden from the USA; presidents and prime ministers of the European Union; Ursula von der Leyen (former German Minister of Defense 2013-2019), Josep Borrell and Louis Michel from the European Commission; and Roberta Metsola from the European Parliament – the list in longer – were key decision makers in the military and humanitarian support to Ukraine. At the same time, Russia had the support of Belarus and its president, Alexander Lukashenko. As the war unfolded, thousands of soldiers and civilians died, and millions of people fled their homes, and their country, Ukraine<sup>[14]</sup>. All the leaders we mentioned before, on both sides of the conflict, could have prevented the war. But they failed, or they wanted a war to start and continue.

In August 2022, the visit to Taiwan by Nancy Pelosi, speaker of the United States House of Representatives, dramatically aggravated tensions between the governments of China and Taiwan. During and after the visit, China held one of the largest military exercises in its history around

Taiwan. The Taiwanese Armed Forces, meanwhile, also held their own exercises. In both cases live ammunition was used.

What do all these leaders have in common? They are all people, individuals, with enormous power. By different social mechanisms, combined with personal leadership skills, each of them concentrates power.

Meanwhile, human populations permanently grow, the most important decisions are made by quite a small number of persons, usually only one (e.g. presidents, prime ministers, kings or dictators), but also by very powerful and relatively small collegiate bodies. The smaller the number of people who make decisions, the greater the probability that those decisions may not be adaptive, or worse, eventually disastrous for the majority of populations.

Most of the great human disasters have been caused by wrong individual decisions in contexts of failed systems of “true” and effective social control. Eventually, decisions democratically decided by democratically elected leaders also fail.

It seems that in most human societies the experiment of concentrating excess power in one person, or a small number of persons, enables the possibility of making wrong and even dangerous decisions. This could happen in governments, private corporations, well-organized democracies, tyrannies, unions, NGOs, international organizations, religious groups, organized crime (mafias), and their mixtures and interactions.

In the field of genetics, one of the sources of species’ variability is produced by the so-called “genetic drift” or Sewall Wright effect. Variability is a fundamental mechanism in evolutionary processes. What is interesting is that the genetically based Sewall Wright effect produces transient non-adaptive traits. That is, characteristics that are not necessarily beneficial for survival<sup>[32]</sup>.

In a totally different context, human culture, which is not genetically transmitted, permits a high-risk drift effect: the eventual adoption of non-adap-



tive behaviors. Basic inherited behaviors, like hierarchy, aggression and territoriality, interacting with social structures that permit excessive concentration of power in a single person, or small groups of persons, facilitate the imposing of non-adaptive decisions for the whole of the society. The problem occurs when those people with concentrated power have little social control, or maintain their power without democracy and by force (dictators for example). It may be a president, a prime minister or a king, small groups with accumulated power, or the owner of an extremely wealthy private corporation.

Eventually, the decisions made by a single person, or by a group of people with excess power, can be beneficial for society and society's relations with the environment. In these cases, the system "evolves" positively. But wrong decisions can cause the system to collapse completely.

To explain how this mechanism works, and its risks, several years ago we introduced the "Principle of Concentrated Power" (PCP). We believe that this behavioral mechanism poses one of the worst risks to human survival, particularly when social control in growing populations is administratively impracticable, too slow in the face of quick decisions made by powerful leaders, or because the society lacks sufficient information to understand such decisions.

2.2 The current war between Ukraine and the invader Russia is the most dramatic example of the Principle of Concentrated Power. Leaders from industrialized countries and international organizations make decisions: invasion of Ukraine (Russia); territorial expansion of NATO with more soldiers and military equipment (NATO members plus Sweden and Finland); weapons' shipment to Ukraine (large numbers of supplying countries); increase in military budgets (most of European countries and the USA); cross economic sanctions, and war of false and true news. Most of these decisions were taken without previous social, environmental and global impact assessments. Being realistic, and besides the correctness or not of their decisions, Vladimir Putin, Joe Biden, Jens Stoltenberg, Volodymyr Zelenskiy, Ursula von der Leyen, Josep Borrell, Louis Michel, Roberta Metsola, plus presidents and prime ministers of the European Community, are causing a brutal relaunch of the arms race, both in research, development and production; a general rise in the prices of fuels,

energy, and transportation, and multiple processes of over-speculation that involve food, agribusiness inputs, and currencies.

Some news on critical issues is distorted to harm one side or the other in conflict. The main narrative is that “the war” is producing food crises and hunger, when the truth is that this crisis already existed, and was aggravated by the war. “According to the FAO, the World Bank, and the International Panel of Experts on Sustainable Food Systems (IPES), there is currently no risk of global supply shortages. This is thanks to higher-than-normal global wheat stocks and a [relatively] comfortable stock-to-use ratio at 26.7% (...). What is crucially being overlooked by most diagnoses on the current food crisis is how the problem does not lie in a lack of food, or lack of market integration, but instead in how the food system is structured around power”<sup>[12]</sup>. Following a report made by Navdanya International, “the globalized, industrialized agrifood system has itself set the precedent for these repeated food and hunger crises”<sup>[12]</sup>.

2.3 As a secondary result of the Ukraine-Russia war, and the inability of the involved governments for stopping such war, measures for reducing global warming were delayed. In a gesture that goes against human survival, the European Parliament considered nuclear and fossil gas as “green” sources of energy (6th July 2022). The Principle of Concentrated Power acted again: 328 parliamentarians voted in favor of nuclear energy and fossil gas, 278 voted against it, and there were 33 abstentions. Considering nuclear energy “green” also encourages, directly and indirectly, a greater development of nuclear weapons. Although the decision adopted is only valid for the European Community, this nonsense classification is already being used by pro-nuclear lobbies in many countries. Another worrying fact is that some countries, faced with the interruption of oil and gas supplies, return to producing electricity from coal. More recently, the German government decided to restart the functioning of nuclear power plants.

This nuclear relaunch is another example of the Principle of Concentrated Power. Nuclear power energy is not only the riskiest among all sources, but also the most expensive. French electricity prices are “significantly above German [prices] because many of its nuclear power plants are having major problems.” At this moment, France “is the country of the European Union that has the greatest risk of reaching exorbitant electricity

prices, and blackouts in the European winter.” According to Enrique Dans, “the price of a megawatt hour in France is now 10 times more expensive than the average between 2010 and 2020, approximately 500 Euros. In Germany, where price increases have also been strongly felt, it is also high, but it fluctuates between 250 and 370 Euros. In France, the nuclear power plants that normally contribute 70% of its [electrical] energy, are now only contributing approximately 59%, due to the fact that only 27 of the 57 reactors are in operation, which forces the country to resort to combined recycle power plants, wind energy, and imports” <sup>[13]</sup>.

2.4 According to David Beasley, director of the UN World Food Program (WFP), “dozens of countries risk protests, riots and political violence this year as food prices surge around the world” <sup>[27]</sup>. Citing increases in the price of shipping, fertilizer and fuel as key factors – due to Covid-19, the climate crisis and the Ukraine war – Beasley said “the number of people suffering from ‘chronic hunger’ had risen in the past five years” <sup>[27]</sup>. Data released by the WHO show a total of 828 million people that suffered from hunger in 2021, an increase of 46 million since 2020, and 150 million since the outbreak of the Covid-19 pandemic. After remaining relatively unchanged since 2015, the proportion of people affected by hunger jumped in 2020 and continued to rise in 2021, to 9.8% of the world population. This compared with 8% in 2019 and 9.32% in 2020 <sup>[15]</sup>.

Somehow a simplified World War III has already started but in a single country, Ukraine, where although armies from USA, NATO and members of the European Community do not face Russia, it is for now a war fueled by the weapons they provide to Ukraine. In this bloody and simplified “experiment” of World War III, in addition to Ukrainian and Russian soldiers, thousands of civilian Ukrainian citizens are dying.

At the same time, millions of Ukrainians left their homes and their country, predominantly women and children. According to data from the United Nations, as of July 4th, 2022, some 12 million people had already left their homes, of which 5,2 million left the country <sup>[14]</sup>. Considering the countries that until July 2022 received 100.000 or more refugees each, their list – in descending order – includes Russia, Poland, Germany, the Czech Republic, Bulgaria, Italy, Turkey, Spain and France <sup>[14]</sup>.

Unfortunately, this simplified World War III that happens in a single country can turn into a real World War III involving different countries and continents, with the eventual use of nuclear weapons.

In the midst of the war (June 2022) Vladimir Putin announced that the RS 28 Sarmat intercontinental ballistic missile would be operational by the end of the year. This ICBM can travel 18,000 kilometers and carry between 10 and 15 nuclear warheads<sup>[16]</sup>. At the same time, the United States has UGM-133A Trident II missiles that can carry up to 14 nuclear warheads and reach Russian territory in 15-20 minutes. It is dangerous and terrifying that people like Vladimir Putin of Russia and Joe Biden of the USA have in their hands the decision to unleash the worst man-made cataclysm. It is incomprehensible that so much concentrated power is granted to people who, eventually, may be psychically altered, or are permeable to irresponsible military groups.

2.5 The immense power that the leaders of countries and corporations have, constitutes in itself a disproportionate potential risk. Every day there are more people ruled by single leaders with greater power. In most of the countries, populations grow, but still have a single main leader, e.g. president, or prime minister, or king, or dictator.

For the first time in the biosphere, there are so many people in so many countries depending on a single leader, and on small groups of parliamentarians and judges. In USA such ratio changed as follows: 1 president for 3,929,214 people in 1790; 1 for 31,443,321 people in 1860; 1 for 179,323,175 people in 1960, and 1 for 331,449,281 in 2020, all data from the US Census Bureau (2020). Sometimes a single person remains president for long periods of time. In recent times the non-monarch leaders with the longest periods of government were Fidel Castro in Cuba (>49 years); Khalifa bin Salman al Khalifa in Bahrain (>48 years); Chiang Kai-shek in Taiwan (>46 years), and Kim Il-Sung in North Korea (>45 years).

The combination of high accumulation of power in a single person or a small group of persons; the exercise of that power by such person or minorities during long periods of time, and little social control over them, make up a dangerous cocktail of unpredictable consequences. Historical

examples of the PCP (“Principle of Concentrated Power”) are:

- a) The Manhattan Project in USA which led to the initial construction of three nuclear devices and the use of two of them on Hiroshima and Nagasaki (1945).
- b) Most of colonialist invasions in human history for the obtaining of raw materials, gold, diamonds, ivory and lands. Also, for the capture and trade of slaves. European countries – mainly Spain, Belgium, The Netherlands, Portugal, UK, Germany, Italy and France – conducted cruel processes of military control in their “colonies” in America, Africa and Asia. These processes were often decided by individuals that concentrated lot of power in European monarchies, governments and private corporations. Occasionally, the invaders and colonial administrators used - in their favor - the previous rivalries that existed between different ethnic groups. Main results of these invasions were the subjugation and early death of millions of people.

During the period 1885-1908 the Congo Free State (today the Democratic Republic of Congo) suffered the absolute and bloody rule of King Leopold II of Belgium. Most of the atrocities caused by the administrators “in the name of the King” were associated with inhuman labor policies dedicated to increase the recollection of natural rubber. Together with epidemic diseases, famine, and a falling birth rate caused by these disruptions, the atrocities contributed to a sharp decline in the Congolese population. According different estimates the cruel administration of the “personal colony” of Leopold II produced, directly and indirectly, 1.3 million to 13 million fatal victims<sup>[see 28]</sup>.

When the European invasions began at the end of the 15th Century, some 100 million indigenous people lived in Latin America and the Caribbean. Just 250 years later, the violent invasions, and diseases brought by the conquerors, reduced that population to about 11 million<sup>[17]</sup>. Since then, and although some native populations recovered in the last two centuries, numerous ethnic groups and original languages disappeared forever. Even within the Americas, and prior to the arrival of European conquerors, the Inca empire also invaded the territories of other cultures, imposing their rules.

Despite subsequent processes of independence from colonial powers, many indigenous communities continued subdued by the “new” leaders, descendants of the original invaders, and “new” owners of their usurped territories.

In Brazil former president Jair Bolsonaro, in a contemporary example of the Principle of Concentrated Power, accelerated the invasion of Amazonian indigenous territories, and large-scale deforestation. According to the deforestation monitoring system DETER-B of the Brazilian Agency on Spatial Research (INPE), approximately 430 square kilometers of the Amazon rainforest were cleared during the month of January 2022, 418% more than in January 2021 (by comparison, January 2021 deforestation was 83 square kilometers) [18]. Jair Bolsonaro’s personal decisions have been leaving a deep and tragic mark of social and environmental destruction in Brazil.

In Argentina, the expansion of transgenic crops for export, more land for cattle ranching, mega-mining and real estate businesses increase the dispossession of lands and naturalize silent genocides. With total impunity, they dismantle, burn and exert violence on indigenous communities that live in their ancestral territories, but also on traditional farmers who lived together with the native forest for decades and even centuries. These processes are facilitated by people with great concentrated power who make socially and environmentally wrong decisions. Among them we can mention government officials; land owners of great properties; the “Mesa de Enlace” (Committee of Landowners) that includes the major sowers of GMOs; corporations that produce pesticides, fertilizers and genetically modified seeds; and manufacturers and sellers of agricultural machinery. Corporations like Bayer-Monsanto, Syngenta-Chem China and the local Bioceres group are corporations with enormous accumulated power, and leaders who wield that power.

- c) Multiple outbreaks of war that were started by a single person, or decision-making minorities. An emblematic case is that of Adolf Hitler in Germany, responsible for the start of World War II. In his work *The Black Book of Humanity* Mathew White reviewed the 100 worst atrocities committed during history by human societies. With this purpose, he considers the number of victims pro-

duced in each conflict. As a result of his research, he learned three main lessons: 1, Chaos is deadlier than tyranny. Many of the exterminations are products of the collapse of authority rather than the exercise of authority. 2) The world is very disorganized. Power structures tend to be informal and transitory, and conflicts result from escalations of violence. 3) Wars kill more civilians than soldiers. In fact, the army is often the safest place to be during a war <sup>[35]</sup>. However, in all these processes there have been leaders with concentrated power who have made drastic and decisive decisions such as Idi Amin in Uganda, Saddam Hussein in Iran or Iosef Stalin in the Soviet Union.

2.6 In the current set of countries, there are different models of exercising public power, and serious conflicts between some of them. There are, for example, systems that improve people's participation and increase social control over the rulers, and authoritarian systems where these possibilities are reduced or annulled. From this perspective, a democratic system is visibly more positive for the population than an autocratic system where the ruler with concentrated power imposes his whims, and subordinates all government apparatus to his decisions. In authoritarian systems with leaders who exercise absolute powers, the probability of non-adaptive decisions increases exponentially, since there are no controls to impose limits on them. Two paradigmatic cases are current Saudi Arabia and North Korea. However, the exercise of concentrated power also wreaks havoc in countries whose government leaders are elected democratically, or through related patterns. This is the case, for example, of powerful nations such as the USA or Russia, and of regions that have formed unions between countries, such as Europe. Such group of countries and their leaders, democratic and non-democratic, and their variants in the exercise of public power, are primarily responsible for the growing destruction of the biosphere, the alarming loss of biodiversity, global climate change, and wars.

2.7 One of the characteristics of the PCP is that people who possess and maintain a lot of power have greater economic benefits, privileges of all kinds, and eventually greater popularity, real or artificially constructed through public campaigns. The intensive use of social media, including social networks, and the existence of private corporations that offer services to channel public opinion – such as the now-closed company

Cambridge Analytica in the United Kingdom - help to obtain more votes in elections, or to concentrate power in certain individuals or corporate groups, including mafias. Eventually, this accumulation of power is observed in leaders of religious groups, sects, secret societies, unions, NGOs and violent gangs from soccer clubs, but also in prominent people in art, science or sports. Each of these leaders has their own universe of people that they influence, in which they can induce socially and environmentally positive behaviors, or on the contrary, harmful and even very violent behaviors. In any human organization, it is feasible for power to be concentrated in a single person or in a small group of power.

2.8 Among the leaders who hold monarchical power, powerful social mechanisms have been built over time to ensure that the peoples accept the exercise of their concentrated power (absolute or reduced), and family transmissions of power without the participation of the peoples. In the case of dictators, this maintenance in power is achieved through the use of brute force (armed forces, police, secret services), torture, assassination, and whatever mechanism is available, whether legal or illegal. Many presidents and, in general, leaders of democratic government systems tend to use these same auxiliary devices of power to counteract criticism of their administrations and repress popular uprisings.

2.9 Secret services, whether in democratic systems or authoritarian systems, are examples of institutions, and the people who lead them, where the Principle of Concentrated Power has fewer limitations and controls, can become extremely dangerous. Not only do they lack social control, but in many cases they lack control at all <sup>[see 29]</sup>.

2.10 For reasons of organization, continuous illegality and warlike capacity, concentrated power acquires brutal structures and mechanisms in organized crime. Their power reaches such dimensions that they can even challenge the police and military powers of a country, as has already happened, for example, in Mexico and Colombia, and is currently happening with the armed gangs in Haiti (2022). There are also coalitions of accumulated power that allow their members to maintain their respective powers and even increase them. This is the case of mixed, illicit associations, in which people with a lot of power belonging to governments, private corporations and mafias participate.



The Principle of Concentrated Power suggests that beyond ideologies, and structures with bodies configured to control each other (such as executives, judiciary and parliamentarians in democratic systems), the potential risk lies in concentrating excess power in a single person, or in very small groups.

### 3. The Principle of Cultural Homogeneity and the Principle of Cultural Divergence

3.1 The permanent cultural change of societies and their behaviors has made these same societies try to achieve a certain cultural homogeneity to maintain, perhaps, greater cohesion and predictability of the behavior of individuals and groups of individuals. The main mechanisms developed to achieve and maintain such relative homogenization have been, in each country or community, education, language, religion, laws, and family –and collective– transmission of local cultural patterns.

The maintenance of patterns linked to local language, music, dance, literature, traditional beverages and food, and the elaboration of objects according to traditional criteria, also contribute to this relative homogeneity. Given that human cultures are open, and that each generation has on average more information than the previous one, and therefore variants in their behavior with respect to previous generations, these mechanisms help maintain an important set of characters that confer identity.

This tendency to maintain a certain cultural homogeneity in time and space, which varies in different human cultures, forms the Principle of Cultural Homogeneity that we developed several years ago.

3.2 In general, human communities that remain geographically isolated from each other are more likely to maintain a certain cultural homogeneity over time. This occurs in indigenous groups in voluntary isolation. In our work accompanying Mbya Guaraní communities that remained relatively isolated for years, such as Tekoa Yma, we observed that they continued to maintain patterns and cultural elements that were no longer displayed by other Mbya Guaraní groups that were in permanent contact with non- indigenous communities <sup>[30]</sup>.

In large cities of very different countries, meanwhile, the cultural novelties that are incorporated over time - despite the social mechanisms of homogenization - are creating changing cultural patterns. In industrial societies with growing models of consumption (consumerism), cultural patterns associated with age groups overlap and interact. This includes the development of their own linguistic variants and differentiated behaviors from previous patterns.

3.3 The increasing complexity of each culture in each place, with added changes in each new generation (and within a generation itself), is strongly associated with the spectacular revolution in the media and systems of social communication. The information transmission and exchange systems, the types of information, and the amount of information available are growing exponentially. At the same time, material culture generally follows a pattern of growth, faster in sectors with good purchasing power, and slower among the poorest inhabitants. Inequity and social distance are also growing between those who have more information, more material goods and greater access to services, and those who, on the contrary, cannot access them. This tremendous growing diversity of situations increases the difference in information content, and even behavior between different people, whether or not they share the same neighborhood, town or city.

In this way, there is some opposition between the cultural mechanisms that try to homogenize, and the cultural mechanisms that increase the cultural divergence between people. We believe that divergence is currently increasing dramatically due to the interaction of millions of people with increasingly varied sources of information, highlighting, for example, the role of cell phones, and the growing material complexity linked to consumerism.

For addressing this growing diversity of individual behaviors, a few years ago we developed The Principle of Cultural Divergence.

3.4 Human brains and especially their recent layers (e.g. neopallium) allow increasing storage of cultural information, not genetically transmitted. We call it endosomatic cultural information <sup>[9]</sup>. Different personal systems developed during our cultural evolution have also made it possible

to expand such storage using external devices. For example, writings in rocks, clays, wood, ceramic, building walls and other support materials; books; graphic, sound and video records; and more recently, technological “memories” contained in computers and cell phones. We call this information exosomatic cultural information <sup>[9]</sup>.

3.5 As cultures became more complex, and the populations increase, the difference and “distance” between the cultural information content of different individuals of the same city, region or country, grows exponentially. Thus it is increasingly difficult to find persons having similar contents of endosomatic and exosomatic cultural information, especially in large cities, highly populated countries, and growing exposure to multiple sources of information. This growing divergence would be increasing the unpredictability of personal and therefore collective behavior.

This lack of predictability is one of the most notable and risky characteristics of our species.

As we have been insistently indicating, this growing variability clashes head-on with the strategy deployed by the majority of species in natural ecosystems of high biodiversity. In these ecosystems, most of their species predominantly display inherited behaviors, which makes them more predictable in time and space. How can an ecosystem of many interacting species, whose ecological niches are relatively predictable, be organized with a species like the human, whose ecological niche not only changes permanently but also increases in size? Later we analyze this dilemma.

3.6 According to the Principle of Cultural Divergence it is increasingly difficult to find homogeneous and predictable behaviors among humans. None of the classic mechanisms of cultural cloning, such as religions, educational systems, laws, and ethical rules, seems to neutralize the cultural divergence promoted, e.g., by the mass media and social networks. Only in countries with a high degree of authoritarianism and hegemony, smaller divergences are artificially maintained, but only temporarily, and usually through strong repression (menaces, torture, killings).

This artificial mechanism – the Principle of Cultural Divergence - can

negatively complement the full exercise of the Principle of Concentrated Power.

## 4. Trying to Understand Human Societies, Trying to Delay Human Extinction

4.1 *Homo sapiens* is a single species that spread throughout the biosphere in the last 150,000 years, developing variants and multiple original peoples with a common origin in Africa. Our deepest root is African.

The ecological role of a species defined by “n” variables - what it eats, the space it occupies, the time it works, whom it serves as food, etc. - is defined in ecology as an “ecological niche”. These variables, in the sense given by Evelyn Hutchinson since the 1950s, make up a hypervolume in time and space <sup>[19] [20]</sup>. While the ecological niches of most of the species that make up natural biodiversity change relatively little over time, since most of their behaviors are genetically established, in the case of *Homo sapiens* that ecological niche not only varies continuously, but has increased in size, volume and negative environmental impact during the last 200,000-315,000 years, but particularly since the invention of agriculture and industrialization.

When the ecological niche of a species is “adapted” to coexist with the rest of the ecological niches of the total biodiversity existing in a particular site or region - even between species that are very close to each other, “sympatric species”- the ecosystem is highly adaptive and has high resilience.

In the case of *Homo sapiens*, our individual, family, and community, ecological niches are permanently augmented in size, volume and complexity over time, generation after generation. However, indigenous communities in voluntary isolation usually have ecological niches that have been changing more slowly over time, showing greater adaptation to the ecological niches of the rest of the biodiversity. On the contrary, in urban and high-income human groups, for example, the complexity of their ecological niches increases dramatically over time, and their adaptation to the

ecological niches of the rest of the biodiversity also decreases dramatically, wrongly assuming that it is possible to live without the highly biodiverse environments that we are destroying.

In natural ecosystems of high biodiversity, a certain evolutionary “harmony” is observed between thousands of species and their populations, where various mechanisms, including the Principle of Competitive Exclusion developed by Garrett Hardin, and other authors, explains how segregation of ecological roles diminishes competition, and increases complex ecosystems “full” of biodiversity <sup>[cf. 31]</sup>. We were able to demonstrate in fungus-growing ants of the same genus, *Acromyrmex*, very close to each other (sympatric species), how “ecological isolation” allowed them to coexist with each other by cutting or collecting different plants, acting at different times, or preferring sunny or shady places <sup>[21]</sup>.

But in the complex and urbanized territories of *Homo sapiens*, not only is there little adaptation to the rest of the biodiversity, but they compete with most species, and all those species that bother or hinder “human development”, are exterminated. Unfortunately, most of our populations, governments and corporations, still don’t understand native biodiversity.

The simplified biodiversity of extreme humanized environments - with a single dominant species, *Homo sapiens* - makes it easier for part of the “invisible biodiversity”, such as viruses and bacteria, to grow exponentially in our populations (pandemics).

4.2 All humans have nervous, endocrine, respiratory, bone, muscular and reproductive systems, very similar to each other. We have the same brains and the same hormones. We are born from female wombs, we grow, age and die as *Homo sapiens*. No ethnic group is supreme or better than the others.

4.3 Something, however, distinguishes us from other animal species. Like all of them, we are an experiment - each species is an evolutionary experiment that may or may not survive. But in our case, we have nervous systems with an unprecedented capacity to store cultural information. What is innovative is that it is not transmitted genetically, but

“culturally” thanks to our oral, graphic and technological languages. We are currently the 14,000th human generation, and each new human generation has - thanks to this ability to store and transmit information - more information on average than the previous one. Culturally, each new generation has some kind of “cultural identity”. If the information contents change - growing in quantity and complexity - our behaviors also change, permanently. Of course, among indigenous peoples in voluntary isolation such changes grow very slowly (cultural evolution never stops), but in the urban areas of complex human societies such changes grow exponentially, even in short periods of time.

As we indicated above, the human population was distributed throughout the biosphere for approximately 200,000-315,000 years. In successively occupied spaces, their different groups interacted with different environments. But also with remnants of ancestral human cultures and derivatives from their “own” new culture. Such complex processes of human expansion of different natural ecosystems and biodiversities, with occupations and retractions of territories, geographical and other kinds of isolation, invasions, wars, fusions, genocides and ecological simplification, contributed to defining a long list of ethnic and inter-ethnic groups, with more than 7,000 languages spoken today <sup>[cf. 11]</sup>.

Currently, there are two simultaneous phenomena that affect human populations: on one side globalization that “homogenizes” cultures, particularly through social networks and media, globalized products and consumption patterns, and on a minor scale, population movements (like tourism and passive migrations). At the same time the information received by each person within “each” culture - a city, a country - is so great and so diverse, that the divergence of cumulated individual information grows permanently.

4.4 On the contrary, in natural ecosystems with high biodiversity, most species have genetically based behaviors. In them, cultural changes are of much less significance, and there is no significant cultural transmission from generation to generation. That is why the biodiversity species of any native ecosystem are relatively predictable. They can better organize themselves, evolutionarily, because their behaviors and ecological niches do not change permanently.

4.5 What has been said above has dramatic evolutionary implications: while a good part of natural biodiversity adjusts to changes in the environment and biodiversity itself, - since each species is “more predictable”- in *Homo sapiens* the strategy is diametrically opposed. We change with each generation, and by definition, we are unpredictable.

4.6 It is for the above reasons that the harmonization between the human “cultural” strategy, and the biodiversity “genetically based strategy” - much more conservative and adaptive than ours - must be urgently reached. The lack of understanding and harmonization between such strategies explains a large part of the crises we face today, especially the Global Reduction of Biodiversity, and Global Climate Change.

4.7 On average, our species does not seek coexistence and mutual adaptation to biodiversity and eco-diversity: we impose on them our patterns of simplification using biocides, other chemicals, fires, mechanical destruction, industrial agriculture, hunting, fishing, and replacement of adaptive species with exotic species. We continue to mistakenly believe that an artificial plantation of *Pinus* spp. or *Eucalyptus* spp. is equivalent to native ecosystems of high biodiversity.

4.8 For the survival of the human species - a highly menaced species too - the challenge covers two fundamental fields: the coexistence of *Homo sapiens* with *Homo sapiens*, and the coexistence of *Homo sapiens* with native biodiversity and the biosphere. In both cases, most of the indicators are negative.

4.9 In the case of the coexistence of *Homo sapiens* with *Homo sapiens*, there is no doubt that the different convulsions typical of a territorial species, that generate hierarchies and aggressions - all genetically based behaviors, that culture amplifies to levels that are difficult to manage - provokes unstable coexistence of sectors marginalized and hungry (the poor), and powerful and satiated sectors (the rich). There is no possibility of survival if poverty and wealth are considered “acceptable” and “normal”.

According to Doland and Peterson (2022), “war, pandemic and sluggish markets hit the world’s billionaires this year. There are 2,668 of them on

Forbes' 36th-annual ranking of the planet's richest people - 87 fewer than a year ago. They're worth a collective USD 12.7 trillion - USD 400 billion less than in 2021" <sup>[22]</sup>. Still, "Forbes found more than 1,000 billionaires who are richer than they were a year ago. And 236 newcomers have become billionaires over the past year (...) [USA] still leads the world [list], with 735 billionaires worth a collective \$4.7 trillion USD, including Elon Musk, who tops the World's Billionaires list for the first time. China (including Macau and Hong Kong) remains number two, with 607 billionaires worth a collective \$2.3 trillion USD" <sup>[22]</sup>.

The richest rich in the world are Elon Musk, USD 234.0 billion (USA: Tesla, Space X); Bernard Arnault and family, USD 150.8 billion (France: fashion and retail); Jeff Bezos, USD 138.9 billion (USA: Amazon); Bill Gates, USD 124.6 billion (USA: Microsoft), and Gautam Adani and family, USD 99.9 billion (India: infrastructure and commodities) <sup>[26]</sup>. On the same Forbes Web page that enumerates the richest people in the world, an advertising link allowed access to the sale of private yachts. One of them, the "Elements", with 12 cabins and a capacity for 24 guests, was offered for sale for 112 million Euros <sup>[23]</sup>.

Something is definitely wrong at the level of human lifestyles when we compare these realities with the extreme poverty of millions of people.

According to the World Bank "For almost 25 years, the number of people living in extreme poverty - on less than \$1.90 per person per day - was steadily declining. But the trend was interrupted in 2020, when poverty rose due to the disruption caused by the COVID-19 crisis combined with the effects of conflict and climate change - which had already been slowing poverty reduction" <sup>[24]</sup>.

World Bank argues that "Sub-Saharan Africa is the only region in the world for which the number of poor individuals, has risen steadily and dramatically between 1981 and 2010. There were more than twice as many extremely poor people living in SSA in 2010 (414 million) than there were three decades ago (205 million). As a result, while the extreme poor in SSA represented only 11 percent of the world's total in 1981, they now account for more than a third of the world's extreme poor" <sup>[24]</sup>.



4.10 Long-term human survival only has a chance if the lifestyles of every person and every group in every culture guarantee the eradication of poverty and wealth. Extreme poverty and wealth are as unacceptable as they are generators of actual and potential instability. Social mobility - sustainable social mobility - can be achieved without the existence of poverty and wealth. Even if full equity is not possible to achieve, there are acceptable grades of access to sustainable and “happy” patterns of life that include acceptable hierarchical societies.

4.11 In this context, the militarization of countries, the development of conventional weapons, and the production of nuclear devices, are incompatible with the survival of our species.

4.12 With regard to the mainstream knowledge and technologies that the different human societies have been cumulatively producing, they only contribute to long-term human survival if they do not increase inequity, if they are harmoniously adjusted to biodiversity and the carrying capacity of ecosystems (“K”), and eradicate weaponry and militarization. Such eradication is formally difficult but not impossible.

In daily-life main menaces include sedentary behaviors; diets with low nutritional value; use of natural and synthetic drugs; GMOs; excessive input of non-adaptive information, and consumerist patterns. Unfortunately, most industrial societies maximize all these variables.

4.13 For a greater possibility of survival, human societies must learn to coexist in their diversity. The worst social enemies are those who deploy the “Principle of Concentration of Power” (PCP), and globally, the permanent increase of cultural hyper-divergence between people.

4.14 It is urgent to develop a “United Nations Convention on Human Lifestyles and Behaviors” that gets to the root of most of the problems that humanity has generated, and is facing today. For this purpose, we proposed a draft convention in 2012 <sup>[33]</sup>. Traditionally the gap between the consumption patterns of the poorest poor contrasts with the consumption of the richest of the rich. Such distance is nonsense.

Speaking in terms of the total energy used, including food and fuels, meanwhile, a hunter and gatherer consumes more or less 3,000 kilocalories. person/day, while a rich representative of high consumption elites spends more than 400,000 kilocalories. person/day. Among extremely rich and powerful persons, such figures could increase to 20 million kilocalories. person/day, and even more <sup>[cf. 25] [8]</sup>. Human beings urgently need to discuss this intolerable gap, trying to define acceptable ranges between low and higher consumption, but adapted to each particular culture and environment. The challenge is how to define these “sustainable” diversities of lifestyles, and how to socially accept them, a not easy task.

4.15 There are lists of economic indicators for all the countries recognized by the United Nations, indicators usually divorced of environmental limits and sustainable lifestyles. According to economic data from the World Bank and population data from United Nations, countries like USA and China have the greatest Gross Domestic Product (GDP) in 2017: USD 19.4 trillion and USD 12.2 trillion, and a GDP per capita of USD 59,939 and USD 8,612 respectively. Meanwhile, for the same year, Gambia and Guinea-Bissau had a GDP of USD 1.4 and USD 1.3 million USD, with a GDP per capita of USD 637 and USD 737 respectively. Analyzing these traditional indicators, we can talk of very rich and very poor countries, and within each of these countries, there are very poor and very rich people having quite different lifestyles. However, the discussion remains: which are the best ranges of lifestyles? Which is the best lifestyle on average that ensures dignity, happiness, and environmental protection? This discussion is still not addressed internationally and in-depth. Being realistic, in most countries to be as rich as possible seems the main personal objective.

Contradictory, people and cultures from the global North criticize how other peoples and cultures from the global South face global climate change or democracy, but without questioning, seriously, their own and often unsustainable lifestyles. In the global South, lifestyles of the North are efficiently reproduced - with practical limitations - by rich and medium-income people.

It is necessary to redefine for each culture and people the concept of poverty and wealth. On the one hand, the lives of people who live daily on

the brink of hunger, without equity, without land, without a home, without access to health, and without educational services, must be dignified. But the level of wealth must also be limited. Unlimited individual wealth is unacceptable. The human being must learn to live with acceptable differences, but without endangering the life and survival of remaining humans. Human lifestyles and behaviors, in their diversity, must be adjusted to human coexistence, to the limits of natural ecosystems and biodiversity, and to the “rights” of future human generations, and environments.

If human beings do not discuss their behaviors and lifestyles in the search of “adaptive” ranges of behaviors and lifestyles, in both cases rejecting poverty and wealth “as acceptable” patterns - of course in the context of equity and gender balance - we will continue to increase the environmental and social crises and the risks of future viral pandemics.

4.16 There are extremely controversial issues that should not be excluded from the survival agenda. Human beings should continue to debate the control of their own demographic growth and densification, country by country, culture by culture, avoiding all authoritarianism and all discriminatory policies. This approach must be closely associated with the development of policies that urgently reduce: inequity; the lack of justice; patriarchy; gender violence; urban aggression; military and police repression; trafficking of people, drugs, weapons and wildlife; arms race and militarism; corruption, organized crime, and war possibilities. The world population cannot grow indefinitely, but measures for balancing biosphere limits, human needs, and intrinsic rate of human growth, request to be agreed upon by consensus.

4.17 It is also urgent to guarantee participation, free expression, and the right to peaceful protest in each country in order to achieve all these objectives. The role of individuals and institutions that peacefully fight against social and environmental destruction is fundamental.

4.18 One of the silent and eventually cruel wars that are taking place in most of today’s countries, confronts human populations that have lived in the same place for a long time and successive generations (indigenous peoples), with invaders from other places and countries. Territories of indigenous peoples have been incessantly occupied by different non-indig-

enous peoples, corporations and governments in all existing regions of the world. Although in several countries reverse processes have been initiated for the devolution of ancestral indigenous lands – just minimum portions of the old territories – such devolutions face all kinds of legal, administrative and cultural inconveniences, created obviously by the successive generations of invaders. There are therefore notable asymmetries of real power between the former occupants, and the descendants of the invaders, recent or old. Interestingly, a large part of the rights of indigenous populations has been recognized and defended through Convention 169 on indigenous rights, which was originally drawn up by the International Labor Organization (ILO).

4.19 In all the processes of protection of existing natural ecosystems of high biodiversity, it must be assumed that the indigenous communities that inhabit them have been their custodians and natural operators for millennia. There is no conservation of biodiversity without the respect and protection of the rights of all those indigenous communities that live with that biodiversity as Earth trustees.

4.20 The general biodiversity of the biosphere and the diversity of indigenous peoples are inextricably linked to the finding of crucial answers for a humanity whose dominant pattern is exponential growth, consumerism, weaponry, and full technology.

Indigenous peoples are equal partners in all kinds of governance, public and private decisions. ILO Convention 169 of the Rights of Indigenous Peoples is a top and essential international instrument that ensures that.

4.21 Indigenous ancestral knowledge is a fundamental part of human knowledge, accumulated over many generations by hunting, gathering and fishing communities. Their knowledge, and their practice of daily coexistence with native environments of high biodiversity, are vital for our survival. They must be recognized, valued, protected and their knowledge disseminated. However, following the criteria and decisions adopted by the indigenous communities themselves on these issues.

4.22 Indigenous revitalization processes conducted by the indigenous communities, especially at the level of communities that have been

destroyed, marginalized and reduced in population, must have top priority. Many communities are organizing their own collection systems, data systematization and training activities to educate new generations in ancestral knowledge.

4.23 All mechanisms for the international protection of indigenous knowledge on medicinal biodiversity (especially medicinal plants), on tangible heritage, on intangible heritage, and on other elements of daily life that are exposed to piracy, clandestine reproductions and biopiracy, must be strengthened.

4.24 Humanity must choose between two extreme education strategies, one that sustains and fuels the current crises, and another that changes our relationship models with ourselves and with nature. There is an urgent need for an education that does not distinguish between biodiversity and us, but rather integrates us into biodiversity; that does not destroy the environment and biodiversity, but rather facilitates the recovery of biodiversity by the remaining biodiversity; that upholds equity; that claims peace and condemns wars and all kinds of violence; that promotes responsible consumption adjusted to the capacities of the biosphere, and of human societies.

4.25 It is necessary to assume that as part of the human experiment, the use of the Internet and social networks has generated a new, chaotic, and dramatically effective educational system. This educational system is random, since it depends on the time that people assign to it, and on the "cocktail" of information that each person consumes during that time. Inevitably, this experiment increases the hyper divergence between human beings, since the type and amount of information consumed individually is unpredictable.

4.26 The unsystematic training experiment triggered by the Internet and social networks has in turn generated a predictable and highly dangerous phenomenon: it confers immense power on those who build and sell the management of enabling technologies (from computers to cell phones), and manage the information that circulates through the virtual universe (the cybersphere).

4.27 The new private mega-rich people of the cybersphere have become social actors that can dangerously influence the political decisions of the exposed people, but also on the models of human behavior, and on wars. As good examples of the Powerful Persons Principle (PPP), mega-rich like Bill Gates and Elon Musk manage to impose their whims, founded or not, and direct cultural evolutionary processes at will. When these and other corporate managers of technology and information start partnerships with governments, the power and scope of such mergers is unpredictable.

4.28 It is urgent that societies and institutions debate these new threats, and develop control mechanisms that, without affecting individual freedoms, protect the environment and exposed populations.

4.29 It is necessary to revisit all current educational systems so that they are at the service of sustainability and survival, and do not become allies of environmental degradation, corporate interests, bad social practices, inequity, irresponsible consumerism, and wars. Transforming human beings and societies into part of biodiversity and the biosphere, not into exploiters and destroyers, is an urgent and super urgent mission.

4.30 We claim the importance and value of popular knowledge, of good science insofar as its technological products favor sustainable survival, and the indispensable role of wisdom. Wisdom is the proper balance between knowledge, and adaptation of that knowledge to peaceful coexistence among human beings, and to our integration into biodiversity and the biosphere.

4.31 As part of multilateral education, which defends popular knowledge, good science and wisdom - intensively promoted by the Right Livelihood College (RLC) Córdoba Campus - everyone is a teacher, and everyone is a student at the same time.

4.32 It is important to add innovative notions to the set of tools that facilitate the integration of human beings into biodiversity and eco-diversity. An important contribution is the *Declaration on Education for*

*Earth Trusteeship* initiated by Neshan Gunasekera of Sri Lanka, later signed by Right Livelihood Award laureates and others at Wongsanit Ashram, Thailand, 23 February 2020.

4.33 The *Declaration on Education for Earth Trusteeship* says: “It is vitally important to alert all Earth citizens to their responsibilities as trustees for current and future generations of life on our planet home. Education for Earth Citizenship is necessary for all people of all cultures and religions, across all generations. This aspect tends to be neglected in educational curricula throughout the world. Trusteeship implies protection and care of the commons, the environment, conservation of the rights and interests of future generations, protection of our cultural heritage, the protection of human rights and dignity worldwide. An inter-generational, inter-disciplinary and cross-cultural approach needs to be inspired with the thought that every individual can make some contribution to this cause, through Right Livelihood: ethical living to achieve Earth Democracy”.

“False ideas of ownership of natural resources as opposed to the Principles of Earth Trusteeship; individual rights as opposed to community rights, social duties and trusteeship of the commons; present profit at the cost of future damage - all these tend to dominate modern society”.

“Therefore, it is vitally important to take educational measures on Earth Trusteeship, including strengthening and spreading learning centers, widely organized through the support of Right Livelihood Laureates and others. We can correct the negative trends and make a lasting, transformative contribution worldwide to develop a shared global Right Livelihood consciousness through Principles of Earth Trusteeship leading to the preservation of our humanity and our planet”.

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# PRINCIPLES





From l. to r.: fire ceremony, June 2018, making a call for Earth Trusteeship; the Peace Palace in The Hague; presentation by Neshan Gunasekera, Sri Lanka; opening of the inaugural meeting on the Hague Principles by Prof. Klaus Bosselmann on the occasion of “70 Years Universal Declaration of Human Rights”, 10 December 2018.

## ***The Hague Principles: Responsibilities and Rights concerning Humans and the Earth***

**Klaus Bosselmann\***

### **Introduction**

Seventy-five years ago, in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. The UDHR defined “inherent dignity” and “equal and inalienable rights of all members of the human family” as the foundation for a just and peaceful future. It also stated, in Article 29 (1), that “everybody has duties to the community in which alone the free will and development of his personality is possible” in recognition of the fact that human rights cannot flourish without corresponding duties. Since then, a profusion of global declarations and documents have expressed the importance of individual and collective duties as a prerequisite for the well-being of humans and the natural environment. In today’s interconnected world, individual well-being depends on the well-being of human and non-human beings alike. The communities that we as individuals belong to are simultaneously local, national, regional and global and above all not confined to human communities. Our human

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\* Professor of Law, New Zealand Centre for Environmental Law, University of Auckland; Member, IUCN World Commission on Environmental Law; Expert, UN Harmony with Nature; Chair, Ecological Law and Governance Association; Co-Chair, Global Ecological Integrity Group; Co-Chair, Scientific Committee, Common Home of Humanity; Chair, Earth Trusteeship Initiative.

destiny depends on the recognition that we are all part of the “community of life” or “Earth community”.

The first global declaration to recognize this ecological truth was the Earth Charter. Adopted in the Peace Palace, The Hague, in 2000, the Earth Charter expressed what the 1987 report of the World Commission on Environment and Development (the “Brundtland Report”) had called for, namely a new international charter that recognizes Earth as our common home and destiny. The Earth Charter, translated into over forty languages and endorsed by over 7,000 organizations (including UNESCO and IUCN), describes a global ethic shared by all cultures and religions beyond their specific characteristics. With its sixteen main principles under four themes – Respect and Care for the Community of Life; Ecological Integrity; Social and Economic Justice; and Democracy, Nonviolence, and Peace – the Earth Charter describes the ethical framework for a just, peaceful and sustainable future. What this ethical framework means with respect to human rights and responsibilities, is the subject of the Hague Principles. The drafting process that eventually led to the adoption of the Hague Principles on the occasion of the 70th anniversary of the UDHR (10 December 2018), built upon the UDHR and other human rights declarations and equally on the Earth Charter. Further, seventeen declarations of human responsibilities and rights of nature were considered<sup>1</sup>, in addition to over twenty-five international environmental agreements expressing concern for the integrity of the Earth’s ecological system. The combined assessment of international human rights law (including the rights of indigenous peoples) and international environmental law (including rights of nature) allowed for a broader, all-inclusive perspective on human rights and responsibilities with respect to each other and the Earth as a whole. To define humanity’s role in the Anthropocene, we need a new universal declaration of human rights and responsibilities. The essentials of such a declaration are expressed in three concise principles, known as The Hague Principles.

Part 1 (“Background”) of the adopted document explains the urgency and feasibility of the Hague Principles and calls upon “the United Nations, and the international community of states, not only to reaffirm their re-

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<sup>1</sup> Listed in the Annex of the Hague Principles.



sponsibilities for human rights, but also to recognise their responsibilities to the Earth community and the Earth system, and to adopt Earth trusteeship as an active and all-encompassing way forward". The Earth system, while relatively new in its scientific conceptualization and importance, is well known in international environmental law. It is in fact a central theme that has underpinned international environmental law since the first agreements on sustainable development, climate change and biological diversity in 1992.

The health and integrity of the Earth's ecosystem is a pre-condition for all life-forms, including human life. This has been acknowledged in more than twenty-five international environmental agreements, including the 1992 Rio Declaration on Environment and Development, Agenda 21, the Earth Charter and the 2012 Rio+20 outcome document *The Future We Want*, right through to the 2015 Paris Agreement on Climate Change and the 2022 [Montreal Outcome document]. Principle 7 of the 1992 Rio Declaration, for example, requires states to "*co-operate in a spirit of global partnership to conserve, protect and restore health and integrity of the Earth's ecosystem*". The problem is that this central concern has not yet shaped design and operations of global governance. International environmental agreements cover climate, oceans, biodiversity and many other areas of the global environment, but they do so in a fragmented and uncoordinated manner. As a result, the interrelations between the atmosphere (climate), the hydrosphere (oceans, freshwater systems), the lithosphere (soils) and the biosphere (biodiversity) have been neglected causing ever-increasing threats to the integrity of the Earth ecosystem. In the same vein, global governance remains fragmented and inadequate.

Earth system science, political science and jurisprudence have evidenced that the integrity of the Earth's ecosystem must be protected and restored.<sup>2</sup> It is critical therefore to integrate this duty into evolving policies and institutions of global environmental governance. Conceptually, Earth gover-

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<sup>2</sup> J. Rockström, L. J. Kotzé, S. Milutinović, F. Biermann, V. Brovkin, J. F. Donges, J. Ebbesson, D. French, J. Gupta, R. E. Kim, T. M. Lenton, D. Lenzi, N. Nakicenovic, B. Neumann, F. Schuppert, R. Winkelmann, K. Bosselmann, C. Folke, W. Lucht, D. Schlosberg, P. Schlosser, W. Steffen, K. Richardson, "Redefining the Global Commons in the Anthropocene", Proceedings of the National Academy of Sciences <https://www.pnas.org/> (forthcoming 2023).

nance<sup>3</sup> requires a shift from thinking about the environment from a State-centred perspective to an Earth-centred perspective. This involves the creation of Earth trusteeship mechanisms at local, national and global levels.

Following the framework of the Earth Charter, the Hague Principles conceive rights and responsibilities as embedded in the Earth community. The Hague Principles define responsibilities for the Earth (1), for the community of life (2) and for human rights (3). They are designed around the need for trusteeship responsibilities that people and their political institutions have for the protection of human rights and the Earth system. In this regard both, citizens and states have responsibilities as trustees of the Earth.<sup>4</sup> Trusteeship – whether public, private or “hybrid” – implies a legal mandate to govern, however bound by the duty to benefit those who cannot speak and act for themselves (in contrast to self-interest implicit in private or corporate ownership and the national interest served by sovereign States). Earth trusteeship would apply this concept to global governance ensuring care for the Earth System, or Earth Community, for the benefit of future generations.

## The Hague Principles as adopted in 2018<sup>5</sup>

### *The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship*

#### 1. Background

On 10 December 2018, the world celebrates the 70th anniversary of the

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<sup>3</sup> K. Bosselmann, *Earth Governance: Trusteeship of the Global Commons*, 2015.

<sup>4</sup> H. van Willenswaard, *Concept Note: Expert Roundtable in Support of Our Common Agenda*, 2022 <https://highleveladvisoryboard.org/resources/>

<sup>5</sup> <http://www.earthtrusteeship.world/the-hague-principles-for-a-universal-declaration-on-human-responsibilities-and-earth-trusteeship/>

Universal Declaration of Human Rights adopted by the United Nations. The Universal Declaration and subsequent human rights covenants are treasured as precious manifestations of the human spirit. The recognition of equal and unalienable rights of all human beings is an indispensable prerequisite for achieving just and sustainable societies. Our globalized world, however, brings new challenges to this prospect. We all belong to the community of life, the Earth community, which determines what rights and responsibilities we must recognize and honour for each other, for future generations, for all living beings and the Earth, our home.

The Earth community is in grave danger. Over the last 70 years the human population has tripled and disparities in economic wealth have greatly increased. Moreover, overall consumption of Earth's natural resources by humans has grown at such a rate that the entire Earth system with its interconnected components – the geosphere, the hydrosphere, the atmosphere, and the biosphere – are all now at risk. In this way, humanity is threatening the very living conditions that make the enjoyment of civil, political, cultural and economic rights possible in the first place. Realizing human rights therefore depends on taking responsibilities for the Earth community and the entire Earth system. These imply obligations and new opportunities for all human beings to act as Earth trustees.

In the course of the last 70 years, people and organisations in many countries and cultures have called for the recognition of human responsibilities. There are numerous declarations of duties, obligations and responsibilities that are acknowledged and celebrated, including those listed in the Annex hereto. Drawing on these declarations and aware of the challenges that humanity and Earth as a whole are now facing, it is urgently necessary to supplement these instruments with new ones that formally recognise the human responsibilities that exist towards the Earth community and the Earth system. Human beings must therefore act as Earth trustees individually and collectively through new arrangements of Earth trusteeship at all levels.

We, members of global civil society and representatives of organisations involved with the creation of the documents listed in the Annex, have come together in The Hague, on the occasion of the 70th Anniversary of the Universal Declaration of Human Rights, to reaffirm our common course

and declare our responsibilities as trustees of human rights and the Earth. We celebrate and embrace the Universal Declaration of Human Rights and, at the same time, call upon all peoples, the United Nations, and the international community of states, not only to reaffirm their responsibilities for human rights, but also to recognise their responsibilities to the Earth community and the Earth system, and to adopt Earth trusteeship as an active and all-encompassing way forward.

## **2. Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship**

*We*, citizens of nation-states, actors in the world economy and members of global civil society,

*Acknowledging* that well-being of human beings, our lives, and our survival as a species and as individuals depend on the health and well-being of other beings and ecosystems,

*Noting* that consumerist society and competitive nationalism repeatedly inflicts unbearable injuries to Nature, leading to catastrophic climate change, unprecedented biodiversity loss, and eventual disintegration of the Earth system,

*Recognizing* that disintegration and collapse of ecological systems force numerous people to leave their homelands, creating political and economic instability that may lead to conflict and upheaval in many parts of the world,

*Considering* that the totality of beings and ecosystems on Earth forms a community of life (the 'Earth community'),

*Realizing* that just as human beings have rights that suit their needs, other beings have the right to exist and flourish according to their specific needs, and that these rights have their source in being part of the Earth community,

*Understanding* that a new, more mindful and appropriate relationship with

Earth and Nature is necessary for the flourishing of all beings,

*Confident* that inspired common effort and dedicated collaboration between political, economic and cultural transformation movements can ultimately result in adequate responses to the challenges of the 21st century,

**HEREBY DECLARE** that we have agreed on the following principles as a guide for drawing up a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship:

### **Principle 1 Responsibilities for Earth**

1.1 All human beings are an integral part of Nature, and individually and collectively share responsibility to protect the integrity of Earth's ecological systems and Earth as a whole, home of all living beings.

1.2 Each state individually, and the international community of states collectively, acknowledge that they have, and share, responsibilities for Nature, in cooperation and in alliance with their citizens as equal trustees of Earth and the integrity of Earth's ecological systems.

### **Principle 2 Responsibilities within the Community of Life**

2.1 Human rights are grounded in our membership within the community of life, the Earth community, which qualifies what rights we are called on to honor and what responsibilities we have for each other and for Nature.

2.2 Responsibilities for Nature, the Earth community and rights of Nature are grounded in the intrinsic values of nature and of all living beings.

## **Principle 3 Responsibilities for Human Rights**

3.1 All human beings are responsible for the protection of human rights and for affirming human rights in their ways of thinking and acting.

3.2 Each state has a prime responsibility for the protection of human rights as a trustee of its citizens and all human beings.

**WE CALL UPON** the United Nations to initiate a process of consultation, negotiation and eventual adoption of a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship based on these principles.

**Annex** - Documents referred to in the Hague Principles:

**1948 American Declaration of the Rights and Duties of Man**

<http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>

**1982 IUCN/UNEP/WWF World Charter for Nature** <http://www.un.org/documents/ga/res/37/a37r007.htm>

**1990 IUCN/UNEP/WWF Caring for the Earth** <https://portals.iucn.org/library/efiles/documents/cfe-003.pdf>

**1992 Rio Declaration on Environment and Development**

<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

**1997 InterActionCouncil Declaration on Human Responsibilities**

<https://www.interactioncouncil.org/publications/universal-declaration-human-responsibilities>

**1998 Declaration on Human Duties and Responsibilities (“Valencia Declaration”)** <http://globalization.icaap.org/content/v2.2/declare.html>

**2000 Earth Charter** <http://earthcharter.org/virtual-library2/the-earth-charter-text/>

**2000 United Nations Millennium Declaration** <https://www.un.org/millennium/declaration/ares552e.htm>

**2000 United Nations Global Compact** <https://www.unglobalcompact.org/what-is-gc/mission/principles>

**2007 United Nations Declaration on the Rights of Indigenous Peoples**  
[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

**2010 Universal Declaration of the Rights of Mother Earth**  
<http://www.rightsofmotherearth.com/declaration-of-the-rights-of-mother-earth>

**2015 (5th ed.) IUCN Draft Covenant on Environment and Development**  
<https://portals.iucn.org/library/sites/library/files/documents/EPLP-031-rev4.pdf>

**2015 Oslo Principles on Global Climate Change Obligations**  
<https://globaljustice.yale.edu/sites/default/files/files/OsloPrinciples.pdf>

**2016 IUCN World Declaration on the Environmental Rule of Law**  
[https://www.iucn.org/sites/dev/files/content/documents/world\\_declaration\\_on\\_the\\_environmental\\_rule\\_of\\_law\\_final\\_2017-3-17.pdf](https://www.iucn.org/sites/dev/files/content/documents/world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf)

**2016-2018 Project on the Rights of Mother Earth and the Duties of Human Beings** <http://files.harmonywithnatureun.org/uploads/upload722.pdf>

**2017 Proposal for a Universal Declaration of Responsibility in an Interdependent World** [http://www.alliance-respons.net/IMG/pdf/eng\\_udir\\_decl\\_interdependence\\_responsibility17.pdf](http://www.alliance-respons.net/IMG/pdf/eng_udir_decl_interdependence_responsibility17.pdf)

**2017 Draft Global Pact for the Environment** <http://pactenvironment.org/aboutpactenvironment/the-project/>

### 3. The Road Ahead

After the adoption of the Hague Principles in 2018, what followed was a period of exchanges in various fora and of further studies. Five years after its launch, the year 2023 will likely initiate a new period of public dialogue and tentative application of Earth Trusteeship to concrete areas of concern as well as the re-assessment of the principles in light of new developments.

Among the documents to guide education, academia and activism is the “Declaration on Education for Earth Trusteeship” which was adopted in 2020 by laureates of the Right Livelihood Award<sup>6</sup> and partners:

*“It is vitally important to alert all Earth citizens to their responsibilities as trustees for current and future generations of life on our planet home. Education for Earth Citizenship is necessary for all people of all cultures and religions, across all generations. This aspect tends to be neglected in educational curricula throughout the world.*

*Trusteeship implies protection and care of the commons, the environment, conservation of the rights and interests of future generations, protection of our cultural heritage, the protection of human rights and dignity worldwide.*

*An inter-generational, inter-disciplinary and cross-cultural approach needs to be inspired with the thought that every individual can make some contribution to this cause, through Right Livelihood: ethical living to achieve Earth Democracy.*

*False ideas of ownership of natural resources as opposed to the Principles of Earth Trusteeship; individual rights as opposed to community rights, social duties, and trusteeship of the commons; present profit at the cost of future damage - all these tend to dominate modern society.*

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<sup>6</sup> <https://schoolforwellbeing.org/c35>



*It is vitally important to take educational measures on Earth Trusteeship, including strengthening and spreading learning centres, widely organized through the support of Right Livelihood Laureates and others. We can correct the negative trends and make a lasting, transformative contribution worldwide to develop a shared global Right Livelihood consciousness through Principles of Earth Trusteeship leading to the preservation of our humanity and our planet.”*

At the level of the United Nations, the current process towards the Summit of the Future in September 2024 is of particular importance. The Report of the High-Level Advisory Board on Effective Multilateralism, expected in April 2023, is likely to recommend specific measures towards more effective global governance and trusteeship responsibilities for of future generations and the Earth. To this end, the issue of incorporating Earth into global governance has been addressed in recommendations to the High-Level Board. An extract of these reads as follows<sup>7</sup> :

*“The High-Level Advisory Board on Effective Multilateralism (HLAB) has a unique opportunity to further develop Our Common Agenda’s idea of a repurposed Trusteeship Council<sup>8</sup>, especially in the light of some resistance from a number of Member States. Under international law, there is at present no legally binding duty of States to protect the global environment, i.e. the integrity of the Earth’s ecosystem. This makes it necessary, and indeed urgent, to investigate the merits of trusteeship responsibilities that Member States may have towards future generations and the Earth. A repurposed Trusteeship Council would remain a UN principal organ and focus on intergenerational equity and the global environment. It could adopt a new multilateral governance model – beyond the traditional state-centric framework – to protect and restore*

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<sup>7</sup> K. Bosselmann, Recommendations to the High-Level Advisory Board on Effective Multilateralism concerning the environment as a global public good (14 Nov 2022) <https://highleveladvisoryboard.org/download/integrating-earth-into-global-governance/>

<sup>8</sup> See also Global Governance Innovation Network, Road to 2023: Our Common Agenda and the Pact for the Future, 2022, at p. 46, and B. Desai, “The Repurposed Trusteeship Council for the Future”, Environmental Policy and Law 52 (2022), 223-235.

*the global commons and Earth's ecological integrity beyond the sovereignty and reach of individual states.<sup>9</sup> The process towards institutional reform of this nature takes commitment and time, however it is important to start the process and also explore new multi-sectoral coalitions at international and national levels to take up common trusteeship challenges. Not taking this opportunity now, could cause a situation where any efforts towards effective multilateralism and protection of global public goods will be too late.*

There are, at least, three options for further investigating trusteeship governance.

1. One is the process of further implementing Agenda 2030 and achieving its Sustainable Development Goals. From an Earth system perspective, the seventeen SDGs, while all relevant, need to foremost ensure that humanity stays within the limits of planetary boundaries. The economy- and society-related SDGs will not be achieved without ensuring that the environment-related SDGs including Water (6), Climate (13), Life Below Water (14) and Life on Land (15) are realized. These need to be safeguarded, arguably through trusteeship governance, to make any prospect for sustainable development realistic and achievable. The HLAB should highlight the need for this 'strong sustainability' approach in its report and ask the High-Level Political Forum (HLPF) for a systematic review of the implementation of Agenda 2030.

2. Another opportunity is the Summit of the Future in September 2024 where the merits of repurposing of the Trusteeship Council – and/or an Earth Trusteeship Dialogue programme in conjunction with the appointment of a Special Civil Society Envoy – could be discussed including its mandate, governance structure and possible amendments to the UN Charter (Preamble and Chapter XIII

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<sup>9</sup> K Bosselmann, *The Next Step: Earth Trusteeship*, Address to the United Nations General Assembly, 21 April 2017, <http://files.harmonywithnatureun.org/uploads/upload96.pdf>; K. Bosselmann, *Earth Trusteeship and State Sovereignty: Transforming Global Governance*, forthcoming 2023.

– Trusteeship Council – to include intergenerational equity and future generations). To be successful, the HLAB’s report needs to accompany the preparations for the Summit’s outcome document “Pact for the Future” and also inform the preparatory ministerial meeting to be held in September 2023.

3. At the Summit, the establishment of a UN Special Envoy for Future Generations is likely to be decided on to help ensure that future generations inherit a healthy planet. To have sufficient impact, the Envoy needs to be in a position of responsibility and access with a clearly defined mandate and with the support from a – well-resourced – UN Future Generations Office. The terms of reference for both, the Envoy and the Office should include responsibility and capacity to pursue dialogue on trusteeship including a repurposed Trusteeship Council.

These three options are not mutually exclusive and should be pursued simultaneously to encourage cross-sectoral discussions within the UN, but also within civil society. Critically, the UN needs to open up to citizens and civil society. No recommendations of the HLAB, no matter how ambitious, will be realized without multi-sector collaboration involving governments, the corporate sector and civil society as equal consensus building partners.”

It will be of critical importance to build partnerships between civil society organisations, the UN and individual Member States willing to discuss the Hague Principles and its implications for our trusteeship responsibilities with respect to the Earth, our home.

# *Earth Trusteeship: A theoretical framework waiting to be unravelled*

Justin Sobion

## **Reflections of an early period**

I first became aware of the concept of Earth trusteeship around November 2018. At that time, I was working in Geneva, as an Associate Human Rights Officer at the Office of the President of the United Nations Human Rights Council, under the Presidency of Ambassador Vojislav Šuc, from Slovenia. I remember Professor Klaus Bosselmann (now my PhD supervisor) emailing me, quite enthusiastically, explaining what Earth trusteeship was all about and the fact that the concept was to be launched in The Peace Palace at The Hague later year. A few days later, I was invited to attend the launch, but due to my work commitments I was unable to travel to The Hague. Throughout this “early period” in Geneva my interaction with Earth trusteeship was casual and tangential. If one was to ask me back in the latter part of 2018, that I would be writing my PhD on Earth trusteeship under the supervision of Professor Bosselmann, I would have been pleasantly surprised. One year later, in December 2019, I became immersed in the subject of Earth trusteeship and the rewards have been fulfilling ever since.

The purpose of this article is to first introduce the reader to The Hague Principles (the instrument which formally establishes Earth trusteeship) and set out what it attempts to achieve. I will then examine the role of the trustees under Earth trusteeship and who are the intended beneficiaries of the Earth. Based on my observations, I conclude that Earth trusteeship, as an ecological trust, has a vital role to play in the future of planetary governance.

## **An Introduction to The Hague Principles**

The text containing The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (“The Hague Principles”), is the result of a collaboration among representatives from a

wide spectrum of environmental, indigenous and human rights organisations which came together under the auspices of the Earth Trusteeship Initiative (ETI). The collaboration started with an Earth Trusteeship Symposium held at Utrecht University in July 2017. This meeting was followed by further consultations and drafts around human rights and responsibilities which were produced at an Earth Trusteeship gathering of about 80 delegates in The Hague exactly one year later.<sup>1</sup> The text containing The Hague Principles was eventually finalised in September 2018, before the convening of its inaugural launch in December that year.<sup>2</sup>

The Hague Principles and the ETI were formally launched on 10 December 2018 at the opening of the Earth Trusteeship Forum, held at the Peace Palace, The Hague, Netherlands. The launch of The Hague Principles was strategically timed to coincide with the commemorations of the 70th anniversary of the Universal Declaration of Human Rights (UDHR).<sup>3</sup> The text containing The Hague Principles is a soft law document that was initiated and drafted by global civil society.<sup>4</sup> The text was inspired by The Earth Charter, another soft law instrument, which was launched 18 years earlier (in June 2000) at the same venue.<sup>5</sup>

During the course of our everyday speech, we often speak about human rights but hardly ever about human responsibilities. The Hague Principles teach us that human rights are fundamental, but not as fundamental are the responsibilities which we and our political institutions have to the

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<sup>1</sup> This history relating to the birth of The Hague Principles and the Earth Trusteeship Initiative can be found at: “Earth Trusteeship – The Voice of the World’s Future” Earth Trusteeship <[www.earthtrusteeship.world](http://www.earthtrusteeship.world)>.

<sup>2</sup> The core members of The Hague Principles process include Klaus Bosselmann, Hans van Willenswaard, Nnimmo Bassey, Leo van der Vlist, Wallapa van Willenswaard, Prue Taylor, Bert de Graaff and Rembrandt Zegers.

<sup>3</sup> Hans van Willenswaard (ed) *Innovation For Life – A New Light on Right Livelihood* (School for Wellbeing Studies and Research, Bangkok, 2020) at 308.

<sup>4</sup> The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (2018), background note and chapeau.

<sup>5</sup> Klaus Bosselmann “Opening of Earth Trusteeship Forum” (Peace Palace, The Hague, 10 December 2018).

Earth.<sup>6</sup> If we do not have clean air to breathe, fresh water from the lakes, and food from plants to nourish us, then our life will swiftly dissipate. Our right to life – the most fundamental of all human rights – will be immediately extinguished. The core message of The Hague Principles is that humans are members of the community of life (or Earth community) and it is this membership which defines what relationship we have with others.<sup>7</sup> This was the rationale for the creation of a universal declaration of responsibilities for human rights and Earth trusteeship (such as The Hague Principles).

## The Content of The Hague Principles

In terms of structure, the text of The Hague Principles can be divided into four distinct parts: (i) A Background note (ii) The Chapeau (iii) Three Principles and (iv) An Annex. These four parts will be discussed below.

### The Background Note

The Hague Principles commence with a Background note, comprising four paragraphs, which sets the tone of the intention of the drafters. The Background note commences, and culminates, with some laudable language concerning the UDHR. In the opening paragraph, the Background note celebrates the 70th anniversary of the UDHR and refers to it, and subsequent human rights covenants, as “precious manifestations of the human spirit.” The Background note continues: “The recognition of equal and unalienable rights of all human beings is an indispensable prerequisite for achieving just and sustainable societies.” The Background note then recognises that “we” (human beings) belong to the community of life (or Earth community). As part of this community, we also have rights and responsibilities “for each other, for future generations, for all living beings and for the Earth.” Notwithstanding this, the Background note acknowledges that we live in a different world today, compared to when the UDHR was

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<sup>6</sup> Klaus Bosselmann “Can kaitiakitanga save the planet?” (20 December 2019) Newsroom <[www.newsroom.com](http://www.newsroom.com)>.

<sup>7</sup> Bosselmann “Can kaitiakitanga save the planet?”, above n 6.

adopted in 1945. In the second paragraph, the Background note heralds this bleak warning:

*The Earth community is in grave danger. Over the last 70 years the human population has tripled and disparities in economic wealth have greatly increased. Moreover, overall consumption of Earth's natural resources by humans has grown at such a rate that the entire Earth system with its interconnected components – the geosphere, the hydrosphere, the atmosphere, and the biosphere – are all now at risk.*

As a consequence, the Background note asserts that under the present living conditions “humanity is threatening the very living conditions that make the enjoyment of civil, political, cultural and economic rights possible”. The second paragraph continues:

*Human rights must therefore include responsibilities for the Earth community and the entire Earth system. These imply obligations and new opportunities for all human beings to act as Earth trustees (emphasis added).*

In the penultimate paragraph, the Background note explains that over the last 70 years, people and organisations in many countries and cultures have called for the recognition of human responsibilities. The Background note makes mention of The Annex, which provides a list of seventeen instruments that acknowledge human responsibilities. Those instruments listed in The Annex include: the American Declaration of the Rights and Duties of Man 1948,<sup>8</sup> the Universal Declaration of the Rights of Mother Earth 2010<sup>9</sup> and the Draft Global Pact for the Environment 2017.<sup>10</sup>

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<sup>8</sup> American Declaration of the Rights and Duties of Man OAS Res XXX (2 May 1948).

<sup>9</sup> Universal Declaration of the Rights of Mother Earth (2010).

<sup>10</sup> Draft Global Pact for the Environment (2017).

The final paragraph of the Background note declares that while the drafters celebrate and embrace the UDHR, they call upon all peoples, the UN and the international community of states to not only reaffirm their responsibilities for human rights but also “to recognise their responsibilities to the Earth community and the Earth system and to adopt Earth Trusteeship as an active and all-encompassing way forward” (emphasis added).

## **The Chapeau**

The chapeau of The Hague Principles confirms that it was a group comprising “citizens of nation-states, actors in the world economy and members of global civil society”, which were responsible for the drafting and agreement of The Hague Principles. This group acknowledges that the well-being of human beings depends on the health and well-being of other beings and ecosystems. The chapeau continues:

*Considering that the totality of beings and ecosystems on Earth forms a community of life (the ‘Earth community’), [and] Realizing that just as human beings have rights that suit their needs, other beings have the right to exist and flourish according to their specific needs...*

The chapeau closes on the understanding that a new, more mindful and appropriate relationship with Earth and Nature is necessary for the flourishing of all beings. As a result, the drafters of the text declared The Hague Principles as a “guide” for drawing up a Universal Declaration on Responsibilities for Human Rights and Earth trusteeship. The use of the word “guide” suggests that The Hague Principles was not intended by the drafters to be a legally binding document but rather a roadmap for using Earth trusteeship as a tool for future ecological governance.

## **The Three Principles**

The Hague Principles contain three core principles. The first two principles: Principle 1 (Responsibilities for Earth) and Principle 2 (Responsibilities within the Community of Life), can be classified as the “ecocentric principles”. This ecocentric language under Principle 1 and Principle 2 is lacking in the UDHR text. Principle 3 (Responsibilities for Human Rights) asserts,



inter alia, that a state is a trustee of the human rights of its citizens and all human beings.<sup>11</sup> Principle 3 is more mundane in that it prescribes an anthropocentric ‘rights focused’ approach where the state and human beings are responsible for the protection of human rights.<sup>12</sup> This objective is similar to that of the UDHR, where member states have pledged to achieve the promotion of universal respect for human rights.<sup>13</sup> The Hague Principles, when read as a whole, illustrate that a state’s trusteeship responsibilities do not end with human rights. States also have parallel ecological responsibilities which cannot be isolated from their human rights responsibilities.<sup>14</sup> The ability to connect biocentrism and anthropocentrism in one single text remains the most outstanding feature of The Hague Principles. This is in stark contrast to our traditional legal system where it has been submitted that human rights and environmental rights, still focuses on human well-being.<sup>15</sup> In order to determine the future role of the trustees and the intended beneficiaries under Earth trusteeship, this essay would briefly examine the concept of a modern-day trust and whether it reconciles with Principle 1 of The Hague Principles.

## Reconciling ‘The Trust’ and Earth Trusteeship

Trusts are rightly regarded as one of the hallmarks of legal systems of the common law family (the law derived from England).<sup>16</sup> The conceptual start-

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<sup>11</sup> Principle 3.2 states: “Each state has a prime responsibility for the protection of human rights as a trustee of its citizens and all human beings.”

<sup>12</sup> Principle 3.1 states: “All human beings are responsible for the protection of human rights and for affirming human rights in their way of thinking and acting”.

<sup>13</sup> Universal Declaration of Human Rights GA Res 217A (1948), preamble.

<sup>14</sup> Klaus Bosselmann and Prue Taylor “Promoting global ethics: the Earth Trusteeship Initiative” in Peter D. Burdon, Klaus Bosselmann and Kristen Engel (ed) *The Crisis in Global Ethics and the Future of Global Governance – Fulfilling the Promise of the Earth Charter* (Edward Elgar Publishing Limited, Gloucestershire, 2019) 279 at 281.

<sup>15</sup> Report of the Secretary-General – *Harmony With Nature A/72/175* (19 July 2017) at [12].

<sup>16</sup> David Johnston *The Roman Law of Trusts* (Oxford University Press, Oxford, 1988) at 1.

ing point of a 'trust' is "a confidence reposed in some other".<sup>17</sup> From this point of view, a 'trust' in English law is in some measure a translation of the word 'trust' as used in ordinary speech.<sup>18</sup> When one speaks of "trusteeship" it refers to the office, status or function of a trustee (the person in whom the confidence is placed).<sup>19</sup> Generally speaking, a trustee is someone who acts on behalf of another. When one thinks of "a trustee" other synonyms can come to mind, such as "guardian", "caretaker" or "custodian". The duties of a trustee can range from holding and preserving property on behalf of someone else to managing the affairs of a minor until he/she attains the age of majority. Trusteeship therefore is a form of governance that requires a person or entity to act (as 'trustee') on behalf and for the benefit of another person or entity ('beneficiary').<sup>20</sup>

The idea behind "Earth trusteeship" is formally established under Principle 1 of The Hague Principles which reads:

1.1 All human beings, individually and collectively, share responsibility to protect Nature, of which we are an integral part, the integrity of Earth's ecological systems and Earth as a whole, home of all living beings.

1.2 Each state individually, and the international community of states collectively, acknowledge that they have, and share, responsibilities for Nature, in cooperation and in alliance with their citizens as equal trustees of Earth and the integrity of Earth's ecological systems (emphasis added).

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<sup>17</sup> Graham Moffat *Trusts Law* (5th ed, Cambridge University Press, Cambridge, 2009) at 1.

<sup>18</sup> Moffat *Trusts Law*, above n 17, at 1.

<sup>19</sup> Bryan A Garner (ed) *Black's Law Dictionary* (11th ed, Thomas Reuters, St Paul) at 1826.

<sup>20</sup> Klaus Bosselmann "The Role of Earth Trusteeship in Earth Governance" in Laura Westra, Klaus Bosselmann and Matteo Fermeglia (eds) *Ecological Integrity in Science and Law* (Springer, Cham, 2020) 241 at 242.

Principle 1.1 not only confirms our deep human connection with nature, but also our natural duty to protect it (as well as the Earth and Earth's ecological systems). Having established our responsibility to nature, Principle 1.2 highlights that both states and human beings share responsibilities as "equal trustees" of the Earth. The use of the phrase "equal trustees" symbolises a joint, democratic and participatory process in the ecological management of the Planet. The corpus (the body or the subject) of the trust is identified under Principle 1.2, and consists of three elements: 1) Nature, 2) Earth and 3) Earth's ecological systems. Principle 1.2 therefore is the cornerstone of Earth trusteeship. It creates, in my view, a specialised form of a trust which is something akin to an 'ecological trust'.

It can be argued, that even with the presence of Principle 1.2, the concept of Earth trusteeship and what it sets out to achieve is not adequately defined. According to the Background Note: "Human beings must therefore act as Earth trustees individually and collectively through new arrangements of Earth Trusteeship at all levels." But what exactly is Earth trusteeship? and how are these "new arrangements" to be realised?

Bosselmann defines Earth trusteeship as the institutionalisation of the duty to protect the integrity of the Earth's ecological systems.<sup>21</sup> For Earth trusteeship (and the duties that are attached to it) to be "institutionalised" it would require some norm-setting activity which integrates the concept into our way of thinking, our culture and even our philosophy of life. From this perspective, using The Hague Principles as a guide is a step in the right direction. It is important to note that Bosselmann combines all three subjects of the trust under one broad component (namely, Earth's ecological systems). By so doing, greater emphasis is placed on the ecological framework of Earth trusteeship.

Having defined who are the trustees of the Earth, a natural, yet bold, question that arises is: "Who Owns the Earth?" In response to this, an advocate for Earth trusteeship will state: "We all do. Or more correctly,

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<sup>21</sup> Klaus Bosselmann "The Framework of Ecological Law" in Bharat H. Desai (ed) *Our Earth Matters – Pathways to a Better Common Environmental Future* (IOS Press BV, Amsterdam, 2021) 33 at 36. See also Klaus Bosselmann "Environmental Trusteeship and State Sovereignty: Can They be Reconciled?" (2020) 11 *Transnational Legal Theory* 47 at 54.

none of us does.”<sup>22</sup> It would be outrageous for the proponents of Earth trusteeship (or anyone else for that matter), to accept that human beings and/or states “own” the Earth.<sup>23</sup> The Earth, like the atmosphere or the oceans, has been long cited as being “res nullius” (nobody’s thing) and therefore incapable of being owned by anyone.<sup>24</sup> Hans Willenswaard, one of the stalwarts for Earth trusteeship, presents a new paradigm of ownership which is diametrically opposed to the conventional western property model. Willenswaard labels this new paradigm as – “ownership” for the benefit of others, which includes the wellbeing of future generations.<sup>25</sup> In his reflections, Willenswaard considers Earth trusteeship as a governance and legal concept that emphasises a “joy of duty” and a “powerful realisation of altruism”.<sup>26</sup> The idea that a trustee’s obligation is grounded in altruism has also been supported by a leading scholar, Peter Birks.<sup>27</sup> Altruism is defined as action in the interests of another or the disposition to act in the interests of another.<sup>28</sup> So even if Principle 1.2 asserts that humans and states are joint trustees for Nature, the Earth and Earth’s ecological systems, this does not mean that they “own” these matters that are the subject to the trust. As trustees, they merely hold, and preserve all three components for the benefit of others.

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<sup>22</sup> “Earth Trusteeship – The Voice of the World’s Future” Earth Trusteeship <[www.earth-trusteeship.world](http://www.earth-trusteeship.world)>.

<sup>23</sup> For more on “Who Owns The Earth?” see Willenswaard (ed), above n 3, at 265 and Bosselmann “Environmental Trusteeship and State Sovereignty: Can They be Reconciled?”, above n 21, at 50.

<sup>24</sup> Bosselmann “Environmental Trusteeship and State Sovereignty: Can They be Reconciled?”, above n 21, at 54.

<sup>25</sup> Hans van Willenswaard *The Wellbeing Society – A Radical Middle Path to Global Transformation* (Garden of Fruition, Bangkok, 2016) at 206.

<sup>26</sup> Hans van Willenswaard “Earth Trusteeship Working Group – Initial Concept Note for discussion” (Summary draft, Right Livelihood College South East Asia campus, Bangkok, July 2020) at 2.

<sup>27</sup> Peter Birks “The Content of Fiduciary Obligation” (2000) 34 *Israel Law Review* 3 at 12 (Lionel Cohen Lecture).

<sup>28</sup> At 14.

Earth trusteeship therefore requires us to rethink the way in which we view traditional property rights.<sup>29</sup> In my view, the self-less nature of the trustee's office should be an integral feature of Earth trusteeship. For it to work, Earth trusteeship requires the trustees to act selflessly and in the interests of others, when caring for the Earth – a subject which does not belong to them.

## Who are the Beneficiaries of the Trust?

Principle 1.2 of The Hague Principles designate the trustees but it is unclear who are the actual beneficiaries. In interpreting who the beneficiaries are, the Background note can assist:

We all belong to the community of life, the Earth community, which determines what rights and responsibilities we must recognize and honour *for each other, for future generations, for all living beings and the Earth, our home* (emphasis added).

In the English language it is plausible to interpret “the future generations” as being minors, or youth, who are up and coming within our society. Future generations could also be interpreted as those who are not yet born. The phrase “each other” in the Background note can be held to mean “the present generation”. By juxtaposing “each other” (the present generation) next to the words “the future generations” it could be reasoned that “each other” would include minors and the youth (since they are presently living). If this is the case then “the future generations” in the Background note would be confined to those who are not yet born.

Using the Background note as the reference and reading The Hague Principles in its entirety (including principle 1.2), we as humans must recognise and honour our trusteeship responsibilities for: 1) each other (present generation), 2) for future generations (those unborn), 3) for all living beings (living non-humans) and 4) for the Earth. If we use this literal inter-

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<sup>29</sup> Willenswaard (ed) *Innovation For Life – A New Light on Right Livelihood*, above n 3, at 265.

pretation, all four of these persons/subjects appear to qualify as proposed beneficiaries of Earth trusteeship. By holding the Earth in trust for others, all of these persons/subjects (living humans, future humans and living non-humans) would benefit, including the Earth itself. This makes The Hague Principles more interesting and perhaps, more ecocentric than originally imagined.

## Why Should We Hold the Earth in Trust for Future Persons?

The concern for future generations is a familiar feature in international and environmental law.<sup>30</sup> Our responsibility to conserve and protect the environment or the climate for the benefit of future generations is highlighted in a number of treaties and international law instruments including: the Stockholm Declaration,<sup>31</sup> the Rio Declaration,<sup>32</sup> the World Charter for Nature,<sup>33</sup> the Convention on Biological Diversity,<sup>34</sup> the United Nations Framework Convention on Climate Change (UNFCCC)<sup>35</sup> and the Draft Global Pact for the Environment.<sup>36</sup> The Earth Charter, which inspired The Hague Principles, declares that: “The protection of Earth’s vitality, diversity, and beauty is a *sacred trust*” and that the Earth’s bounty and beauty must be secured

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<sup>30</sup> Klaus Bosselmann “The Concept of Sustainable Development” in Klaus Bosselmann, David P Grinlinton, Prue Taylor (eds) *Environmental Law for a Sustainable Society* (2nd ed, New Zealand Centre for Environmental Law, Auckland, 2013) 95 at 107.

<sup>31</sup> Report of the United Nations Conference on the Human Environment A/CONF.48/14/Rev 1 (5–16 June 1972) at 4 (principle 1).

<sup>32</sup> Report of the United Nations Conference on Environment and Development A/CONF.151.26 (Vol I), Annex I (12 August 1992), principle 3.

<sup>33</sup> World Charter For Nature A/RES/37/7 (1982), preamble.

<sup>34</sup> Convention on Biological Diversity (opened for signature 5 June 1992, entered into force 29 December 1993), preamble.

<sup>35</sup> United Nations Framework Convention on Climate Change (opened for signature 4 June 1992, entered into force 21 March 1994), preamble and art 3.

<sup>36</sup> Draft Global Pact for the Environment (2017), art 4.

“for present and future generations”.<sup>37</sup> This language found in the Earth Charter represents the epitome of what Earth trusteeship seeks to fulfil in terms of planetary governance.

There are also Court rulings that subscribe to the philosophy of holding the Earth on trust for others. The South African Constitutional Court in *Fuel Retailers Association of Southern Africa v Director-General Environmental Management* held that: “The present generation holds the earth in trust for the next generation. This trusteeship position carries with it the responsibility to look after the environment.”<sup>38</sup> Similarly, the High Court in India in *Miglani v State of Uttarakhand* acknowledged that because the past generation handed over the Earth to the present generation in its pristine glory, the present generation are morally bound to reciprocate this to the future generation.<sup>39</sup> The High Court in *Miglani v State of Uttarakhand* touches upon the theory of intergenerational equity, which is widely discussed in Edith Brown Weiss’ influential text – *In Fairness to Future Generations*.<sup>40</sup> This theory postulates that each generation is entitled to inherit a planet at least as good as that of previous generations. In other words, all generations are entitled to at least the minimum level that the first generation in time had.<sup>41</sup>

On this subject of future generations, the scholarly work of Kevin Behrens, a South African professor in bioethics, is also relevant. Behrens explains that the present generation should express gratitude to its predecessors for preserving the environment on its behalf, by emulating its predecessors and preserving the environment for future generations.<sup>42</sup> This sense of duty

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<sup>37</sup> The Earth Charter (2000), preamble and principle I.4 (emphasis added).

<sup>38</sup> *Fuel Retailers Association of Southern Africa v Director-General Environmental Management* CCT 67/06, 7 June 2007 at [102].

<sup>39</sup> *Miglani v State of Uttarakhand* [2017] (PIL) No. 140 of 2015 (HC) at 22.

<sup>40</sup> Edith Brown Weiss *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (The United Nations University, Tokyo and Transnational Publishers Inc, New York, 1989).

<sup>41</sup> Weiss, above n 40, at 24-25.

<sup>42</sup> Kevin Gary Behrens “Moral obligations towards future generations in African thought”

stems from the notion of moral obligations towards an unidentifiable, contingent group of future persons.<sup>43</sup> The fact that future generations have no voice to speak for themselves, it is the conscience of the present generation that needs to keep their welfare constantly in view.<sup>44</sup> As Behrens asserts: “no sound environmental ethic can now ignore the question of what (if anything) we owe to posterity.”<sup>45</sup> Behrens admits that although the notion that we owe something morally to unborn generations is almost obvious by Africans, it could be contested in Western philosophy.<sup>46</sup> Behrens relies on the scholarly contribution of Kwasi Wiredu – a prominent Kenyan philosopher – to support his views. Wiredu wrote:<sup>47</sup>

*Of all the duties owed to the ancestors none is more imperious than that of husbanding the resources of the land so as to leave it in good shape for posterity. In this moral scheme the rights of the unborn play such a cardinal role that any traditional African would be nonplussed by the debate in Western philosophy as to the existence of such rights.*

Weiss accepts that there are cultural traditions that recognise human obligations to conserve the planet for future generations. Such cultural traditions are deeply rooted in, for example, Islamic law, African customary law and in Asian nontheistic traditions.<sup>48</sup> Weiss also invokes the socialist legal tradition of Marx who shared the view that communities are only possessors (not owners) of the earth with obligations to protect the earth for future generations.<sup>49</sup> The Buddhist tradition is no stranger to this philos-

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(2012) 8 (2-3) *Journal of Global Ethics* 179 at 179.

<sup>43</sup> Behrens, above n 42, at 179.

<sup>44</sup> C G Weeramantry *Tread Lightly on the Earth – Religion, The Environment and The Human Future* (Stamford Lake (Pvt) Ltd, Pannipitiya, 2009) at 254.

<sup>45</sup> Behrens, above n 42, at 180.

<sup>46</sup> At 181.

<sup>47</sup> At 181.

<sup>48</sup> Weiss, above n 40, at 18.

<sup>49</sup> Weiss, above n 40, at 19–20.



ophy. Weeramantry (a Right Livelihood Laureate) shares the Buddhist's ethical perspective which calls upon us to re-examine what kind of world we have inherited and what we will pass on to the coming generations.<sup>50</sup> This ethical perspective has been enshrined in the constitution of the Kingdom of Bhutan, where Buddhism is the official religion of the state. Article 5(1) of the constitution prescribes:<sup>51</sup>

*Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment... (emphasis added).*

The constitution of Bhutan provides a current example where the citizens are the trustees of the natural environment while individuals who are living (present generation), and those who have abstract claims in the future (future generations) are the beneficiaries. This, in effect, is a form of Earth trusteeship at work. The argument pertaining to trusteeship and intergenerational equity has also reached the pinnacle of the UN. According to a 2013 Report of the Secretary-General:<sup>52</sup>

*...it has been argued that the notion that each generation holds the earth as a trustee or steward for its descendants strikes a deep chord with all cultures, religions and nationalities.*

It is possible to mount an argument that since we are morally responsible for future persons, why cannot we also be responsible for future generations of living beings who are not persons? In his essay, Behrens goes so far to suggest that a strong case could be made for taking future generations of all morally considerable entities into account.<sup>53</sup> Such a statement may be consistent with Principle 2 of The Hague Principles, which recognises our responsibilities to the community of life based on the intrinsic

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<sup>50</sup> Weeramantry, above n 44, at 138.

<sup>51</sup> Constitution of the Kingdom of Bhutan 2008, art 5 (1).

<sup>52</sup> Intergenerational Solidarity and the Needs of Future Generations – Report of the Secretary-General A/68/100 (2013), [12].

<sup>53</sup> Behrens, above n 42, at 179.

value of nature and all living beings. However, on a strict interpretation of The Hague Principles, it would be difficult to adopt such a position. Firstly, the only mention of “future generations” in The Hague Principles appears to be in the Background note. Our responsibilities for: “each other, for future generations, for all living beings, and the Earth” suggest that the category “future generations” is inextricably bound to “each other” – namely the present generation of human beings.<sup>54</sup> If the drafters of The Hague Principles intended to extend the “future generations” to include the future generations of “living non-humans” they would have expressly done so.

Secondly, and as Behrens concedes, we (especially in the western tradition) are unable to coherently account for moral duties for future persons, much less the future of other life forms.<sup>55</sup> Lastly – and using the phrase of Behrens – what makes a particular species a “morally considerable” entity? Would it be fair to say that future generations of elephants are “morally considerable entities” and that the future generations of dragonflies are not? Environmental pragmatists confront this dilemma by arguing that an ecocentric value system together with a long-term focus on our human intergenerational responsibilities, is enough to ensure the future protection of the natural environment, including the life of non-human species.<sup>56</sup> To put it another way – if we act as trustees for non-human species (e.g.; wildlife, whales and birds), indirectly we would be looking after their future generations since the possibility of these species becoming extinct would become remote.

## Earth Trusteeship for the Future

In 2021 António Guterres, the Secretary-General of the UN, issued a Report titled *Our Common Agenda* where he proposed, inter alia, a “repur-

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<sup>54</sup> The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship (2018). The background note refers to rights and responsibilities we must recognize and honour “for each other, for future generations, for all living beings and the Earth, our home.”

<sup>55</sup> Behrens, above n 42, at 179–180.

<sup>56</sup> Behrens, above n 42, at 180.

posed Trusteeship Council”.<sup>57</sup> Implicit in this proposal is that a “repurposed Trusteeship Council” would revive and/or replace the defunct UN Trusteeship Council, one of the principal organs of the UN, which purpose was to supervise the administration of Trust Territories under the International Trusteeship System. Several years earlier in 1997, Kofi Annan, a former Secretary-General, envisioned a “new concept of trusteeship” and proposed that the Trusteeship Council be converted to a forum where member states of the UN exercise their collective trusteeship for the integrity of the global commons – such as the oceans, atmosphere and outer space.<sup>58</sup> This essay submits that Earth trusteeship can add value to these proposals of a “new concept of trusteeship” and “a repurposed Trusteeship Council” as put forth by two esteemed UN Secretaries-General.

Earth trusteeship is also “waiting in the wings” to assist in a proposed International Court of Justice Advisory Opinion (ICJAO) on climate change, which, at the time of writing, is being initiated by the Pacific Island state of Vanuatu. This ICJAO will focus on the obligations of states under international law to protect the rights of present and future generations against the adverse effects of climate change.<sup>59</sup> Once again, Earth trusteeship can contribute to the ICJAO in defining what is the role of states as trustees and who ought to be the potential beneficiaries of the Earth under international law.

## Conclusion

The core message of The Hague Principles is that humans are members of the community of life and this determines what relationship we should have with others. Rights do not exist in a vacuum, and any global legal

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<sup>57</sup> Our Common Agenda – Report of the Secretary General (The United Nations, 2021) at 4, 7 and 45.

<sup>58</sup> Jeffrey Laurenti “Renewing the United Nations – A Critical Assessment of the Secretary-General’s “Track Two” Reform Program” (1997) Global Policy Forum <[www.globalpolicy.org](http://www.globalpolicy.org)>. See also *Renewing the UN: A Programme for Reform – Report of the Secretary-General A/51/950* (1997) at [85].

<sup>59</sup> Vanuatu Daily Post Staff “Vanuatu Climate initiative endorsed by OACPS Council of Ministers” (2 August 2022) Pasifika Environews <[www.pasifika.news](http://www.pasifika.news)>.

system needs to be based on responsibilities from which any rights must follow.<sup>60</sup> As human beings, we inhabit one planet which consists of many other life forms. Thus, our main, collective responsibility is to be trustees of the Earth (which includes Nature and Earth's ecological systems). For it to work, Earth trusteeship requires the trustees to act selflessly and in the interests of others, when caring for the Earth – a subject which does not belong to them. As trustees of the Earth, we hold the Planet in trust for the benefit of others, who are: the present generation, future generations (persons unborn), all living beings and even the Earth (which is in itself a living entity). Earth trusteeship is an ethical responsibility which requires selfless service to others, including living non-humans and Earth's natural spaces. As a type of 'ecological trust', Earth trusteeship has the potential to be an effective tool in the future of planetary governance. Earth trusteeship is a theoretical framework waiting to be unravelled.

In my opinion Earth trusteeship is the future.

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<sup>60</sup> Bosselmann "Opening of Earth Trusteeship Forum", above n 5.

# *Earth trusteeship in law: the Rights of Nature*

Jessica den Outer

In an attempt to turn the tide, or rather to avert the endangering wave of the current emergency state of the natural world, notions such as Earth Trusteeship and the Rights of Nature are rising. On a rainy and cloudy day in The Hague on 10 December 2018, *The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship* (“The Hague Principles”) were launched. The Principles recognised that the Earth community is in great danger. The conditions in which we live are threatening the very basic conditions that make the enjoyment of civil, political, cultural and economic human rights possible in the very first place. Therefore, human rights must be accompanied by responsibilities embedded in Earth Trusteeship and be complimented by the recognition of the Rights of Nature in an attempt to turn the tide.

## **Human Rights**

Something significant for human history happened in December 1948. The United Nations set a milestone in history. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly, at the time representing 58 countries from all over the world.<sup>1</sup> For the first time in human history, people from all over the world recognised that every single person on this Earth is entitled to fundamental rights and freedoms. There is no distinction between race, sex, colour, language or other factors. Everyone is equal and should be able to enjoy inalienable human rights. Humans have civil and political rights, like the right to life. They also have economic, social and cultural rights, like the right to education. Ever since the adoption of this important document, the Universal Declaration of Human Rights has been translated in more than 500 languages and has inspired multiple human rights treaties and affected regional, national and local laws.<sup>2</sup> It set a global wave of the recognition of human rights in motion.

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<sup>1</sup> United Nations Bibliographic Information System (Source: [www.unbisnet.un.org](http://www.unbisnet.un.org)).

<sup>2</sup> “Universal Declaration of Human Rights” United Nations <[www.un.org](http://www.un.org)>.



Cover of the book on Rights of Nature.  
Written by Jessica den Outer in Dutch language.

Once upon a time, it was not so self-evident that every single human being enjoys rights and freedoms. Women, for example, did not always enjoy the same rights as men. They were not able to vote, could not sue for sexual harassment, and could not serve on juries. It was only in the 19th century that women's rights movements stood up and claimed a broader notion of human rights to include women's rights. Children for a long time did not enjoy any protection and worked under unsanitary and unsafe conditions. In 1924, the League of Nations adopted the Geneva

Declaration on the Rights of the Child. It stated that everyone owes children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that instils social consciousness and duty.<sup>3</sup> Excluded from human rights for a long time were also slaves. Africans who were forcibly sold and brought from the continent, through the "Middle Passage", to the Americas and the islands of the Caribbean were enslaved and worked in households, plantations and farms. They were regarded as property, had no rights and were subordinate to the ruthless wishes and commands of slaveholders. It was only in 1865 that slavery was abolished in the United States of America (in the British colonies in the Caribbean, slavery was abolished a few years earlier, in 1834). After that period, the

<sup>3</sup> "History of Child Rights" UNICEF <[www.unicef.org](http://www.unicef.org)>.

former slaves were gradually granted the same rights as whites i.e.; to be able to own property, marry and sue in court. It is a shameful spot on human history, that we once reserved human rights only for a select few.

Looking back on this history, it would now be unthinkable that we would exclude certain human groups from enjoying fundamental human rights. It is common belief that everyone is equal, enjoys fundamental rights and that no human being can be property of another. It shows a fundamental notion: the law has evolved, emancipated and still is continuously developing.

## **Nature: an object without rights**

Whilst on paper all human beings should enjoy fundamental human rights, the rest of nature has no rights at all. Often, nature is regarded as property in our legal systems. Elements of nature, such as rivers, trees and rocks, are regarded as commodities: things that humans can use for their own gains. It is a manifestation of the *Anthropocene*, a proposed name for the current era that we live in. This name was taken from the word *Anthropos*, which means human in the Greek language. The Anthropocene stands for the era in which humans have such a tremendous (negative) effect on the Earth. From a geological point of view we can see how humans are able to change the Earth's surface. In the Anthropocene, everything is about - and revolves around humans. In laws, regulations and decision-making. Value is attached to things as long as it can mean something to humans. For example, trees are valued because we can make furniture out of its wood. A dead tree is worth more than a tree that is alive. We call this *instrumental* value. On the other hand, we would not think of cutting down giant sequoias because we think of them as beautiful. This is what we call *esthetical* value. The same argument might go for sequoias based on the fact that the ancient trees represent a *historical* value. In all these values it becomes apparent that we speak about human valuation. But what is barely found in our systems is the notion of *intrinsic* value. This is value that something enjoys, simply because it exists without attaching a human valuation to it. *The Hague Principles* state that '*Responsibilities for Nature, the Earth community and rights of Nature are grounded in the intrinsic*

*values of nature and of all living beings.*<sup>4</sup> In recognising the intrinsic worth of all forms of life, Rights of Nature are a logical manifestation of that idea.

We think of human rights as a fundamental notion. Something everyone enjoys, simply by being human. But *The Hague Principles* express that ‘just as human beings have rights that suit their needs, other beings have the right to exist and flourish according to their specific needs’.<sup>5</sup> The rest of nature also needs rights. If someone or something has rights, it becomes a legal subject that has rights and obligations, and is seen as a ‘person’ for the law. It is a way, essentially, to recognise the intrinsic value of nature. If even companies, ‘fictions’ created by men, can be a legal subject and can stand up for their rights before the law, why not the rest of nature?

## The Rights of Nature

This idea of the Rights of Nature was first proposed by professor Christopher D. Stone in 1972 in his article ‘Should Trees Have Standing?’. This idea was first met with derision. Nature with rights - how would that work? Can humans now also sue trees for shedding their leaves?! Just a little more than fifty years later, recognising the Rights of Nature is no longer just an idea, but has found ground in the legal systems of more than thirty countries. Mother Earth, rivers, mountains, even animals have gained rights.

The Rights of Nature are recognised in constitutions, national (environmental) laws and regulations, local laws and regulations, in court decisions and in private initiatives. Think for example of Ecuador, recognising the rights of *Pachamama* (Mother Earth) in its constitution, the highest law that exists in a country. Or the *Whanganui River Claims Settlement Act, 2017* that recognised the Whanganui-river in New Zealand as a legal person. At the local level, laws and regulations have been adopted that recognise the Rights of Nature. In the United States of America, about thirty small

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<sup>4</sup> *The Hague Principles for a Universal Declaration on Responsibilities for Human Rights and Earth Trusteeship* (2018), principle 2 <[www.earthtrusteeship.world](http://www.earthtrusteeship.world)>.

<sup>5</sup> *The Hague Principles*, preamble.



communities have recognised Rights of Nature through local ordinances or other regulations. Judges from all over the world have determined the Rights of Nature through court decisions. The freedom of judges to speak on this topic depends per legal system - generally, in our Anglo-Saxon tradition judicial activism is not as much celebrated. In Colombia, India and Bangladesh, judges have in fact recognised the Rights of Nature in court cases. These national developments raise the question - what is happening at the international level? At the moment, there is no international treaty recognising the Rights of Nature. There is some movement in that direction with a group that advocates for the recognition of the Rights of Nature in the Post-2020 Global Biodiversity Framework of the Convention on Biological Diversity. Another movement that is gaining international attention is ecocide. Ecocide is advocating for the criminalization of environmental crimes - 'ecocide'. A group of experts drafted a definition of ecocide in the summer of 2021 and the campaign to recognize ecocide in the Statute of Rome is still ongoing. At the same time, there are also private initiatives that try to implement the spirit of the Rights of Nature. The zoöp, for example, presents an organisational model that recognises the Rights of Nature and appoints a voice for non-human life in the board of organisations.

Legal scholars have identified a rough 409 Rights of Nature initiatives around the world in which jurists, students, academics and citizens plead for the recognition of the Rights of Nature.

In the compendium '*Rights of Nature: Case Studies from Six Continents*' (2021, Embassy of the North Sea) it becomes apparent that this is a global trend. From South America, Africa, to Asia: around the world, countries are beginning to recognise that the rest of nature should also have rights. This is implemented differently in each country. The Rights of Nature do not conform to one principle, but do entertain various implementations of the same idea: nature deserves rights.

## **The rationale behind the Rights of Nature**

There seems to be different rationales behind the implementation of Rights of Nature around the world. These rationales range from cultural, religious

to environmental reasons. For example, in New Zealand, the Whanganui river was recognised to be a legal person as a compromise for the historical conflict between The Crown and the Māori. It is therefore an attempt to address centuries of colonial injustice. In India, judges spoke out that the holy rivers Ganges and Yamuna should have rights, in accordance with the view that these rivers are considered sacred in Hinduism. In Bangladesh, judges spoke of the rights of all rivers in the country following the pollution of river Turag, that was declared 'dead' because of heavy pollution.

When the compendium was published, it seemed that Europe was lagging behind. Countries such as Ecuador, Colombia and Uganda were leading the way in the Rights of Nature, but no countries in Western-Europe had adopted the Rights of Nature at the time of writing. South America is seen as the pionier of the Rights of Nature. But in 2022 Spain recognised the rights of Mar Menor, Europe's biggest saltwater lagoon that is heavily polluted. In a first, Spain adopted a law that set out the legal personality of Mar Menor and its rights. It sets, hopefully, a precedent of which one would suspect this is the beginning of Rights of Nature in Europe and will inspire other Western countries to follow suit.

## Earth trusteeship

It is one thing to recognise rights. But what *The Hague Principles* clearly indicate is that we need to go beyond the recognition of rights - and also act accordingly. Rights can inform a new way of acting, a new way of finding a place in the Earth Community. This was also recognised by *The Hague Principles*: 'these rights have their source in being part of the Earth community'<sup>6</sup>. It is about 'understanding that a new, more mindful and appropriate relationship with Earth and Nature is necessary for the flourishing of all beings'<sup>7</sup>. Rooted in indigenous views, Rights of Nature present a different outlook on the relationship between humans and the rest of nature. No longer are humans seen as the sole dominators of the Earth, but as Earth trustees that are intrinsically linked and connected to all life

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<sup>6</sup> Ibid, preamble.

<sup>7</sup> Ibid, preamble.

forms. Such a vision is part of many indigenous philosophies, and the Rights of Nature may be seen as a way of embedding that view in the Western legal system.

The Rights of Nature should not only be recognised for their symbolic value. To truly respect the Rights of Nature, they should also be enforced in (environmental) planning and decisions. Enforcing the Rights of Nature cannot be done without guardians to protect and enforce the Rights of Nature. Juridically speaking, this can be compared to the way minor-aged children are represented in our legal systems. A guardian is appointed to represent a child and can defend their interests and rights and can go to court on its behalf, if necessary. It is no longer necessary that only a *human* interest is affected; rather, nature can now, through a representative, assert its own rights and interests in court. This idea of guardianship fits within the spirit of *The Hague Principles*. It recognises that we all belong to the Earth Community, and we all have rights and responsibilities that we must recognize and honour for each other. Not just for us, but also for future generations, all other living beings and our common home the Earth. It is different from stewardship in that this model still associates humans as rulers over the Earth - whereas this new paradigm recognises that we are all part of the same community without any hierarchy.

In practice this has led to countries implementing different forms of representation of nature. For example, in Ecuador 'any citizen' is able to bring a lawsuit on behalf of the Rights of Nature. In New-Zealand, a special guardianship committee has been set up to represent the Whanganui-river, consisting of representatives of both The Crown and Māori. Even though forms of representation may differ, they are all attempting to instill a voice for nature in human decision making. It is a practical implementation of the concept of Earth trusteeship.

## Human rights and the Rights of Nature

Human rights and the Rights of Nature would, in theory, not exclude each other, but rather compliment each other. After all, both envision a green and sustainable home in which life, health, water, food and all basic needs are being met. This conclusion is supported by the campaign for the Rights

of Nature in Uganda. In 2019, Uganda became the first African country to officially recognise the Rights of Nature in its National Environmental Act. Nature has fundamental rights to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.<sup>8</sup> The Advocates for Natural Resources and Development in Uganda (together with 4 other organisations) advocated for this law. In their campaign, they linked nature's rights to an existing human right. Article 39 of the Constitution of Uganda (1995) states that every Ugandan citizen has the right to a clean and healthy environment. How can we protect this right, said the Advocates, if we do not protect nature's health itself? Human rights and Rights of Nature should both exist and compliment one another.

## Conclusion

In conclusion, human rights, Rights of Nature and Earth Trusteeship promote a new paradigm in which humanity is to live in harmony with the rest of nature. It is, after all, a logical evolution of the law of which we will see more in the future. Of course, recognising rights is only a first step ahead of a long road. Women's rights are still not exercised in every part of the world. Children's interests and a right to a future are still overlooked. African-Americans and Afro-Caribbean persons still face discrimination and have not been fully compensated for the wrongs of the past. But embedding the concepts of Earth trusteeship and the Rights of Nature in the very legal framework that guides our (moral) society, is a promising start.

This article was written by Jessica den Outer and represents her personal opinions and her conclusion of the compendium "*Rights of Nature: Case Studies from Six Continents*" that she wrote with Dr. Laura Burgers for the Embassy of the North Sea in 2021.<sup>9</sup> This compendium takes a journey across six continents, providing one or two examples of Rights of Nature along the way. Each example highlights the background, the underlying

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<sup>8</sup> The National Environment Act 2019 (Uganda), s 4(1).

<sup>9</sup> The compendium can be purchased via:  
<https://www.embassyofthenorthsea.com/product/rights-of-nature-case-studies-from-six-continents/>

worldview, the recognised rights, representation, enforcement and the particularities of the recognition of the Rights of Nature. This article does not in any way reflect or represent the views of co-author Dr. Laura Burgers or the Embassy of the North Sea.



ACTION







Closure of the *Forty Years Right Livelihood* conference held at Chulalongkorn University, Bangkok and Wongsanit Ashram, February 2020.

## ***Education for Earth Trusteeship. From seed to budding plant.***

**Neshan Gunasekera<sup>1</sup>**

Co-Chair, Earth Trusteeship Working Group (ETWG)

*“Trusteeship, an excellent and timely idea. Trustees is precisely what we all need to be, now and in the future. I have but one question, where exactly is the ship heading?”<sup>2</sup>*

Professor Hans-Peter Dürr, Right Livelihood Laureate, (1987)

<sup>1</sup> Neshan Gunasekera is a lawyer, is also Legacy Holder for Judge C.G. Weeramantry, Right Livelihood Laureate, 2007 and Member, World Future Council. He was the former, Director, Weeramantry International Centre for Peace Education and Research 2007-2012 and Training for Trusteeship Workshop series 2008-2012. He is currently a Research Fellow at the Raoul Wallenberg Institute for Human Rights and Humanitarian Law in Lund and affiliated with the Faculty of Law, Lund University, Sweden.

<sup>2</sup> A question posed to the author on presenting the findings of the Training for Trusteeship Programme at the 30th Anniversary of the Right Livelihood Award to late Professor Hans-Peter Dürr (1929-2014) and other Right Livelihood laureates, Bonn, Germany 2010. See further on Professor Hans-Peter Dürr, <https://rightlivelihood.org/the-change-makers/find-a-laureate/hans-peter-durr/>

This is a question that I will return to, time and time again during our journey on Education for Earth Trusteeship.

The Principles of Trusteeship and Intergenerational Equity, considered as key principles of international environmental law have been close to my heart and have inspired my work over the decades. In 2008, in Sri Lanka, we had initiated the Training for Trusteeship Workshop series, which was an educational programme focused on furthering these two principles through an inter-disciplinary approach. The first year's title of the workshop was Peace, The Environment and The Human Future.

We announced our intentions in the following sentences:

The concept of trusteeship for the future is fundamental to human wellbeing, yet scarcely receives attention in today's educational curricula. This concept, which is stressed alike by religion, philosophy and law, underlines the fact that every generation, far from being in a position of ownership or overlordship of the Earth, is in a position of trusteeship for generations yet to come. Unfortunately, it is the concept of dominion rather than trusteeship which is prevalent throughout the world.<sup>3</sup>

“The outstanding and pioneering contributions made by Judge C.G. Weeramantry, during his tenure at the International Court of Justice at the Hague<sup>4</sup>, formed part of the philosophical underpinnings of this programme. As referred to earlier in this publication, his Separate Opinion in the *Gabčíkovo case* at the International Court of Justice in 1997<sup>5</sup>, drew from the rich wisdom contained in indigenous, cultural, traditional and religious legal sources from across the world. As he himself later accounted in a pioneering Report on world religious wisdom and international law, made to the

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<sup>3</sup> Conceptual Background to the Training for Trusteeship Workshops, see, <http://www.sacep.org/pdf/Workshop-Reports/2008.11.27-30-Training-for-Trusteeship-Peace-Environment-&-Human-Future.pdf>

<sup>4</sup> H.E. Judge C.G. Weeramantry, was judge of the International Court of Justice from 1990-2002, with the period 1997-1999 as its Vice-President and in the latter years as an Ad Hoc Judge.

<sup>5</sup> Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7 at 102, 108 and 110.

World Future Council in 2009, “this case between Hungary and Slovakia was relating to the damming of the waters of the Danube and the environmental damage claimed to have resulted from it, the long-term perspective of the conservation of the environment had to be balanced against the short-term perspective of the use of water resources for development. Insights from the great religions became very pertinent to the determination of the issues before the Court. Among these was the sermon of the Buddhist missionary Mahinda, son of the Emperor Asoka, preaching to the King of Sri Lanka when he was on a hunting expedition with a number of his retainers. The sermon, based on the principles of Buddhism, stressed a fundamental principle of the modern international law of sustainable development. ‘O King’ said the monk, ‘You may be the king of this country, but you are not the owner of this land. You are its trustee, and you hold this land for the benefit of all those who are entitled to use it both now and for generations to come’.<sup>6</sup> This he referred to as the Principle of Trusteeship, one of the very first principles of international law recognized over two thousand years ago.<sup>7</sup> He also drew from the wisdom contained in the building and usage of the ancient cascading irrigation system in Sri Lanka, established many millennia ago<sup>8</sup>.

Judge Weeramantry received the Right Livelihood Award in the year 2007. The Right Livelihood Award is made to honour individuals and organizations that have brought about long-term social change. In his Award it was stated “for his lifetime of groundbreaking work to strengthen and expand the rule of international law. “

Christopher Weeramantry (1926-2017), in the words of the Right Livelihood Foundation, was a world-renowned legal scholar and Vice-President of the International Court of Justice. He played a crucial role in strengthening and expanding the rule of international law. His work demonstrated how international law can be used to address current global challenges

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<sup>6</sup> See, *Tread Lightly on the Earth: Religion, Environment and the Human Future*, A Report to the World Future Council, Stamford Lake, 2009, C.G. Weeramantry

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, See further, <http://iucnsrilanka.org/Kapiriggama/cascade-2/what-is-a-cascade/>



Adoption of the Declaration on Education for Earth Trusteeship at Wongsanit Ashram, February 2020.

such as the continued threat of nuclear weapons, the protection of human rights and the protection of the environment.

When the International Court of Justice made its decision on nuclear weapons in 1996, Weeramantry was a dissenting voice. He strongly disagreed with the majority's decision to leave undetermined the legality of one area of the use of nuclear weapons – namely, the use of nuclear weapons in self-defence when the survival of the state was at stake. His dissenting opinion recognised that this exception would in practice be widely used by the nuclear-weapon states, and he categorically asserted their illegality “in any circumstances whatsoever.”

Weeramantry also focused on other areas of cutting-edge jurisprudence where social questions, theology and philosophy meet, such as the impact of technology on human rights or the environmental principles in international law (end quote Right Livelihood Foundation)<sup>9</sup>.

Judge Weeramantry continued to promote the principle of trusteeship as an important consideration by all those who wield political authority at

<sup>9</sup> As extracted from the Right Livelihood website, see, <https://rightlivelihood.org/the-change-makers/find-a-laureate/christopher-weeramantry/>

all levels of governance. The Centre he established in Sri Lanka<sup>10</sup>, of which I had the honour of being the Director for a few years, also spread this work through various research and educational projects. The Training for Trusteeship Programme was a culmination of some of these efforts. It must be noted here that apart from the Right Livelihood Award Foundation, there were several other partners who endorsed and partnered with this programme, including UNESCO, IUCN, South Asia Cooperative Environmental Programme, Earth Charter Initiative and the World Future Council to name a few.

It was clear that the Principles of Trusteeship had to be given serious consideration within any decision-making processes involving the rights of current and future generations of life on our planet. This links also with the developing ideas on Earth System Governance, Ecological Law and Earth Jurisprudence.

The convergence of these efforts with several others contributing incredible work in their own right, led to the meeting in 2018 which adopted *The Hague Principles for a Universal Declaration on Human Responsibilities and Earth Trusteeship* which was launched at the Peace Palace at The Hague, the Netherlands<sup>11</sup>. In 2019 the Earth Trusteeship Forum, organized by Right Livelihood College Bangkok in conjunction with the Chulalongkorn University Right Livelihood Summerschool (CURLS) in Thailand, took up the original “experiential education” seed of the 2008 Training for Trusteeship workshop in Sri Lanka.

Therefore, at the occasion of the 40th Anniversary Conference of the Right Livelihood Award held in Bangkok, February 2020, I proposed *the Declaration on Education for Earth Trusteeship* to revitalize the original initiative. The enthusiastic adoption in Wongsanit Ashram – an alternative learning centre founded by fellow Right Livelihood Laureate Sulak Sivaraksa – was soon followed by the constitution of the Earth Trusteeship Working Group (ETWG) of which I became the Co-Chair. The ETWG is coordinated by Justin Sobion from Trinidad and Tobago, the first PhD Candidate with

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<sup>10</sup> See note 1 above

<sup>11</sup> See, [https://www.alliance-respons.net/bdf\\_fiche-document-529\\_en.html](https://www.alliance-respons.net/bdf_fiche-document-529_en.html)

Earth trusteeship as a thesis subject, under the inspired supervision of Prof. Klaus Bosselmann, University of Auckland, Aotearoa/New Zealand, who should be recognised as the forerunner and pioneer of “Education for Earth Trusteeship”.

The ETWG aims to continue the work of dissemination and application of the principle of Earth trusteeship and related principles, through the several networks now already established and those to be connected in the years ahead. It is of critical importance that all governance systems include the principle of Earth Trusteeship, not merely as a philosophy or a concept to be guided by but as a mandatory consideration in arriving at all its key decisions, which inevitably will have an impact on those who are here today and those who are yet to come. Hence, education for Earth trusteeship is of paramount importance in the world today, irrespective of which educational systems we may belong to or parts of the world we may come from. We need to bridge our collective wisdom together and ensure that realize our duties to the fullest extent possible. I humbly invite all of you to join hands with us and add value to our shared journey.

**Read here the full text of the declaration:**

### **Declaration on Education for Earth Trusteeship**

Adopted at the occasion of the Right Livelihood Award 40 Years, commemorated at Chulalongkorn University, Bangkok and Wongsanit Ashram, Nakhon Nayok, Thailand, 20-22 February 2020

It is vitally important to alert all Earth citizens to their responsibilities as trustees for current and future generations of life on our planet home. Education for Earth Citizenship is necessary for all people of all cultures and religions, across all generations. This aspect tends to be neglected in educational curricula throughout the world.

Trusteeship implies protection and care of the commons, the environment, conservation of the rights and interests of future generations, protection of our cultural heritage, the protection of human rights and dignity worldwide.

An inter-generational, inter-disciplinary and cross-cultural approach needs

to be inspired with the thought that every individual can make some contribution to this cause, through Right Livelihood: ethical living to achieve Earth Democracy.

False ideas of ownership of natural resources as opposed to the Principles of Earth Trusteeship; individual rights as opposed to community rights, social duties, and trusteeship of the commons; present profit at the cost of future damage - all these tend to dominate modern society.

It is vitally important to take educational measures on Earth Trusteeship, including strengthening and spreading learning centres, widely organized through the support of Right Livelihood Laureates and others. We can correct the negative trends and make a lasting, transformative contribution worldwide to develop a shared global Right Livelihood consciousness through Principles of Earth Trusteeship leading to the preservation of our humanity and our planet.

I commit to support in furthering the objectives set out under the Declaration on Education for Earth Trusteeship:

Wongsanit Ashram, 22 February 2020

<b>Signed at Wongsanit Ashram</b>	
Vandana Shiva, India	Right Livelihood Award (RLA) 1993
Nnimmo Bassey, Nigeria	RLA 2010; Right Livelihood College (RLC), campus Port Harcour
Raúl Montenegro, Argentina	RLA 2004; RLC campus Córdoba
Mona Abouleish Lenzen, and Andreas Lenzen, Egypt / Germany	Representing SEKEM / Ibrahim Abouleish, 2003
Rosana Fernandes, Brazil (and Claudia Jardim, translator, based in Bangkok)	Representing Landless Workers' Movement, MST, 1991

## Signed at Wongsanit Ashram

Ryoko Shimizu, Japan	Representing Seikatsu Consumers Cooperative (SCCC), RLA 1989
Neshan Gunasekera, Sri Lanka	Legacy Holder, Judge C.G. Weeramantry, RLA 2007
Caitlin Stronell, Japan / Australia	Representing Jinzaburo Takagi, Japan, RLA 1997; Citizen's Nuclear Information Centre
Victor Karunan, Thailand / India	Representing Anwar Fazal, Malaysia, RLA 1982; RLC campus Bangkok
Wallapa and Hans van Willenswaard, Thailand / the Netherlands	Representing Sulak Sivaraksa, RLA 1995; RLC campus Bangkok
Monika Griefahn, Germany	Vice Chair, Right Livelihood Foundation
Ellen Chistoforatu, Germany	University of Kassel, Center for Teacher Education
Stina Thanner, Sweden	Right Livelihood Foundation
Emoke Debiak, based in Geneva	Right Livelihood Foundation
Manu Krishan,	Global Study on Children Deprived of Liberty Coordinator
Chris Benner, USA	RLC campus Santa Cruz
David Shaw, USA	RLC campus Santa Cruz
Narumon Paiboonsittikun	RLC campus Bangkok; Towards Organic Asia (TOA)
Kanyanat Lertkhonsan	RLC campus Bangkok, School for Wellbeing
Sopheak Kuch, Cambodia	Youth
Elisa Gentilt, France	School for Wellbeing / RLC Bangkok, intern
Nguyet Doan, Vietnam	Youth



<b>Signed at Wongsanit Ashram</b>	
Le Nguyen, Vietnam	Youth
Thien Quach, Vietnam	Youth

<b>Joined later</b>	
Dr. Fidelis Allen,	Coordinator, RLC University of Port Harcourt, Nigeria.
Dr. Swati Banerjee	Co-ordinator, RLC - TISS (Tata Institute of Social Sciences), Mumbai and Chairperson and Associate Professor, Centre for Livelihoods and Social Innovation, TISS, Mumbai.

# *Save the Planet, Protect the Future, No Excuses for Inaction:*

## **Eight policy initiatives to advance Earth Trusteeship through governments and the United Nations**

**By Alyn Ware**

Member, World Future Council. 2009 Right Livelihood Laureate.

International Representative, Aotearoa Lawyers for Peace.

### **Introduction**

On Armistice Day (November 11) 2022, the World Future Council (WFC) presented *Save the Planet, Protect the Future, No Excuses for Inaction*<sup>1</sup>, a joint statement of 19 WFC Councillors and 60 Laureates of the Right Livelihood Award (also known as the 'Alternative Nobel Peace Prize') to the 2022 UN Conference on Climate Change (COP27) in Sharm-el Sheikh, Egypt.

The statement notes that *“Planet Earth is facing existential threats from human impact on the land, sea and air – on its ecological systems and its many forms of life, but there are effective policy measures that could Save the Planet and Protect the Future.”* It calls, in particular, for *“urgent action to shift from dead-end, unsustainable, exploitative relationships with the environment and with each other, to **relationships based on earth trusteeship/stewardship**, rights of nature, human rights including rights of future generations, and common security.”*

An earlier version of the appeal was presented to the Stockholm plus 50 Conference in June 2022, and there are plans to present these same calls and policy initiatives to other UN conferences including the 2023 Climate Summit and the 2024 Summit of the Future.

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<sup>1</sup> Joint Statement Save the Planet, Protect the Future, No Excuses for Inaction. <https://www.worldfuturecouncil.org/wp-content/uploads/2022/11/Save-the-Planet-Statement.pdf>

This article will explore the relevance of UN processes for advancing the principles of Earth Trusteeship, and the eight policy initiatives highlighted in the joint statement *Save the Planet, Protect the Future, No Excuses for Inaction*.

## Opportunities to advance Earth Trusteeship in UN processes

The United Nations, while not a perfect global governance body, is the principal international institution currently available and able to engage all relevant actors in the protection of Earth's ecosystems for current and future generations.

UN members include virtually all of the world's national/federal governments. Its mandate, established by the UN Charter, requires engagement of, and responsibility to, '*all peoples of the world*'. Its focus includes both current and '*succeeding generations*'. And the UN's various bodies – including the General Assembly, Economic and Social Council, Security Council, International Court of Justice, Human Rights Council and many others – provide a range of mechanisms and processes for advancing environmental protection in addition to its primary mandate to prevent war, protect human rights and ensure economic and social development for all.

**The UN General Assembly**, for example, hosts various UN Summits relevant to the environment which provide opportunities to advance the principle and practice of Earth Trusteeship. These include Summits on Climate Change, Biodiversity, Oceans and Sustainable Development Goals. The joint statement *Save the Planet, Protect the Future, No Excuses for Inaction* utilizes these opportunities by advocating for specific policy initiatives that can be advanced at these summits through adoption either by a group of like-minded countries or by the Summit(s) as a whole.

There are also opportunities to advance Earth Trusteeship principles through the **International Court of Justice** in conjunction with cases that have trans-boundary or international environmental aspects. Examples of previous cases which have done so include the *Nuclear Weapons Tests Cases of 1974 and 1995* and the *1996 ICJ Advisory Opinion on the*

*Legality of the Threat or Use of Nuclear Weapons*.<sup>2</sup> A case on climate change, which will likely be taken up by the court in 2023, will provide additional opportunities to advance legal affirmation and application of Earth Trusteeship principles.<sup>3</sup>

**The UN Human Rights Council**, and other UN human rights bodies, also provide opportunities to advance Earth Trusteeship through resolutions, general comments and periodic reviews of governments' implementation of their human rights obligations. The UN Human Rights Committee General Comment 36 on the Right to Life, for example, notes the **impacts of environmental degradation, climate change and unsustainable development on future generations**, and the obligations of States to address this.<sup>4</sup> The Universal Periodic Review process<sup>5</sup> provides opportu-

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<sup>2</sup> See *Nuclear weapons and law for the future: The application of principles protecting future generations in international tribunals*, by Alyn Ware. Paper presented at 'Taking Legal Action on Behalf of Future Generations', an international conference held from November 17-18, 2017 hosted by the University of Caen (France) and organized by Region Normandy as part of the Normandy for Peace series. Accessible at <https://alynware.kiwi/blog/2020/12/nuclear-weapons-and-law-for-the-future/>.

<sup>3</sup> See *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, Draft UNGA resolution circulated to UN member states on November 29, 2022 by Vanuatu and 17 other governments. <https://www.vanuatuicj.com/resolution>

<sup>4</sup> "Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law." UN Human Rights Committee General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, Paragraph 62. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>

<sup>5</sup> "The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur." UN Human Rights Council briefing. See <https://www.ohchr.org/en/hr-bodies/upr/upr-main>.

nities for civil society to review, challenge and encourage governments to embrace Earth Trusteeship principles in order to fully comply with their obligations to protect the human rights of current and future generations.

In addition, there are opportunities to build Earth Trusteeship more directly into global governance systems through a proposal made by the **UN Secretary-General** to re-purpose the UN Trusteeship Council to “*serve as a deliberative forum to act on behalf of succeeding generations. Among other tasks, it could issue advice and guidance with respect to long-term governance of the global commons, delivery of global public goods and managing global public risks.*”<sup>6</sup>

Such a re-purposing of the Trusteeship Council could be established by the UN Summit of the Future, which will take place in September 2024, or by a UN Charter Review Conference held in accordance with Article 109 of the UN Charter.<sup>7</sup>

## The eight policy initiatives

The joint statement *Save the Planet, Protect the Future, No Excuses for Inaction* puts forward eight policies to protect the climate, prevent armed conflict, strengthen the legal responsibility to protect planet earth and future generations, enhance the concepts of Rights of Nature and Earth Trusteeship in political and legal systems, ensure that corporate and economic interests adhere to human rights and environmental protection principles, support sustainable agriculture and facilitate fair representation of indigenous peoples, women, and vulnerable groups in the development and implementation of climate, peace and security policies.

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<sup>6</sup> *Our Common Agenda: Report of the UN Secretary-General*. Page 77 [https://www.un.org/en/content/common-agenda-report/assets/pdf/Common\\_Agenda\\_Report\\_English.pdf](https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf)

<sup>7</sup> Article 109 of the UN Charter holds that “A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.”

The policies are:

- **Leave fossil fuels in the ground:** It's time to move from regulating carbon emissions to ending the fossil fuel economy. We encourage countries to join the Beyond Oil & Gas Alliance and to negotiate a Fossil Fuel Treaty in order to end all fossil fuel extraction and to support transition to fossil free economies;
- **End financial support for fossil fuels:** This includes ending subsidies and investments in the fossil fuel industry, and shifting these to financial incentives for renewable energies and transition to green economies;
- **Shift military budgets and investments to human security.** Much of the \$2 trillion spent annually on militaries – including all of the \$100 billion spent on the nuclear arms race – could be better invested in environmental protection, public health, renewable energies and the transition to green economies;
- **Elevate the legal responsibility to protect planet earth and future generations:** This includes adhering to the outcome of precedent cases such as *Urgenda v Netherlands* and giving support to the initiative to take the issue of climate change to the International Court of Justice, in line with the recent recognition of the Right to a clean, healthy and sustainable environment as a fundamental human right.
- **Enhance the concepts of Rights of Nature and Earth Trusteeship in our relationship with the earth and in our political and legal systems:** This includes acknowledging earth systems as living systems, “ecocide” as a crime against humanity, and the Rights of Nature as relevant and binding on governments; (emphasis added)
- **Ensure that corporate and economic interests adhere to human rights and environmental protection principles:** Support the draft of a binding treaty on the obligations of transnational corporations to ensure their accountability for the violation of human rights also related to environmental law;
- **Ensure sustainable agriculture that provides sustenance for all:** Support local food production and agroecological farming

through subsidies, reforms and tax reliefs;

- **Ensure fair representation of indigenous peoples, women, and vulnerable groups in the draft and implementation of climate, peace and security policies.** This is in line with the Human Rights Council's guidelines for equal participation in political and public affairs on different levels.

## The importance of the eight policies

The eight policies suggested by World Future Council and Right Livelihood Laureates are by no means a complete list of what needs to be done. But they are essential to avoid a planetary breakdown and ensure the maintenance of planetary ecosystems into the future. Here is why these policies, in particular, are so important:

- **Leave fossil fuels in the ground**

The joint message focuses strongly on the climate crisis, noting that a climate catastrophe can only be prevented if we move to cutting carbon emissions at their source – the mining of fossil fuels.

*“Staying within the 1.5°C limit is an absolute imperative. We must thus stop expansion of all new coal, oil and gas projects and commit to a global, rapid just and equitable transition out of fossil fuels”.*<sup>8</sup>

- **Elevate the legal responsibility to protect planet earth and future generations**

The Paris Agreement and COP process are insufficient to facilitate the necessary changes to protect the climate. These processes are constrained by corporate and political interests in the fossil fuel economy, say the joint message endorsers. In order to effect change, we need to *“elevate the legal responsibility to protect planet earth and future generations: This includes*

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<sup>8</sup> Saber Chowdhury MP (Bangladesh), Honorary President of the Inter-Parliamentary Union. Member of the World Future Council. Endorser of the joint statement.

*adhering to the outcome of precedent cases such as Urgenda v Netherlands and giving support to the initiative to take the issue of climate change to the International Court of Justice, in line with the recent recognition of the Right to a clean, healthy and sustainable environment as a fundamental human right.”<sup>9</sup>*

- **Shift military budgets to human security**

Governments collectively spend \$2 trillion per year preparing for and engaging in war and destruction, while neglecting to invest in peace, the climate and sustainable development. These massive military investments increase tensions and stimulate armed conflicts, which contribute further to carbon emissions and thwart the achievement of sustainable development goals. We must strengthen the United Nations and other common security mechanisms in order to replace the ‘law of force’ with the ‘force of peace and law.

*“The Russian invasion of Ukraine is causing severe human suffering, as well as having a significant global impact on the climate agenda, energy and food security. It is becoming clear that decarbonization, energy transition and local sustainable agriculture are crucial priorities for societal development of the future. This should be framed both by the political measures and by a greater role of civil society and local communities”.*<sup>10</sup>

- **End financial support for fossil fuels and ensure fair representation of indigenous peoples, women, and vulnerable groups in the draft and implementation of climate, peace and security policies**

This will require some attention to the economic disparities between the rich and the poor, according to the endorsers. “It is not [all of] humanity who have created the climate crisis. The richest 10% are responsible for 50% of our greenhouse gas emissions,

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<sup>9</sup> Joint Statement *Save the Planet, Protect the Future, No Excuses for Inaction*. <https://www.worldfuturecouncil.org/wp-content/uploads/2022/11/Save-the-Planet-Statement.pdf>

<sup>10</sup> Angelina Davydova (Russia), Co-host of The Eurasian Climate Brief, Member of the World Future Council. Endorser of the joint statement.



while those suffering most of the consequences have contributed the least to the problem.”<sup>11</sup>

*“There is an urgent need to establish a financial mechanism for loss and damage to allow vulnerable countries in the developing world to cope with the devastating effects of climate change.”*<sup>12</sup>

- **Enhance the concepts of Rights of Nature and Earth Trusteeship in our relationship with the earth and in our political and legal systems**

*“The International Community needs to act on our shared consciousness of one Earth Community. Act on the principles of international environmental law, including that of Earth Trusteeship and Intergenerational equity. May our decisions today be infused with the wisdom of those gone before us, those who are here and now and those who are yet to come.”*<sup>13</sup>

- **Ensure sustainable agriculture that provides sustenance for all**

A promising proposal for upscaling sustainable agriculture practices, put forward by Right Livelihood Laureate Helmy Abouleish, is to establish ‘Economy of Love carbon credits’ sourced from verified organic agriculture projects.

*“Through this fair compensation, organic farmers can sell their goods at conventional market prices, allowing everyone to purchase healthy and organic food, to improve livelihood of farmers and to mitigate climate change.”*<sup>14</sup>

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<sup>11</sup> Greta Thunberg (Sweden). Right Livelihood Laureate and endorser of the joint statement.

<sup>12</sup> Maria Fernanda Espinosa (Ecuador), President of the 73rd UN General Assembly. Member of the World Future Council. Chair, Coalition for the UN We Need. Endorser of the joint statement.

<sup>13</sup> Neshan Gunasekera (Sri Lanka), Councilor, World Future Council. Chair of the Earth Trusteeship Working Group.

<sup>14</sup> Helmy Abouleish (Egypt), Chief Executive Officer of the SEKEM sustainable farming and production company. Member of the World Future Council. Endorser of the joint statement.

*“One of the quickest and lowest cost ways to restore landscapes is through creation of enabling policies – policies which give land users the assurance that they will benefit from their work. Favourable policies should be high on the priority list of climate action.”<sup>15</sup>*

## The Statement and its endorsers

### ***Save the Planet: Protect the Future. No Excuses for Inaction***

Message from Right Livelihood Laureates and members of  
the World Future Council to COP 27  
(the UN Climate Change Conference 2022)

Planet Earth is facing existential threats from human impact on the land, sea and air – on its ecological systems and its many forms of life. COP 27 provides an opportunity for us to make the collective changes necessary to prevent a catastrophic collapse of one or more ecological systems which could end civilisation as we know it – and to instead adopt policies to protect the future for all life.

It's time to end the excuses for inaction and minimal stop-gap measures, and to instead make the real changes required.

We, the undersigned Laureates of the Right Livelihood Award and Members of the World Future Council, call for urgent action to shift from dead-end, unsustainable, exploitative relationships with the environment and with each other, to relationships based on earth trusteeship/stewardship, rights of nature, human rights including rights of future generations, and common security.

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<sup>15</sup> Tony Rinaudo (Australia), Natural Resources Management Specialist for World Vision. Right Livelihood Laureate. Endorser of the joint statement.

## **We call in particular on governments to:**

- Leave fossil fuels in the ground: It's time to move from regulating carbon emissions to ending the fossil fuel economy. We encourage countries to join the *Beyond Oil & Gas Alliance* and to negotiate a *Fossil Fuel Treaty* in order to end all fossil fuel extraction and to support transition to fossil free economies;
- End financial support for fossil fuels: This includes ending subsidies and investments in the fossil fuel industry, and shifting these to financial incentives for renewable energies and transition to green economies;
- Shift military budgets and investments to human security. Much of the \$2 trillion spent annually on militaries – including all of the \$100 billion spent on the nuclear arms race – could be better invested in environmental protection, public health, renewable energies and the transition to green economies;
- Elevate the legal responsibility to protect planet earth and future generations: This includes adhering to the outcome of precedent cases such as *Urgenda v Netherlands* and giving support to the initiative to take the issue of climate change to the International Court of Justice, in line with the recent recognition of the Right to a clean, healthy and sustainable environment as a fundamental human right.
- Enhance the concepts of Rights of Nature and Earth Trusteeship in our relationship with the earth and in our political and legal systems: This includes acknowledging earth systems as living systems, "*ecocide*" as a crime against humanity, and the *Rights of Nature* as relevant and binding on governments;
- Ensure that corporate and economic interests adhere to human rights and environmental protection principles: Support the draft of a binding treaty on the obligations of transnational corporations to ensure their accountability for the violation of human rights also related to environmental law;

- Ensure sustainable agriculture that provides sustenance for all: Support local food production and agroecological farming through subsidies, reforms and tax reliefs;
- Ensure fair representation of indigenous peoples, women, and vulnerable groups in the draft and implementation of climate, peace and security policies. This is in line with the *Human Rights Council's guidelines for equal participation* in political and public affairs on different levels.

The above measures, though by no means a complete list of what needs to be done, are not only essential to avoid a planetary breakdown, but they also constitute important tools to address the issues faced by many Right Livelihood Laureates and Members of the World Future Council. We call on States to take firm and concrete actions for real, radical, and transformative change

### Endorsed by:

### Right Livelihood Laureates:

# R!

**Alan Rusbridger** (UK)

Journalist. Former Editor in Chief, The Guardian

**Alice Tepper Marlin** (USA)

President and CEO, Council on Economic Priorities

**Alyn Ware** (New Zealand/Czech Republic/  
Switzerland)

Global Coordinator, Parliamentarians for Nuclear  
Non-proliferation and Disarmament. Director,  
Basel Peace Office.

**Aminatou Haidar** (Western Sahara)

Nonviolent activist and human rights defender

**Amory Lovins** (USA)

Co-Founder & Chairman Emeritus, Rocky Mountain  
Institute

**András Biró** (Hungary)

Journalist and activist, Hungarian Foundation for Self-Reliance  
(Autonómia Alapítvány in Hungarian)

**Angie Zelter** (UK)

Founder and activist, Trident Ploughshares

**Prof. Anwar Fazal** (Malaysia)

Consumer and citizen rights campaigner

**Basil Fernando** (Hong Kong)

Jurist, poet and human rights defender, Asian Human Rights Commission

**Bianca Jagger** (UK)

Goodwill Ambassador, Council of Europe

**Birsel Lemke** (Turkey)

Anti-mining environmentalist, Citizens' Initiative HAYIR

**Cassia Bechara for MST** (Brazil)

Direção Nacional Movimento dos Trabalhadores Rurais Sem Terra (MST)

**Chico Whitaker** (Brazil)

Architect, politician and social activist

**Dipal Barua** (Bangladesh)

Former Founding Managing Director of Grameen Shakti Bright Green Energy Foundation

**Fernando Rendon** (Colombia)

Co-Founder & Director, International Poetry Festival of Medellín

**Frances Moore-Lappé** (USA)

Founder, Small Planet Institute

**Framtiden i våre hender -The Future in Our Hands** (Norway)

Endorsed by Anne Kari Garberg, Director of Communications,  
Framtiden i våre hender

**Greta Thunberg** (Sweden)

High school student and activist, #FridaysForFuture

**Hans Herren** (USA/Switzerland)

Agronomist and entomologist. Founder, Biovision Foundation

**Dr. Hanumappa Sudarshan** (India)

Founder Vivekananda Girijana Kalyana Kendra (VGKK)

**Helen Mack** (Guatemala)

Human Rights defender. Founder and President, Myrna Mack Foundation.

**Helena Norberg Hodge** (Australia)

Activist and author. Founder, Local Futures

**Helmy Abouleish** (Egypt)

Chief Executive Officer, SEKEM

**Henk Hobbelink**

Co-founder and coordinator, agronomist GRAIN, international

**Prof. Herman Daly** (USA)

Economist. Professor Emeritus, University of Maryland School of Public Policy

**Hunter Lovins** (USA)

President, Natural Capitalism Solutions. Co-Founder, Rocky Mountain Institute

**International Baby Food Action Network**

Endorsed by Annelies Allain, Founder of the International Baby Food Action Network

**Jacqueline Moudeina** (Chad)

Human Rights lawyer. President, L' Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme.

**Juan Pablo Orrego** (Chile)

Ecologist. President of Ecosistemas

**Jumanda Gakelebhone** (Namibia)

Advocate for the rights of the First People of the Kalahari

**Katarina Kruhonja** (Croatia)

Peace activist. Founder, Centre for Peace, Non-Violence and Human Rights.

**Krishnammal Jagannathan** (India)

Social activist, Land for Tillers' Freedom (LAFTI)

**Leonardo Boff** (Brazil)

Theologian, philosopher, writer & publisher

**Lottie Cunningham Wren** (Nicaragua)

Miskito lawyer, environmentalist, and Indigenous rights activist. President, Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua.

**Marthe Wandou** (Cameroon)

Gender and peace activist. Founder, Action Locale pour un Développement Participatif et Autogéré.

**Martín von Hildebrand** (Colombia)

Founder of Gaia Amazonas, ethnologist and anthropologist COAMA and Gaia Amazonas

**Maude Barlow** (Canada)

Honorary Chairperson, The Council of Canadians

**Prof. Michael Succow** (Germany)

Environmental activist. Founder of Succow Stiftung

**Monika Hauser** (Germany)

Gynaecologist. Founder, Medica Mondiale

**Nnimmo Bassey** (Nigeria)

Executive Director, Health of Mother Earth Foundation

**Pat Mooney** (Canada)

Author and expert on politics of biotechnology and biodiversity. Co-founder, ETC Group

**Paul Walker** (USA)

Chair, Chemical Weapons Convention Coalition.

Director, Green Cross International Environmental Security and Sustainability program

**Petra Tötterman Andorff** (Sweden)

Secretary General, Kvinna till Kvinna

**Prof. P.K. Ravindran** (India)

Former President, Kerala Sastra Sahitya Parishad (KSSP).

**Rachel Stroer for the Land Institute** (USA)

President, The Land Institute

**Prof. Raúl Montenegro** (Argentina)

Professor of Evolutionary Biologist and Environmentalism. Environment Defence Foundation (FUNAM).

**Ritwick Dutta and Rahul Choudhary** (India)

Lawyers Legal Initiative for Forest and Environment

**Rossella Miccio for Emergency** (Italy)

President, Emergency

**Ruth Manorama** (India)

Advocate for the rights of Dalit women.

**Mageswari Sangaralingam for Sahabat Alam** (Malaysia)

Researcher, Friends of the Earth Malaysia

**Shrikrishna Uphadyay** (Nepal)

Development practitioner SAPPROS

**Shiila Watt-Cloutier** (Canada)

Advocate for the rights of the Inuit of the Arctic

**Dr. Sima Samar MD** (Afghanistan)

Doctor for the poor and educator for the marginalised.

Founder, Shuhada Organization. Former Chair, Afghanistan Independent Human Rights Commission (AIHRC)

**Sulak Sivaraksa** (Thailand)

Professor, writer and activist.

Founder, International Network of Engaged Buddhists.

**Theodor van Boven** (The Netherlands)

Jurist and professor emeritus of international law

**Tony Rinaudo** (Australia)

Agronomist, World Vision

**Dr. Vandana Shiva** (India)

Scholar and activist, Navdanya. Founder, Research Foundation for Science, Technology and Ecology.

**Vesna Teršelič** (Kroatia)

Social activist. Founder, Croatian Anti-War Campaign (ARK)

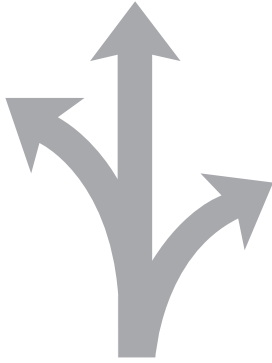
**Vladimir Sliviyak** (Russia)

Co-chairman and co-founder, Ecodefense

**Dr. Zafrullah Chowdhury MD** (Bangladesh)

Public health activist, Gonoshasthaya Kendr





## Members of the World Future Council

**Alyn Ware** (Aotearoa-New Zealand/Czechia/Switzerland)

Global Coordinator, Parliamentarians for Nuclear Non-proliferation and Disarmament. Director, Basel Peace Office.

**Andrea Reimer** (Canada)

Adjunct Professor in Power & Practice, University of British Columbia. Loeb Fellow, Harvard University's Graduate School of Design. Former City Councillor Vancouver, Canada.

**Angelina Davydova** (Russia)

Director, environmental and climate journalist Office of Environmental Information, Russia

**Dipal Barua** (Bangladesh)

President, Founder, Managing Director South Asian Network for Clean Energy (StANCE)

**Frances Moore-Lappé** (USA)

Founder, Small Planet Institute

**Helmy Abouleish** (Egypt)

Chief Executive Officer, SEKEM

**Dr. Hans R. Herren** (Switzerland)

President and CEO Millennium Institute and Biovision Foundation

**Jan McAlpine** (USA)

President and CEO, McAlpine International Consultants.  
Former Director, United Nations Forum on Forests (UNFF)  
Secretariat – Department of Economic and Social Affairs.

**Katiana Orlic** (Italy)

Political and strategic advisor for several International Organisations, NGOs and film production companies

**Maja Göpel** (Germany)

Political economist, transformation researcher, and sustainability scientist

**Maria Fernanda Espinosa (Ecuador)**

Former President of the 73rd Session of the United Nations General Assembly, academic, diplomat and politician

**Maude Barlow (Canada)**

Honorary Chairperson The Council of Canadians

**Neshan Gunasekera (Sri Lanka)**

International lawyer, educationist and environmentalist.

Board Member, International Association of Lawyers Against Nuclear Arms.

**Pedro Tarak (Argentina)**

Senior Leader of Global Bridge Builders at Sistema B International,

Co-founder of Sistema B and former President of Sistema B International.

Board Member of the Wellbeing Economy Foundation in the UK. Member of the Advisory Council of the B Team

**Dr. Rama Mani (France)**

Transformative leader, educator, peacebuilder, poet and performance artist.

Home for Humanity, Theatre of Transformation Academy and Enacting Global Transformation Initiative, University of Oxford and Bern University.

**Nkatha Murungi (South Africa)**

Assistant Director of the Centre for Human Rights.

Senior Lecturer in the Faculty of Law at the University of Pretoria

**Saber Chowdhury MP (Bangladesh)**

Member of Parliament, Former President of the Inter-Parliamentary Union Bangladesh

**Otto Scharmer (USA)**

Senior Lecturer, MIT Management Sloan School.

Co-Founder and Chair, Presencing Institute

**Prof. Vandana Shiva (India)**

Founder, Research Foundation for Science, Technology and Ecology



Photo credit – Stephanie Keith (Greenpeace) \*

## ***How to be Good Ancestors: Taking Climate Change to the World Court***

**Prue Taylor**

### **Introduction**

We, present generations of humanity, frequently reference the needs and interests of youth and future generations. In so doing, we articulate an intergenerational responsibility to pass the Earth, our sacred inheritance, on to those who succeed us. These references to future generational equity or intergenerational justice range from the poetic to the pragmatic. They permeate aspirational declarations, legal texts and political statements. They are also a common thread binding the diverse cultures and spiritual traditions of Earth's human communities. But what does it really mean to act responsibly? What duties does it entail? How are we called upon to act today, so that the gift of life on Earth is shared by those yet to come?

This chapter considers these questions by using a current example of international legal action. It is an inspiring story of today's youth calling

upon older generations to use their remaining powers and privileges wisely. As the generation best able to speak for the future, today's youth are at the vanguard of what it means to be Earth Trustees, acting for the positive benefit of others and the Earth itself. However, this story has not yet reached its conclusion. It remains to be seen whether we (the soon to be ancestors) will heed the call of youth, respect their leadership and give them our full support. Our acts and omissions will determine the planetary reality both youth and future generations inherit.

## The Call to Act

Around the world, citizens are increasingly turning to their national courts in the pursuit of legal action to protect the climate (and ultimately) the whole Earth system. It has taken decades of work to reach this point. Taking international legal action has been a much slower process. There are many reasons for this. The world's most powerful states are amongst the most polluting and ecologically destructive. It is not politically or economically expedient for them to call each other out. States hold to a consensus that international negotiations and treaties such as the 2015 Paris Agreement are a better option for taking action than contentious legal proceedings. Finally, not all states accept the jurisdiction of the United Nation's (UN) principal judicial organ – the International Court of Justice (ICJ) or World Court. However, there is another option to the conflict orientated nature of most legal proceedings. The ICJ has jurisdiction to issue Advisory Opinions (ICJ AOs) upon the request of states. These are non-contentious legal proceedings. The Court is asked for its expert opinion on matters of international law. In essence, the Court is being asked to assist the international community by declaring what the law is. Its advisory opinion is not legally binding but the law that it declares is. Generally speaking, an ICJ AO carries significant moral and legal authority because of the ICJ's status as UN's highest judicial authority. Therefore, it can influence the development of the law and (hopefully) lead to strengthened state commitments.

This story involves a request to the ICJ for an Advisory Opinion on the climate change obligations of states. More specifically; what are the obligations of states under international law to: “protect the rights of present and future generations” against climate change? Asking the Court for an AO is

not uncommon, but this particular request is novel because it has been initiated by youth. In 2019, a group of Pacific Island law students researched and developed a persuasive legal and political argument. They formed the Pacific Island Students Fighting Climate Change (PISFCC) and inspired the Vanuatu Government (under the leadership of Prime Minister Bob Loughman) to support them. This step is critical to success as only nation states and UN organs and agencies can request an ICJ AO.



Photo credit – Pacific Islands Students Fighting Climate Change \*)

It is no accident that Pacific youth led this initiative. In 2011 the Government of Palau began the process of requesting an AO but failed to get the necessary support from other states. This undoubtedly deterred further attempts on the basis that ‘it didn’t work last time’. However, Pacific youth are not so easily discouraged. They have the energy and motivation to try again. But more than this, they have a compelling moral voice and legitimacy that is at the core of intergenerational justice. As today’s youth, they are more able than any other living generation to speak for their own needs and fears and for those of future generations. They speak for both themselves and for their children. Another reason why it is no accident on the part of Pacific youth to take up leadership is because the region is on the front line of climate change impacts. However, they are not approaching this campaign as victims but as constructive and courageous leaders. They are advocates demanding justice and respect for human rights. As a PISFCC campaign slogan declares: “We’re not drowning, we’re fighting”.

The intention to fight for justice and respect for the law is consistent with

the leadership shown by Pacific Island states during negotiation of the 2015 Paris Agreement. Their efforts led to explicit recognition of the 1.5 degree warming limit. Thus far, states have not met their obligations. We remain on track for heating of 2.5 degrees or more by the end of the century. The ICJ AO initiative is seen as an important legal strategy to require effective implementation of the Paris Agreement. The ICJ calling attention to the climate change trajectory and its consequences and calling out states for breach of their legal and moral obligations, may have a beneficial impact. The Paris Agreement itself lacks enforcement mechanisms, relying instead on voluntary commitments and 'naming and shaming' to coerce compliance. An ICJ AO could play an important role in this kind of 'soft' international law process. It could also put states on notice that the Paris Agreement is not the only source of legal obligations to halt devastating ecological harm. Other international legal principles and agreements exist to control the acts and omissions of states.

Since the initial call to act was sent out, the response has been steadily building. The PISFCC have joined forces with youth groups around the world, including World's Youth for Climate Justice, expanding the reach of the campaign. More recently, Vanuatu's Prime Minister launched a global civil society campaign. The ICJ AO Alliance now comprising around 1,500 civil society organisations from over 130 nations.<sup>1</sup>

The PISFCC have also gained support from civil society representatives responsible for a successful ICJ AO on nuclear issues. In 1996 the ICJ delivered a landmark Advisory Opinion declaring the use and threat of use of nuclear weapons illegal. The 1996 Nuclear Test Case changed the moral and legal landscape and motivated negotiations for nuclear non-proliferation, disarmament and declarations of 'no first use'. Persons actively involved in these nuclear campaigns are now using their experience and expertise to assist and highlight the parallels between nuclear destruction and climate change. Both are caused by human agency, both are avoidable, both lead to a future of loss, pain and grief for people and Planet.

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<sup>1</sup> Lagipoiva Cherele Jackson "Vanuatu's push for legal protection from climate change wins crucial support" *The Guardian* (International edition) (The United Kingdom, online ed, London, 10 May 2022).

While much progress has been made by the PISFCC and Vanuatu since 2019, gaining the support of the community of nation states is a lot 'trickier'. However, a key milestone was achieved in July 2022. All Pacific Islands Forum member states (including Aotearoa New Zealand and Australia) expressed their positive endorsement of the campaign, called for a supporting UN General Assembly Resolution and signalled their willingness to work collaboratively with Vanuatu.<sup>2</sup> Again, a campaign slogan provides a succinct statement of the intention and potency of support from all Pacific Islands Forum members: "One People, One Ocean, One Journey".

## An Urgent Journey

States cannot directly request the ICJ for an AO. This is best done by a UN General Assembly (UNGA) resolution that specifies the legal question or questions states want the Court to address. The resolution must be supported by a majority of 97 UN member states. So, while Vanuatu is the initial champion, other states must now come on board to actively support and vote in favour of the UNGA resolution. However, before states will vote 'YES' they will need to be convinced that the legal question(s) are the right ones to put before the Court.

At the time of writing, the legal question(s) are the subject of intensive negotiations. A draft UNGA resolution was circulated to all UN Member States on 29 November 2022. More negotiations will follow its release, but the objective of Vanuatu and the core group of supporting states will be to have the resolution pass without any major change.<sup>3</sup> Discussion of the exact legal question(s) remains speculative. However, the PISFCC support the language used by Pacific Islands Forum states: "What are the obligations of States under international law to protect the rights of present and

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<sup>2</sup> "Report: Communique of the 51st Pacific Islands Forum Leaders Meeting" (14 July 2022) Pacific Islands Forum <[www.forumsec.org](http://www.forumsec.org)>.

<sup>3</sup> At the time of writing, the Core Group supporting states are: Angola, Antigua and Barbuda, Bangladesh, Costa Rica, Federated States of Micronesia, Liechtenstein, Morocco, Mozambique, New Zealand, Portugal, Romania, Samoa, Sierra Leone, Singapore, Uganda, Vanuatu, Vietnam and Germany. See: <[www.vanuatuicj.com](http://www.vanuatuicj.com)>.



future generations against the adverse effects of climate change.”<sup>4</sup> This drafting allows the Court to focus on legal obligations beyond those in the Paris Agreement (and supporting treaties) and consider additional legal sources including other environmental treaties, general principles and customary international law. The inclusion of ‘rights’ allows consideration of developments in human rights law, including recent international recognition of a universal human right to a clean and healthy environment.<sup>5</sup> However, it is the explicit inclusion of ‘future generations’ that offers some important legal opportunities of direct relevance to Earth Trusteeship.

In the decades since international environmental law became a discipline, the principle of future generational equity has been used in many treaties and declarations. It is both embedded within the broader concept of sustainable development and used in specific ecological contexts. For example, the 2015 Paris Agreement provides that states should respect, promote and consider intergenerational equity when taking climate change action.<sup>6</sup>

The 1992 UN Framework Convention on Climate Change was more explicit stating:<sup>7</sup>

*The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.*

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<sup>4</sup> “Report: Communique of the 51st Pacific Islands Forum Leaders Meeting” (14 July 2022) Pacific Islands Forum, at para 46.

<sup>5</sup> “UN General Assembly declares access to clean and healthy environment a universal human right” (28 July 2022) UN News [www.news.un.org](http://www.news.un.org)>

<sup>6</sup> The Paris Agreement, preamble.

<sup>7</sup> Article 3 (1)



Because of the frequent use of future generational equity in law, the ICJ itself stated:

*“Nowadays, in 2010, it can hardly be doubted that the acknowledgement of inter-generational equity forms part conventional wisdom in International Environmental Law.”*<sup>8</sup>

In spite of its frequent use and its apparent status as a principle of international law, there is less agreement on what future generational equity actually means and even less clarity on how to implement it in specific contexts. A standard legal textbook summarises the situation as follows:<sup>9</sup>

*A review of juridical writings and legal instruments indicates that the core of the principle is that while the present generation has a right to use the Earth and its natural resources to meet its own needs, it must pass the Earth on to future generations in a condition no worse than that in which it was received so that future generations may meet their own needs. This generally applies both to the diversity of the resources and to the quality of the environment.*

This comment defines future generational equity as a human-centred utilitarian concept requiring long-term thinking when applied to resource access and use. Following this interpretation, a bit of self-restraint by present generations in ‘fairness’ to the future can quickly become a version of cost-benefit analysis with longer time frames thrown in. Standard environmental mechanisms and principles such as the precautionary principle and environmental impact assessments are closely associated with this definition of future generational equity. These standard legal elements are important and helpful however they express a predominant world view and do not encapsulate the totality of its meaning nor the full scope of its potential implementation in international law. Most importantly, they

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<sup>8</sup> Pulp Mills on the River Uruguay (Argentina v Uruguay), Judgment, [2010] ICJ Reports Separate Opinion of Judge Cançado Trindade at para 122.

<sup>9</sup> Edith Brown Weiss Max Planck Encyclopedias of International Law Intergenerational Equity (April 2021, online ed).

obscure its central moral imperative.

The ICJ AO potentially puts the meaning and relevance of future generational equity squarely before the Court in the context of an imminent existential risk to both present and future generations. The UN Secretary General puts it starkly: states are failing to meet their obligations under the Paris Agreement; ‘we are on a highway to climate hell with our foot on the accelerator’.<sup>10</sup> This is the critical decade – we either agree a ‘climate solidarity pact’ or a ‘collective suicide pact’.<sup>11</sup> At this pivotal juncture in global history, the ICJ may have an opportunity to elaborate on future generational equity in a way that leads us away from a state-centred legal system that mostly serves and benefits the national self-interests of states towards one that ‘serves the greater interests of humanity and planetary welfare’.<sup>12</sup> In short, a legal system that prioritises and requires the fulfilment of ecological responsibilities for the benefit of all people and the whole community of life. In such a system, states are required to act as global Earth trustees. However, states are not the only trustees. All humanity (however we organise ourselves and at all levels) must also strengthen and fulfil this universal responsibility. In the words of the Earth Charter: ‘Everyone shares responsibility for the present and future well-being of the human family and the larger living world.’<sup>13</sup>

## Towards a Richer Understanding

How could ICJ Judges source and determine a deeper meaning to future generational equity, one that takes us beyond traditional Euro-centric legal scholarship and its preference for business as usual and state-centred law? They may choose to follow the inspirational leadership of a fellow

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<sup>10</sup> Fiona Harvey and Damian Carrington “World is on ‘highway to climate hell’, UN chief warns at Cop27 summit” *The Guardian* (International edition) (The United Kingdom, online ed, London, 7 November 2022).

<sup>11</sup> Harvey and Carrington, above n 10.

<sup>12</sup> *Gabcikovo-Nagymaros Project (Hungary v Slovakia)* [1997] ICJ Reports, 7. See Separate Opinion of Vice-President Weeramantry at 118.

<sup>13</sup> The Earth Charter, preamble.

judge. Judge Weeramantry, former Vice-President of the ICJ, consistently reiterated a fundamental argument: to survive on this Planet, we need to draw on the collective global wisdom integral to diverse traditional cultures and major spiritual traditions.<sup>14</sup> By way of example, he recounts traditional African wisdom: a reasonable, responsible decision cannot be made without considering the ‘threefold face of humanity’. Weeramantry elaborates:<sup>15</sup>

*It is not only we – who are alive here and now – who enter the picture. There are those who went before us and those who are yet to come. **The perspectives of all three** must be considered from the standpoint of the decision.*

In the last 300 years, international and many national legal systems have cut themselves off from this wisdom as a consequence *individualism and rights have trumped social and ecological responsibilities*. Drawing upon these traditions and integrating them into present law and governance is an interdisciplinary task. In Judge Weeramantry’s view, we have the wisdom and we can devise the procedures for integration – what we still need is a change of attitude.<sup>16</sup>

Is this change of attitude occurring? Do we have examples of international and domestic legal systems opening themselves to global wisdom? Can we use this wisdom to develop an understanding of future generational equity that takes us far beyond the very narrow utilitarian ‘long term thinking’ framing outlined above? And if so, how would this fundamentally reshape states’ obligations to address climate change?

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<sup>14</sup> C G Weeramantry “Rights, Responsibilities and Wisdom from Global Cultural Traditions” in David Grinlinton and Prue Taylor (eds), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (Martinus Nijhoff Publishers, Leiden, 2011)

<sup>15</sup> Weeramantry “Rights, Responsibilities and Wisdom from Global Cultural Traditions”, above n 14, at xvi (emphasis added).

<sup>16</sup> Weeramantry “Rights, Responsibilities and Wisdom from Global Cultural Traditions”, above n 14, at xx.

These are all very big questions. At this point, we can only speculate about whether they will come before the Court. A full investigation of these questions goes far beyond the purpose of this chapter. However, there are two recent examples of change that could well be illustrative of a larger trend.

The first example comes from within the international legal system and it concerns negotiation of a new agreement to conserve high seas biological diversity. It is an effort to modernise the 1982 Law of the Sea Convention. The negotiations are ongoing however, after many years of effort one of the great achievements of Pacific Island states has been the inclusion of principles and articles requiring use and acknowledgement of 'traditional knowledge of indigenous peoples and local communities'. While this phrase (and similar phrases) mostly appear in the context of science and best available technology, it would be an error to dismiss its wider relevance. Traditional knowledge has informed the draft agreement's definition of 'stewardship'. The draft Preamble currently provides: states desire to 'act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations.'<sup>17</sup> The general principles article elaborates: stewardship for present and future generations means: 'protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and preserving the inherent value of biodiversity of areas beyond national jurisdiction'.<sup>18</sup> This effort to articulate the meaning of stewardship (in legal language) is an expression of a kinship relationship with the Ocean that is both cultural and natural. This relationship is best expressed by the 2009 Maupiti Declaration:<sup>19</sup>

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17 Further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, 30 May 2022. See <[www.digitallibrary.un.org](http://www.digitallibrary.un.org)>.

18 Draft Article 5(k) (emphasis added).

19 The Declaration was the outcome of the Pacific Islands World Heritage Workshop, 5 November 2009.



A Pacific Youth delegation in front of the Peace Palace, seat of the International Court of Justice, The Hague.

### **The representatives of Pacific Countries and Territories**

**REAFFIRM** that, for many Pacific communities: The ocean is their identity, way of living, values, knowledge and practices that have sustained them for millennia.

**OBSERVE** that the loss of values associated with the ocean and its resources threatens the collective, physical, moral, spiritual well being, integrity and survival of many islands communities

**RECOGNIZE** the need to safeguard knowledge, spirituality, traditional practices and their inter-relationships with land, sky and ocean.

**URGENTLY CALL** to action all nations and the peoples of the World to join and protect, manage, maintain and sustain the cultural and natural integrity of the ocean for our ancestors and future generations.

Returning to the new high seas agreement, full inclusion of traditional knowledge of indigenous peoples and local communities informs not only the definition of stewardship, it also acknowledges indigenous peoples and communities as legitimate international actors alongside nation states. Therefore, they must be included in decision making and management enabling them to exercise their moral obligations of stewardship. In doing so, there is the opportunity to demonstrate and to transfer understanding and experience of the deep relational values upon which stewardship is founded. In short, there is a means by which relational indigenous and local wisdom can lead transformation by the very act of 'doing the right thing'.

The second example of legal change comes from shifts in the domestic law of Aotearoa New Zealand. A requirement to sustain resources for the benefit of future generations has been part of environmental law for over thirty years. This law also recognises the need and desire of indigenous people (Maori) to exercise 'kaitiakitanga', defined as guardianship consistent with customary traditional values and practices and the ethic of stewardship. However, in practice the predominant Western world-view and attitudes have meant neither of these concepts have been effectively used in decision-making. Except in very rare instances, these concepts have been 'read out of the law'. This is now starting to change. A much more relational understanding of humans and nature is beginning to permeate the law according to which humans have moral and legal responsibilities towards nature.

In the specific context of marine pollution, the New Zealand Supreme Court recently decided that specific marine protection law grants Maori legal rights to exercise authority over the marine environment according to their tikanga (customary values and practices) which are intended to safeguard the natural world for future generations.<sup>20</sup> According to tikanga, safeguarding the natural world for future generations is a first priority, not an optional additional consideration. More specifically, the Court found decisions about marine mining must ensure Maori are able to exercise kaitiakitanga or responsibilities of care and respect. The Court (lead by a

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<sup>20</sup> Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board [2021] NZSC 127.

Judge of Maori descent) stated that the 'meaning' of customary values and practices must be viewed from an indigenous perspective alongside a non-indigenous one. When applied to decision making this means that an understanding of material harm (e.g.; marine pollution) may extend beyond negative physical effects to include spiritual effects (e.g.; negative consequences of not fulfilling responsibilities of care and respect). This decision opens a new pathway to a much more comprehensive understanding of what is required in the exercise responsibility across all generations; ancestors, present generations and their successors and the consequences of not doing so.

In many respects, the legal changes in Aotearoa New Zealand and the draft high seas agreement are specific manifestation of some key individual and collective rights recognised by the 2007 UN Declaration on the Rights of Indigenous Peoples.<sup>21</sup> This UN Declaration should be read as reinforcing and complementing the high seas agreement. For example, the Declaration recognises the interdependence between respect for rights and sustainable and equitable development. Article 25 recognises the right to maintain and strengthen relations with land, territories and resources to 'uphold responsibilities to future generations'. Article 11 speaks to the centrality of cultural traditions and customs to the maintenance of indigenous cultures across three temporal scales: past, present and future. Much more could be said about this Declaration and its recognition of indigenous rights however, the main point here is that signatory states have declared a legal and moral intention to recognise these rights in the spirit of partnership and mutual respect. The means to do this is through the development of both international agreements and domestic law.

From an indigenous perspective we can learn some very important things about future generational equity, when coupled with a notion of guardianship or stewardship that distinguish it from the current Euro-centric legalistic interpretations.

First, responsibility towards ancestors and successors implies keeping faith with and continuing entwined cultural and natural relationships. How we locate ourselves within a series of temporal relationships helps us bet-

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<sup>21</sup> UN Declaration on the Rights of Indigenous Peoples GA Res 61/295 (2007).



ter understand who we are as humans, what is of value and what our responsibilities are. A Maori proverb expresses this in part: Kia whakatōmuri te haere whakamua: 'I walk backwards into the future with my eyes fixed on my past'.

Second, fulfillment of intergenerational responsibility is not optional nor altruistic. It is based upon reciprocity and obligation. In return for nature's gifts of sustenance, we are required to respect, appreciate and to give back. In the words of Robin Wall Kimmerer: <sup>22</sup>

*For much of human's time on the planet ... we lived in cultures that understood the covenant of reciprocity, that for the Earth to stay in balance, for the gifts to continue to flow, we must give back in equal measure for what we take.*

These acts of reciprocity remind us that we are but one member of the Earth community. Caring for the whole Earth community is the only means to ensure the mutual flourishing of all. The rules that govern ecosystem function apply to us. We must not take more than we need and (increasingly) we are called to restore damaged ecosystems.

Third, fulfillment of intergenerational responsibility has the potential of offering a far more systemic response to climate change by addressing the complex causes beyond the narrow frames of mitigation and adaptation. For example, while the interconnections between climate change and global poverty have long been understood, little has been done to effectively address the global economic system and inequality in wealth distribution. We are failing to meet the UN Sustainable Development Goals which aimed to integrate improved human development and environmental action across multiple domains. Poverty and other forms of social and cultural deprivation often have profound intergenerational reach. It can be said that injustice casts a shadow for several generations. Urgent attention to the multifaceted ecological/socio/economic justice claims of present generations is absolutely foundational to the wellbeing of future generations.

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<sup>22</sup> Robin Kimmerer "Returning the Gift" (1 October 2013) Humans and Nature <[www.humanandnature.org](http://www.humanandnature.org)>.



## Voyaging together: taking the world's biggest problem to the world's highest court

Let's return to the ICJ AO campaign itself. At the time of writing, the PISFCC, global youth and civil society organisations are working together with Vanuatu and the core group of states to encourage as many other states as possible to support the initiative and vote 'YES' to the UNGA resolution later this year. The current forum is COP 27. We do not yet know what the outcome will be. Nor do we know what the exact legal framing will be around the obligations of states to protect present and future generations. These uncertainties must not distract us from understanding and pursuing our task as good ancestors. We must work in support of youth, using our current power and position to ensure youth have the opportunity to put their case to the world's highest court. We can do this by lobbying government officials, supporting civil society organisations, talking about the campaign with others and by giving it our positive and sustained attention.

In the absence of formal vehicles for elevating the voice of present and future generations (such as a UN Earth Trusteeship Council or a UN Envoy and Office for Future Generations), the ICJ AO initiative provides a critical procedural opportunity – and it does so now! If it leads to positive legal developments such as those out-lined then we will all benefit. However, a sole focus on legal outcomes potentially misses a fundamental truth: this is a chance to empower the voice of youth who speak for the future. In doing so, we give them the opportunity to be better ancestors than we have so far proven to be. We enable them to act as Earth Trustees.

\*) Both images can be found at the Pacific Islands Students Fighting Climate Change website: [www.pisfcc.org](http://www.pisfcc.org)

*On 1 March 2023, the ICJAO Resolution was formally published by the UN. The request for an Advisory Opinion was co-sponsored at that date by 105 countries. Adoption of the resolution in the UN General Assembly is expected on 29 March 2023.*



## ARTICLES



# ***Earth Democracy, Earth Community, the Commons and Earth Trusteeship***

Dr Vandana Shiva

We face an existential crisis as humanity and as a planetary civilisation. Indigenous people have been uprooted, displaced and exterminated over 500 years of colonialism.

One million species are threatened with extinction, with 200 going extinct every day. The present path humanity is on is clearly non-sustainable because it is destroying life on Earth, the very infrastructure of life.

Non-sustainable systems are emerging as a threat to the very survival of the human species.

Humans too are a threatened species.

The colonisation of the land and people transformed Terra Madre, the Living Earth, into Terra Nullius, the empty land, inert raw material, private property. This transformation and colonisation continue, threatening the extinction of diverse species and diverse cultures.

The Earth is Living. We are not separate from the Earth, we are a strand in the web of life, we are members of one Earth Family.

Biodiversity, the diversity of species in mutuality and interconnectedness, creates the web of life, maintains the living planet and the infrastructure of life.

The emergencies humans face in terms of hunger and thirst, disease and pandemics are rooted in the ecological crises and the crises of injustice, inequality, and inhumanity.

Earth Democracy creates the potential for a deeper interconnectedness

between humans and other beings. It allows us to recognise that on an interconnected planet, the extinction emergency is one indivisible Extinction. Protecting other cultures and other species is protecting our common future. Earth Democracy enables a shift from enclosures of the commons for creating private property to recovery of the commons through Earth Trusteeship. Earth Democracy is a paradigm shift from the “dead earth” paradigm to a paradigm of the Living Earth.

## Being Alive is Being Earth Community

Mother Earth is Terra Madre, Gaia, Pachamama, Vasundhara .... Emerging ecological sciences recognise her as Gaia. She is living. She gives us life. We are part of her Earth Family, Vasudhaiva Kutumbkam, of living, creative, diverse, intelligent sentient beings.

The phrase *Vasudhaiva Kutumbakam* (Sanskrit: वसुधैव कुटुम्बकम्) consists of several words: *vasudhā* (transl. ‘the earth’), *ēva* (transl. ‘is thus’) and *kutumbakam* (transl. ‘family’).

अयं निजः परो वेति गणना लघुचेतसाम्। (Ayam Nijah Paro Veti Ganana Laghucetasam)

उदारचरितानां तु वसुधैव कुटुम्बकम्॥ (Udaracaritanam Tu Vasudhaiva Kutumbakam)

(Chapter 6 of Maha Upanishad VI.71-73)<sup>1</sup>

This is mine, this is yours, this is a stranger, this is a relative, is the thinking of a petty mind. An evolved mind sees the whole world as one Earth Family. All beings are our relatives. There are no strangers, no enemies, no hierarchies, no superiority and inferiority. Oneness is the path to sustainability and justice, to non-violence, peace and harmony.

The petty-minded mechanistic and market paradigm has made us forget we are one Earth Family. It has created Eco-Apartheid, the illusion that

<sup>1</sup> [https://en.wikipedia.org/wiki/Vasudhaiva\\_Kutumbakam](https://en.wikipedia.org/wiki/Vasudhaiva_Kutumbakam)

humans are separate from nature, that some powerful humans are masters and owners of the Earth, her resources, her biodiversity. Eco-Apartheid goes hand in hand with anthropocentrism, the false assumption that humans are superior to our non-human relatives, who are mere objects and property to be manipulated for profits, or threats to human life that need to be exterminated. Apartheid as separation has made other people and other species strangers, a threat, an obstruction, a competitor who must be exterminated for one's existence.

This is why forests have been cleared, rivers dammed, insects pushed to extinction with pesticides, plants exterminated with Roundup, organisms genetically modified for patents. The petty mind is a mechanical mind, an arrogant mind that drives the hubris that the earth is dead matter, Terra Nullius. Colonising, industrial, mechanical man sees himself as the "creator". GMOs are an example of this hubris, allowing violence against the integrity of living systems, and using this violence to claim the right to ownership through patents and intellectual property. GMO in effect means "God Move Over", since corporations are claiming to have created life and seek to become "Life Lords", lords over life itself, collecting rents, royalties and taxes from life's renewal and regeneration.

The corporate form was constructed to facilitate colonisation, colonial commerce, private property. It has created a world of separation and division, of enclosures of the commons, of the illusion that the market provides for our needs. We have become strangers in our common home, aliens in our earth family. We have been made to forget that the Earth is Living and provides for all beings.

Mother Earth sustains us through her multiple creative processes and transformations, her interconnections and her flows, her currencies and cycles of food and water, energy and breath.

The Earth, Gaia, is an Autopoietic – a self-organised, self-regulating living organism full of diverse self-organised living organisms – her biodiversity. Nature's Economy is a biodiversity economy, created through the diversity of life to sustain the diversity of life.

Nature's Economy is the Economy of Life, Oikonomia – the true sense of economy as the art of living together in our common home, Oikos. The Art of Living is growing life with other life, in non-violence, compassion and harmony. Money does not grow life.

The Earth creates the economy of life, the economy of food and water, of oxygen and energy that give us life, without creating waste and pollution. She creates abundance and enoughness for all species.

## **Earth Democracy: Recognising the Rights of Nature, Respecting Human Rights**

Earth Democracy is a worldview, paradigm and practice that is based on the recognition that:

1. The Earth is living. The Living Earth is our Mother. She is Terra Madre, Mother Earth, Gaia, Pachamama, Vasundhara ... Mother Earth has rights.
2. We are all members of the One Earth Family. We are part of the Earth, and not separate from her, not her masters. We are interconnected through the living currencies of breath, water and nourishment. We have a duty to protect the Earth's Living Systems that provide us clean air, clean water and clean food.
3. We are part of One Humanity on One Planet. All humans are equal. Our diversity enriches life and cannot be made the justification for inequality and injustice. Future generations have a right to enjoy the gifts of the Earth. Present generations have a duty of Earth Care to pass on the gifts of nature in their full diversity, integrity and purity.
4. Earth Democracy is based on Living Economies, Living Democracies and Living Cultures woven through the diversity in the web of life. Each life form supports and sustains all others in mutuality and cooperation and harmony. All living beings are sentient beings and have rights. All beings are creative and intelligent.



Living Economies are based on co-creativity and co-production by humans as part of the Earth community, respecting the rights and integrity of all. In Earth Democracy the economy is a subset of ecology based on the laws of Mother Earth. We share the earth's gifts with others. Seed, biodiversity, water, food are commons. Participation as co-creators in the Earth's ecological processes to protect the commons and defend the common good is living democracy. Cultivating the culture of oneness with the Earth is Living Culture.

Earth Democracy is a worldview, paradigm and practice that is based on the recognition that everything is interconnected, the Earth Is Living, the Earth has rights, that we have duties to care for the Earth, and regenerate her soil, seeds and biodiversity, her water and food systems. Our rights flow like a spring from our duties.

Earth democracy recognises that humans are part of the Earth and related to other beings. Human Rights are therefore connected to the Rights of the Earth and the Rights of other species.

Earth Democracy recognises that all human beings are equal and have the same rights, enshrined in the UN Declaration of Human Rights and the other conventions that have evolved to protect the Rights of Women, the Rights of Indigenous Peoples, the Rights of Peasants, and the Rights of the Child.

Earth Democracy recognises that all human beings are equal in rights, while they are diverse in their race and religion, their gender and cultures. Diversity is not inequality. Diversity goes hand in hand with democracy and the rights of all to their ecological space. Invading into the ecological space of other human beings on the false assumption of superiority and imposing uniformity is at the root of environmental injustice and economic inequality. Imposition of "sameness" and "uniformity" on a biologically and culturally diverse world unleashes violence against nature, her species, and diverse cultures.

All humans are ecologically equal but diverse in culture, race, religion and gender. We have the same rights to food and water, clean air and a safe and healthy environment.

Human beings, as part of the Earth, have natural rights to be alive, well and healthy. The right to life is the right to breathe and have clean air, the right to water and freedom from thirst, the right to food and freedom from hunger, the right to a home, to belonging, to land, to the sustenance and livelihoods that soil and land provide.



Vandana Shiva on visit to Wongsanit Ashram, near Bangkok, February 2020.

Since we depend on nature for sustenance, destruction of nature translates into violation of human rights to food and water, life and livelihood.

All ecological problems have common roots in the denial of the Earth as a Living System, and violation of the limits her ecological cycles and processes put on human action.

Violation of the integrity of species and ecosystems, the breaking of ecological limits and planetary boundaries, cultural integrity and diversity

are at the root of multiple ecological emergencies the Earth is facing, and social and economic emergencies humanity is facing.

Biodiversity, the diversity of species, their mutuality and interconnectedness, creates the web of life, maintains the living planet and the infrastructure of life. I call this nature's economy, the biodiversity economy, and the living carbon economy. Plants through photosynthesis use the sun's energy to convert carbon dioxide in the atmosphere into living carbon on which all life depends.

Climate Change is a result of disrupting the ecological and nutrition cycles of life. It is a result of shifting from a living carbon economy of care for the biosphere to a dead carbon economy of industrialism, mining 600 million years of fossil fuels buried underground by nature, and pumping them into the atmosphere as pollutants and Green House Gases into the atmosphere.

The movement to recognise the Rights of Mother Earth began after the failure of the Copenhagen Climate Summit in 2009. The worst polluters announced they would shift from legally binding emissions reduction targets to voluntary commitments. Evo Morales, the indigenous president of Bolivia said "we are not here to defend the rights of polluters but the Rights of Mother Earth". He later organised a "People's Summit on Climate Change and the Rights of Mother Earth" from which evolved the Draft Declaration of the Rights of Mother Earth, to supplement and complement the Universal Declaration of Human Rights.<sup>2</sup>

We do not "give" Rights to Nature. Mother Earth "has" rights. We have to recognise, and live according to her laws. Mother Earth gives us life, she gives us natural rights to share her gifts, and ecological duties to protect and regenerate her. The Rights of Mother Earth become our duties. Rights flow from responsibility.

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<sup>2</sup> Universal Declaration of Rights of Mother Earth [https://www.garn.org/universal-declaration/#:~:text=\(1\)%20Mother%20Earth%20is%20a,integral%20part%20of%20Mother%20Earth.](https://www.garn.org/universal-declaration/#:~:text=(1)%20Mother%20Earth%20is%20a,integral%20part%20of%20Mother%20Earth.)

We are alive because nature is alive. The Earth gives us life. She is not raw material for exploitation and profits. The ecological crises are rooted in the denial of the Earth as living. Environmental injustice and violation of human rights is rooted in the denial that we are part of the living Earth, that all humans have equal rights as Earth Citizens.

Earth democracy as a worldview and practice allows us to recognise the connections between Rights of Mother Earth and Human Rights. It shows us to walk a path to protect both, and ensure the freedom and wellbeing of all.

A movement is growing to define violence against nature and violation of principles of ecological justice as a crime of Ecocide in international law<sup>3</sup>. Across the world people are taking actions to prevent the damage to and destruction of ecosystems which are leading to harming the health and wellbeing of species, including humans.

## Separation, Mastery and Eco-Apartheid

The multiple crises and pandemics we face today – the health pandemic, the hunger pandemic, the poverty pandemic, the climate emergency, the extinction emergency, the emergency of injustice, exclusion and inequality, dispossession and disposability of large numbers of humanity – are all rooted in a worldview based on the illusions of separation and superiority which deny interconnectedness and oneness.

These false assumptions are:

1. The transformation of **Terra Madre**, Mother Earth who is living and has rights, into **Terra Nullius**, the Empty Earth. The assumption that nature is dead inert matter, property to be owned by enclosing the commons and raw material to be extracted for profits. The denial that the Earth is living, she is Gaia, Pachamama, Vasundhara and that Mother Earth has Rights is the root cause of ecological destruction and violence against her.

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<sup>3</sup> <https://www.stopecocide.earth/become>

2. **Eco-Apartheid**, the assumption that humans are separate from nature, are her conquerors, masters, owners and the denial of the fact that we are part of nature, not separate from her. Apartheid is “apartness” or “separateness” in Afrikaans.
3. **Human Apartheid**, based on the false assumption that colonising man is separate from and superior to other cultures and most human beings, who are colonized, including the indigenous, the non-white and coloured, women, farmers, peasants and workers. The illusion of superiority leads to domination and discrimination on the basis of race, gender, religion, work. This false assumption of superiority is also used to enclose the commons that are cared for and shared by all members of a community. Enclosures allow the extraction and appropriation of resources that sustain all life, including human life.
4. **Anthropocentrism**, the assumption that humans are superior to other species which are reduced to objects to be owned, manipulated and exploited for profits and control. And a denial that we are members of one Earth family and all living beings are sentient beings with integrity and rights.

If nature is dead and not living, Nature and the Earth have no rights. There are no ecological limits and no limits to extraction from nature. This is at the root of non-sustainability.

The anthropocentric assumption that humans are separate from nature and superior to other species who have no rights is not just a violation of the rights of our fellow beings but also a violation of our humanity and human rights. We are members of one Earth family, and our being human is predicated on our relations with Biodiversity and Living Seed, Land and Living Soil, Living Waters and Living Food. Human rights defined on the basis of separation and superiority makes “dominance” and “exploitation” appear natural to being human, when they are in fact constructs based on the illusion of separation and superiority which have contributed to both non- sustainability and injustice.

Denial of nature’s rights leads to destruction of nature and a threat to the very conditions of human survival. In an ecologically interconnected world,

denial of the rights of nature translates into denial of human rights. The same constructs that lead to violence against nature and her destruction become the basis of violence against fellow human beings. Non-sustainability and injustice are part of the same process.

This worldview of separation also engenders hierarchies and the illusion of superiority – of humans as superior to other species, men as superior to women, whites as superior to blacks and all coloured people, one faith as superior to the diversity of belief systems which have nourished cultural diversity. Separation and Superiority create structures of violence - violence against nature, violence against women, violence against every “other” defined as lesser beings with the objective of colonisation.

Colonisation is based on separation and superiority, the construction of Apartheid.

The mechanistic reductionist worldview of nature as dead inert matter and mere raw material to be extracted was constructed by Descartes and Bacon to facilitate nature’s exploitation and promote colonialism and commercialization.

Bacon, who is called the Father of Modern Science, called this shift “The Masculine Birth of Time” with a deeply patriarchal concept of the project of reductionist mechanistic science.<sup>4</sup>

Descartes made life and sentient beings disappear. Life is inert matter he declared. A mere machine .....

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<sup>4</sup> Shiva, Vandana. 1988. *Staying Alive: Women, Ecology and Survival in India*. Penguin Random House and Kali of Women <https://www.penguinrandomhouse.com/books/537607/staying-alive-by-vandana-shiva/>

Shiva, Vandana. 2016. *Biopiracy. The Plunder of Nature and Knowledge*. New Delhi: Kali for Women and Women Unlimited. <https://www.penguinrandomhouse.com/books/539065/biopiracy-by-vandana-shiva/>

Shiva, Vandana et al. 2020. *Gates to a Global Empire. Over Seed, Food, Health, Knowledge ... and the Earth: A Global Citizens’ Report*. <https://navdanyainternational.org/publications/gates-to-a-global-empire/>

Locke justified the violent enclosures of the commons and the creation of private property as “improvement” of nature .....

The paradigm of the “dead Earth” goes hand in hand with the scientific paradigm of mechanistic reductionism and a technological paradigm of mastery, control and engineering instead partnership, cooperation and co-creativity.

The first engineering was mechanical – the fossil fuel-driven energy of the machine to displace human and animal energy, and the creative role of humans and animals in maintaining the web of life.

The second engineering age was the age of chemical engineering. *IG Farben* and the Poison Cartel<sup>5</sup> began chemical engineering making pesticides from fossil fuels. The production of poisons included gases that killed millions of people in Hitler’s concentration camps.

The Nuremberg trials covered a “subsequent trial” of *IG Farben’s* crimes against humanity.<sup>6</sup> After the war *IG Farben* was broken up in smaller companies including BASF, BAYER and Hoechst.

The UN Declaration of Human Rights was humanity’s recognition that all humans are equal and a commitment to never allow such violence based on the illusion of superiority to occur again.

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<sup>5</sup> Lords of Poison: the Pesticide Cartel by Devlin Kuyek, GRAIN website June 2000; <https://grain.org/en/article/293-lords-of-poison-the-pesticide-cartel> The Poison Cartel – Fact Sheet Navdanya International <https://navdanyainternational.org/publications/poison-cartel-fact-sheet/>

<sup>6</sup> Various *IG Farben* top managers were convicted for war crimes and crimes against humanity including mass slavery of concentration camp prisoners, plundering and spoliation. The question whether the managers of *IG Farben* were (fully) aware of the use of Zyklon-B, produced by a subsidiary owned for 42,5 % by *IG Farben*, for concentration camp mass murder, remains unanswered and controversial. (note added by Eds. Reflections on Earth Trusteeship; sources [http://www.wollheim-memorial.de/en/ig\\_farben](http://www.wollheim-memorial.de/en/ig_farben) and <https://www.basf.com/global/en/who-we-are/history/chronology/1925-1944/1939-1945/kampfstoffe-und-zyklon-b.html>)

The preamble of the Universal Declaration of Human Rights says<sup>7</sup>

*“(...) recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*

After the wars, war chemicals were turned into agrichemicals. The violence of war now spreads on our farms and communities. My own journey in agriculture began with the violence in Punjab and the genocide in Bhopal in 1984 when a pesticide plant owned by Union Carbide leaked and killed thousands. The tragedy has maimed and crippled hundreds of thousands, including unborn generations.

The spread of toxic chemicals whose primary objective is to kill living beings has led to an extinction crisis.

In the 1980s, the Poison Cartel mutated into the “life sciences industry” pushing the next engineering revolution - the genetic engineering of life itself, to modify and manipulate living organisms, referred to as GMOs, genetically modified organisms. New GMOs are now being engineered through new tools mistakenly referred to as “gene editing”. Living organisms are complex, self-organised, self-regulatory, evolutionary systems, not a word programme which can be cut and pasted. A change in one gene in one site has massive unpredictable impacts onsite and offsite. It “mangles” DNA.<sup>8</sup>

The Poison Cartel and the digital giants are converging to reduce life to software. They are driving “Digital Agriculture,” “Farming without Farmers” and “Food without Farmers”.<sup>9</sup>

The planetary emergency is leading to new attempts at engineering at a

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<sup>7</sup> <https://www.un.org/en/universal-declaration-human-rights/>

<sup>8</sup> <https://futurism.com/neoscope/crispr-problem-mangles-dna-wasnt-supposed-touch>

<sup>9</sup> <https://www.theguardian.com/global-development/2013/feb/25/vandana-shiva-seeds-farmers>



planetary scale. Geoengineering is the latest example of the mechanical mind trying to “engineer” life on Earth.<sup>10</sup>

The mechanical mind that denies and displaces nature’s creativity and intelligence, and human creativity and intelligence, goes hand in hand with an economic paradigm based on extractivism, disposability and profits which denies the ecological space to all beings.

As Carolyn Merchant wrote in the *Death of Nature*<sup>11</sup>

*“As a conceptual framework, the mechanical order had associated with it a framework of values based on power, fully compatible with the directions taken by commercial capitalism”*

Selfishness and greed are celebrated as natural to being human, and are universalised instead of being recognized as the anti-nature, inhuman values cultivated and rewarded among a few privileged men by Capitalist Patriarchy.

Adam Smith’s 1776 book, “An Inquiry into the Nature and Causes of the Wealth of Nations.” (*Wealth of Nations*)<sup>12</sup> written soon after the East India Company established its rule over India, falsely assumed that self-interest and competition are the basis of wealth creation. Greed was made the organising principle of society and presented as a law of nature, our very essence.

For Smith, competition is the ‘desire that comes with us from the womb,

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<sup>10</sup> <https://navdanyainternational.org/bill-gates-his-fake-solutions-to-climate-change/>  
<https://navdanyainternational.org/publications/gates-to-a-global-empire/>

<sup>11</sup> Merchant, Carolyn. 1980. *The Death of Nature: Women, Ecology, and the Scientific Revolution*. 1st ed. Manhattan: Harper and Row

<sup>12</sup> Smith, Adam. 1776. *An Inquiry into the Wealth of Nature and Causes of the Wealth of Nations* (Vol. I-V). London: W. Strahan and T. Cadell. <https://www.ibiblio.org/ml/libri/s/SmithAWealthNations.pdf>.

and never leaves us, until we go into the grave.<sup>13</sup>

What comes from the womb is the gift of unconditional giving and care, of love and life.<sup>14</sup>

As Ronnie Lessem and Alexander Schieffer indicate<sup>15</sup>

*“If the fathers of capitalist theory had chosen a Mother rather than a single bourgeois male as the smallest economic unit for their theoretical constructions, they would not have been able to formulate the axiom of the selfish nature of human beings in the way they did”*

Mechanistic reductionism fragmented nature and atomised society. It reduced each species and every human being to an atom competing with all others for scarce resources. The assumption of scarcity and competition go hand in hand. Nature creates abundance. Human beings co-create abundance when they work according to Nature’s Laws and in cooperation with each other. Capitalist Patriarchy creates the illusion of scarcity to impose its extractive technologies and economic model, which create real scarcity in the form of the ecological crisis and poverty and hunger.

While writing Origin of Species Charles Darwin was influenced by Adam Smith. He reinforced Smith’s assumption of Competition and Survival of the Fittest and made it the principle of Biology and Evolution, even though humans and other species survive through cooperation and mutuality.

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<sup>13</sup> Rasmussen, Dennis C. 2006. Does ‘Bettering Our Condition’ Really Make Us Better Off? Adam Smith on Progress and Happiness. *The American Political Science Review* 100(3): 309–18. <https://www.jstor.org/stable/27644357>

<sup>14</sup> Vaughan, Genevieve, ed. 2007. *Women and the Gift Economy: A Radically Different World View Is Possible*. Inanna. <https://www.inanna.ca/product/women-gift-economy-radically-different-world-view-possible/>

<sup>15</sup> Lessem, Ronnie, and Alexander Schieffer. 2010. *Integral Economics: Releasing the Economic Genius of Your Society*. London: Routledge.

The fragmented, atomistic view of society was imposed on complex, interconnected living organisms and ecosystems. Each individual life form was assumed to be evolving in isolation competing with all others, for scarce and shrinking resources creating the worldview of scarcity.

The mechanistic view of separation and atomisation was blind to the fact that the Earth and her resources are living, and humans as part of the Earth have the potential to regenerate resources, create wealth cooperatively in abundance and share it equitably. The mechanistic worldview ignored the interconnectedness and widespread cooperation among species for mutual support and the gift of life. It was blind to the capacity of human beings and communities to take care of nature, regenerate her resources and create shared abundance.

Scientists are now finding out that cooperation shapes evolution, not competition. From the molecules in a cell, to organisms, ecosystems and the planet as a whole, cooperation and mutuality is the organising principle of life. Indigenous cultures have always organized themselves as members of the Earth community working in cooperation to maintain the infrastructure of life and wellbeing.

The multiple emergencies are not separate. They are interconnected. And they have the same roots. Their solutions are also interconnected. The emergencies that threaten the very future of our species cannot be addressed by the same mindset that created them.

However, even though the crises are interconnected, each crisis is treated as unrelated to others. There is a focus on symptoms, not the deeper root causes.

As Einstein said

*“We cannot solve our problems with the same thinking we used when we created them.”*

We need a new way of thinking and living so humans and other species

can continue to live and thrive.

Wendell Berry said<sup>16</sup>

*“... if we apply our minds directly and competently to the needs of the Earth, then we will have begun to make fundamental and necessary changes in our minds. We will see that war and oppression and pollution are not separate issues but are aspects of the same issue. Amid the outcries for the liberation of this group or that, we will know that no person is free except in the freedom of other persons and that our only real freedom is to know and faithfully occupy our place - a much humbler place than we have been taught to think - in the order of creation.”*

## **Life is a Commons. We have a duty to care for the Earth's Gifts through Earth Trusteeship**

Life is an interconnected commons which sustains all humans and all life forms. We have a duty to care for Fellow Beings through Sharing the Earth's Gifts as Commons through Earth Trusteeship. Reclaiming and Regenerating the Commons in our Common Home is our responsibility and our right

As Michel Bauwens says<sup>17</sup>

*“I believe that value is created by everyone. Value is created not by commodifying but by contribution. Every citizen, every inhabitant is productive and creates value. Caring is commoning. Caring is value creation.” ...*

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<sup>16</sup> Berry, Wendell. “Think Little”. In *Essays 1969-1990*. Ed. Jack Shoemaker. The Library of America.)

<sup>17</sup> <https://designforsustainability.medium.com/the-re-emergence-of-the-commons-the-cosmo-local-regeneration-51191725e55c>

Life is a Commons. Living a life of caring is commoning, of being alive in the web of life. Commoning is walking the path of life as laid by nature's ecological laws of renewal and regeneration.

The web of life is woven by all beings in interconnectedness. It is regenerated and maintained by care and mutuality. It sustains all needs of all life in nature's economy and people's economy.

No part of nature belongs to one species.

The Earth and her resources are not property to be owned and traded for profit, they are not raw material to be extracted, used and thrown away as garbage and waste, polluting and degrading the planet. Earth Trusteeship calls on us to care for the earth as commons.

Caring for our Common Home which we share with other beings gives us the compassionate courage to defend our fellow beings, our earth relatives from harm. Harm to others is harm to ourselves. Caring gives us the energy to regenerate our common home and the power to defend our commons - the commons of seed and food, biodiversity and knowledge, land and water.

I call this nature's economy, the biodiversity economy, the living carbon economy. Plants through photosynthesis use the sun's energy to convert carbon dioxide in the atmosphere into living carbon on which all life depends. All ecological problems have common roots in the denial of the earth as a Living System. Violation of species and ecological integrity and ecological limits, cultural integrity and diversity is at the root of multiple ecological emergencies the earth is facing and social and economic emergencies humanity is facing.

Earth Democracy is based on **Living Economies, Living Democracies and Living Cultures** woven through their diversity into the web of life. Each life form supports and sustains all others in mutuality and cooperation and harmony. Our society, and economy should reflect this.

## **In Earth Democracy the economy is a subset of ecology based on the laws of Mother Earth.**

Living economies are based on Reclaiming and regenerating the commons.

Real wealth is our real relationships and our real communities. Economies for the common good need care of common goods and our common home.

Our real wealth is our biodiversity and seeds, our soil and our land, our water and clean air, our food and our health. Our real wealth is our capacity to care for the earth, to regenerate and rejuvenate her potential through our care, and share the gifts in the commons.

Commons and communities are beyond the state and the market. They are self-organised. They are Autopoietic. They are self-governed by shared responsibility and common rights.

Real wealth is our capacity to create, produce and make what we and our communities need to ensure our wellbeing. Wellbeing is the original meaning of wealth, not money. Work creates wealth. As co-creators and co-producers with nature we protect and regenerate the earth's wealth. We create real wealth when we live as Earth Citizens in earth economies, aware of the earth's potential to create abundance and also her fragile limits which need to be respected.

Since food and water are the currencies that weave the web of life, food and water are a commons. In the paradigm based on nature's principles of how life works, food and water are not commodities owned and traded for profit.

Land is our Mother. Land is commons. We belong to the land. Land does not belong to us. Belonging leads to caring. Caring creates bonds of belonging. Belonging creates solidarity, community, mutuality.

The commons have sustained all life over millennia. They have created economies of permanence and economies of abundance. In the collective care of indigenous peoples they have lasted over centuries and not been degraded because they are based on common care for the earth and community. The commons do not lead to a tragedy. The real tragedy is the privatisation and enclosure of the commons. Reclaiming and Regenerating the commons by regenerating our capacity to think and work as earth communities is creating economies of care.

Being human is living in gratitude, with care, in the commons of life.

Reclaiming the Commons through our common care, for our common sustenance is central to defending and creating economies of life and living.

The World Economic Forum Mantra “You will own nothing and you will be happy”<sup>18</sup> is not about reclaiming the commons.

This is about the final enclosures of life, and privatisation of the infrastructure of life and means of living so we pay “the 1%”<sup>19</sup> rents for eating and breathing, for food and water, for homes and mobility. This is ultimate colonisation, the ultimate slavery, the last construction of Terra Nullius. It would lead to the final extinction.

But the earth is not dead, she is alive, she is living. With the living earth, we have the power to reclaim her land and waters, her seed and food, her breath and air as commons for the sustenance of all humans and all living beings.

Reclaiming the Commons of life is the ultimate liberation for our times. For this we need to shed the baggage of colonialism parading as ‘the economy’. We need to learn, once again, to create Oikonomia as the Art of

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<sup>18</sup> <https://www.youtube.com/watch?v=QOrS6buynAk>

<sup>19</sup> Vandana Shiva and Kartikey Shiva Oneness vs. the 1%: Shattering Illusions, Seeding Freedom 31 August 2020, Chelsea Green Publishing.

Living. We need to remember that life is the currency of life, not money.

Life through its flows creates and maintains the infrastructure of life and the commons.

Currency means flow. The currency that flows through living systems to maintain their life is not money. Living Economies are based on currencies of life - breath and air, food and water, energy and nutrition.

We are part of nature.

We are made of the same elements the Earth is made of - the *panchmahabutas* - earth, water, fire, air and space.

Living is participation in the processes of the living earth.

We are air and breath. We are water. We are soil. We are food.

The air, soil and biodiversity, water and food are the currencies of life that connect our life to the life of Mother Earth. Breath, water and food give us life. We breathe the oxygen the plants create. And when our metabolism is healthy, our bodies are in “homeostasis”, we are able to circulate the oxygen we breathe, to reach every tissue and cell. Covid attacked multiple organs in our bodies, destroying our bodies self-regulating systems. Thousands died for lack of oxygen. They could not breathe.

Air is a commons.

We share the air we breathe with all species, including plants and trees. Through photosynthesis, plants convert the carbon dioxide in the atmosphere and give us oxygen. “I can’t breathe” is the cry of the enclosure of the commons of air through the mining and burning of 600 million years’ worth of fossilized carbon.

We drink the water the earth circulates through the hydrological cycle, storing some in her aquifers and in the ground, some flowing in our springs, our streams, our rivers to the oceans, then evaporating to come down as dew, rain and snow. Our bodies are 70% water . Dehydration can mean death.



Water is a commons.

When the Multinational Company Suez tried to privatize the Ganga River in in 2002, we built a water democracy movement to reclaim the Ganga as our commons. Through a *Satyagraha* against Coca Cola 2002, my sisters in Plachimada, Kerala, shut down the Coca Cola plant and reclaimed water as a commons.

The planet is 70% water. Our bodies are 70% water. Water is the ecological basis of all life, and in the commons, conservation creates abundance. The plastic water bottle is a symbol of the enclosures of the commons—first by privatizing water for extractivism, and then by privatizing the land and oceans through the resulting plastic pollution.

Seed is a commons.

Seed is fertilised by bees and pollinators. It grows into a plant that gives future seeds. It is shared and exchanged by farmers in their communities. I have dedicated my life to defending the Seed Commons.

The chemical industry is enclosing the commons of our seeds and biodiversity through “intellectual property rights.” Led by Monsanto, now Bayer, and Gates, our biodiversity was declared “raw material” for the biotechnology industry to create “intellectual property,” to own our seeds through patents, and to collect rents and royalties from the peasants who maintained the seed commons.

Reclaiming the commons of our seed has been my life’s work since 1987. I took inspiration from Gandhi’s *Salt Satyagraha* to start the *Seed Satyagraha* saying “No” to “Patents on Seed” and “Patents on Life”.

We started the Navdanya movement and declared: “Our seeds, our biodiversity, our indigenous knowledge is our common heritage. We receive our seeds from nature and our ancestors. We have a duty to save and share them, and hand them over to future generations in their richness, integrity, and diversity. Therefore we have a duty to disobey any law that makes it illegal for us to save and share our seeds.”

I worked with our parliament to introduce Article 3j into India's Patent Law in 2005 which recognizes that plants, animals, and seeds are not human inventions, and therefore cannot be patented. Navdanya has since created 150 community seed banks in our movement to reclaim the commons of seed. And our legal challenges to the biopiracy of neem, wheat, and basmati have been important contributions to reclaiming the commons of biodiversity and indigenous knowledge.

We are nourished by the food the soil and earth provide and our gut microbiome transforms to maintain and regenerate our health. And it is through regenerating the soil, practising the law of return, we become part of the great nutrition and food cycle that sustains life on earth, including human lives.

Food is a commons.

Food is the currency of life, from the soil-food-web, to the biodiversity of plants and animals, insects and microbes, to the trillions of organisms in our gut microbiomes. Hunger is a result of the enclosure of the food commons through fossil fuel-based, chemically intensive industrial agriculture, and speculative finance.

The path to peace, justice and sustainability is paved by reclaiming the commons -our common home, the Earth, and the commons of the Earth family, of which we are a part. Through reclaiming the commons, we can imagine possibilities for our common future, that we can sow the seeds of abundance through "commoning".

In the commons we care and share - for the Earth and each other. We are conscious of nature's ecological limits, which ensure her share of the gifts she creates, goes back to her to sustain biodiversity and ecosystems. We are aware that all humans have a right to air, water, and food, and we feel responsible for the rights of future generations.

Enclosures of the commons, in contrast, are the root cause of the ecological crisis and the crises of poverty and hunger, dispossession, and dis-

placement. Extractivism commodifies for profit what is held in common for the sustenance of all life.

## **Creating an Ecological Civilisation of Earth Democracy for the Common Good**

Happiness and wellbeing are the true purpose, meaning, measure of life. Not Money.

The Art of Living is about nourishing life – the life of all beings on the Earth, including our human family. The Art of Living is creating and participating in Living economies that sustain life, and create happiness and wellbeing for all.

Happiness and Wellbeing is what we aim for. All pre-colonial and post-colonial cultures have put happiness and wellbeing at the centre of human concerns, not money making. Money making has been elevated to a religion in the greed economy. And Money has been made the only measure of life.

Greed and the worship of money creates the illusion that money is the currency that allows us to buy life. But life is not a product on a supermarket shelf. Life is the birthright of all living beings, including humans. Colonialism and greed has systematically enclosed the commons of land, of seed, of water and food, and even the air we breathe. Enclosures mean that people are forced to buy their means of living. The cost of living constantly increases, pushing increasing numbers out of the right to live. Inequality used to be between the haves and have-nots. It is rapidly being pushed to “live or live not “.

People are dispossessed of the infrastructure of life and living by being told they will be compensated with money. The more they are told their incomes must increase by participating in the extractive economy of greed, the poorer and more indebted people become. As everything is commodified and all commons are enclosed and privatised, we pay for what was ours. People are forced to run on the money-making treadmill to extract

more from them. In being forced to chase money instead of practising the art of living, instead of incomes increasing, the cost of living keeps increasing. The dispossession accelerates.

In the Great Reset, the World Economic Forum (WEF) has said “You will own nothing . And you will be happy”.

What they do not say is “we” will own everything, and you will rent everything from us - the land, your home, your car, your communication systems, your software, even your mind. And “we” the billionaires will grow richer in a new Techno Feudal economy based on rent collection.

Being on the treadmill of “making money”, peasants have become landless, people have become homeless.

But money is not the currency of life, care is the currency of life, compassion is the currency of life, food is the currency of life, water is the currency of life, water is the currency of life, living energy is the currency of life, life is the currency of life.

The purpose of life is to contribute to the larger common good and wellbeing of all members of the Earth Community. The larger common good grows from the commons and the economy of care.

Rockefeller, Gates, Wall Street and Black Rock cannot become defacto owners of the Earth and her gifts. Their profit-making accounting systems are too impoverished to see and protect her biodiverse richness, her complexity, her self organisation, her generosity and abundance.

Earth Democracy is a worldview, paradigm and practice that is based – I repeat – on the recognition that:

1. The Earth is living. The Living Earth is our Mother. She is Terra Madre, Mother Earth, Gaia, Pachamama, Vasundhara and has rights. Mother Earth has rights.
2. We are all members of the One Earth Family. We are part of

the Earth, and not separate from her, not her masters. We are interconnected through the living currencies of breath, water and nourishment. We have a duty to protect the Earth's Living Systems that provide us clean air, clean water and clean food.

3. We are part of One Humanity on One Planet. All humans are equal. Our diversity enriches life and cannot be made the justification for inequality and injustice. Future generations have a right to enjoy the gifts of the Earth. Present generations have a duty of Earth Care to pass on the gifts in their full diversity, integrity and purity.
4. Living Economies are based on co-creativity and co-production of human as part of the Earth community, respecting the rights and integrity of all. In Earth Democracy the economy is a subset of ecology based on the laws of Mother Earth. Participation as co-creators in the Earth's ecological processes to protect the commons and defend the common good is living democracy. Cultivating the cultures of oneness with the Earth is Living Culture.

Earth Democracy is a worldview, paradigm and practice that is based on the recognition that everything is interconnected, the Earth Is Living, the Earth has rights, that we have duties to care for the Earth, and regenerate her soil, seeds and biodiversity, her water and food systems. Our rights flow like a spring from our duties.

Earth democracy recognises that humans are part of the Earth and related to other beings. Human Rights are therefore connected to the Rights of the Earth and the Rights of other species. The violation of earth rights translates into the violation of human rights.

Earth Democracy recognises that all human beings are equal and have the same rights, enshrined in the UN Declaration of Human Rights and other conventions that have evolved to protect the Rights of Women, the Rights of Indigenous people, the Rights of Peasants, and the Rights of the Child.<sup>20</sup>

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<sup>20</sup> See Appendix to this article

Earth Democracy recognises that all human beings are equal in rights, while they are diverse in their race and religion, their gender and cultures. Diversity is not inequality measured. Diversity goes hand in hand with democracy and the rights of all to their ecological space. Invading into the ecological space of other human beings on the false assumption of superiority and imposing uniformity is at the root of environmental injustice and economic inequality. Imposition of “sameness” and “uniformity” on a biologically and culturally diverse world unleashes violence against nature, her species, and diverse cultures.

All humans are ecologically equal but diverse in culture, race, religion and gender. We have the same rights to food and water, clean air and a safe and healthy environment.

Human beings, as part of the Earth, have natural rights to be alive, well and healthy. The right to life is the right to breathe and have clean air, the right to water and freedom from thirst, the right to food and freedom from hunger, the right to a home, to belonging, to land, to the sustenance and livelihoods that soil and land provide.

The Earth’s biosphere and climate, soil, water and biodiversity are ecologically interconnected through flows of life’s currencies, they are non-separable. The ecological integrity and interconnectedness of living systems makes the infrastructure of life a commons shared by the earth community and by the human common community.

Since we depend on nature for sustenance, destruction of nature translates into violation of human rights to food and water, life and livelihood. Enclosure of the commons violates the rights of all members of the Earth Community.

My sisters in Chipko<sup>21</sup> rose to protect the forests by declaring they will hug and embrace the trees if they are cut for timber, reminding the world that the forests are not timber mines but the source of soil, water and oxygen.

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<sup>21</sup> The Chipko movement received the Right Livelihood Award in 1987 <https://rightlivelihood.org/the-change-makers/find-a-laureate/the-chipko-movement/>

Forests produce life for all, not profits for a few.

Today we all need to rise in a global Chipko, wherever we are, whatever we do, hug the earth, our land, our water, our forests and biodiversity, our food, family and communities and protect life from the greed of Rockefeller and Gates, Black Rock, Vanguard and Wall Street.

When we stopped the WTO<sup>22</sup> in Seattle, our slogan was “Our World is not for Sale”. We need to rise again, remind ourselves and the world that the Earth gives us life, the Earth, her resources, her services are not for sale. Mother Earth is not for Sale. To sustain, regenerate and renew life on earth we must defend the commons of life and resist the agenda of privatising and financialising nature. This is the Satyagraha for life, the Satyagraha for a Sacred Economy<sup>23</sup>.

We have to defend Mother Earth with our love and care, with solidarity for all humans and all non-human relatives from the limitless violence and insatiable hunger of the rich - auri sacra fames<sup>24</sup>

In Earth Democracy we know that Mother Earth gives life to all beings and provides for the needs of all.

As Gandhi said

*“The Earth has Enough for everyone’s Needs, Not for a few people’s greed.”*

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<sup>22</sup> World Trade Organisation

<sup>23</sup> <https://www.navdanya.org/bija-reflections/2019/10/01/satyagraha-for-a-sacred-economy/>

<sup>24</sup> Latin for “the curse of hunger for gold”

## **Organising Principles of Earth Democracy, Nature's Economy, Living Economies of Mother Earth that sustain life**

In summary, the 8 organising principles of Nature's Economy that I have learnt from the Earth and Earth communities over the last 5 decades are:

1. Mother Earth is Living. Every ecosystem on the Earth, every organism in every ecosystem, is Self-Organised and Autopoietic. The Earth is not dead inert matter. The Earth is living. We are part of One Interconnected Earth Family.
2. Every organism, from the smallest microbe to the largest mammal is part of the web of life. All living beings are sentient beings and have intrinsic value and worth. They are not objects to be owned and manipulated. Their value does not come from the market and cannot be reduced to money.
3. Diversity is nature's organising principle, the basis of emergence, evolution and resilience. Diversity in forms and expressions, flows and relations is how nature creates value and strength. Nature does not create monocultures and uniformity.
4. Nature works in cycles - the nutrition cycle, the hydrological cycle, the cycle of renewal of Seed to Seed. Nature's Economy is a complex of multiple Living Circular Economies based on ecological cycles of renewal, recycling and the law of return, the law of giving and gratitude. Nature does not work in linear extractive flows. Nature's cycles are zero waste and zero pollution systems, unlike the waste and pollution-creating industrial systems driven by external energy. Nature's Economy is a negative entropy economy because it is based on life which is negative entropy.
5. Nature's Cycles of Renewal and Regeneration are based on the living currencies and flows of energy, food, water, air, life. The Currency of Life is Life, Not Money.
6. Nature's gifts are for sustenance of all beings in the Earth Family, not just for humans. All beings have a right to the Earth's Gifts



of sustenance as equal trustees of the Earth. All people and countries have a duty to care for and share the Earth's gifts through Earth trusteeship.

7. Nature's Economy is a Commons of Life and the ecological processes of Regeneration that sustain life. All individuals, communities and countries have a duty to erect the Earth's ecological systems.

Care for the Earth and her Biodiversity is the Real Economy in which we participate. Our needs are provided through care and love for Seed and Soil, Forests and Water. Cooperation, Mutuality, and Synergy are the principles of Nature's Economy, not competition and extractivism.

8. Nature's economy is based on creation of abundance to be shared. Nature does not create scarcity.

All beings cooperate in mutuality and Gift Giving to create abundance and sustenance for all, making conservation and regeneration the basis of living economies and livelihoods.

## Appendix

- **UN Declaration of Human Rights:**  
<https://www.ohchr.org/en/universal-declaration-of-human-rights>
- **Rights of Women:**  
<https://www.un.org/womenwatch/daw/beijing/platform/declar.htm>
- **Rights of Indigenous Peoples:**  
<https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>
- **Rights of Peasants:**  
<https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Declaration%20on%20the%20rights%20of%20peasants.pdf>
- **Rights of the Child:**  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>



# Who Should Own the Earth?

Dasho Karma Ura, Ph D.<sup>1</sup>

The author Peter Barnes raised a penetrating question with his book *Who Owns the Sky*<sup>2</sup> (2003). Although we would assume that the sky over our head is owned equally by all of mankind, Barnes suggested that it was owned more by those who used the skies and polluted them more, at the expense of others who do not pollute as much.

The sky over our head was also a major political-ecological theme in the European elections in the 1960's. In 1961, German Chancellor Willy Brandt, a Nobel Laureate, campaigned that "*The sky above the Ruhr has to become blue again.*"<sup>3</sup>

Today, the sky above most urban spaces looks duller, hotter and dirtier, and is almost certainly used and 'owned' more by polluters.

The question 'Who Should Own the Earth?' is an all-encompassing topic relevant to policymakers, legislators, businesses, academics and technologists, to name but a few. The question is a poignant one precisely because of the rapidly increasing rate of environmental destruction. The present generation is posing a grave threat to future generations through its current political systems and concepts.

In that sense, our generation of citizens are adversaries of future generations, rather than their allies and custodians or trustees of the earth's resources. Whereas we received the world's resources in a better state

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<sup>1</sup> Updated text of a keynote speech 'Who Should Own the Earth?' by Dasho Karma Ura, President, Centre for Bhutan and GNH Studies, at the Earth Trusteeship Forum, Chulalongkorn University, Bangkok, 19-21, July 2019.

<sup>2</sup> *Who Owns the Sky? Our Common Assets and the Future of Capitalism* by Peter Barnes. Island Press, 2003.

<sup>3</sup> Lindau Nobel Laureate Meetings <https://mediatheque.lindau-nobel.org/recordings/31479/environmental-protection-as-an-international-mission-german-presentation-1972>

than we pass them on, our ancestors were trustees of nature, which we so heavily rely on.

The first obvious answer to 'Who Should Own the Earth?' is that it can and should be owned by all those generations who will be born in the future. If all beings yet to be born own it, it should logically follow that it is equally owned by beings in the present and the past. However, naturally, in sheer terms of relevance, this applies more to present and future generations. But the power of decision-making is abrogated by the present generation, simply because future generations cannot take part in the decision-making process. If future generations equally own the Earth, they also have a right to be considered in current-day decision-making. Our policies and politics need to be able to consider, and make space in our decision-making frameworks, for their voice and for their agency.

Current decision-making processes, however, only favour current generations. It is a short-termism that lacks clarity when it comes to how we view the future, as it stretches further and further in time. We lack the ability to measure and understand the impact of our decisions on other human beings and sentient beings.

I would go so far as to say that future-oriented frameworks are extremely poor or non-existent. The Nobel Laureate Amartya Sen is among the leading pioneers who have explored the idea of value over time<sup>4</sup>. Social Discount Rates or SDR's as discussed by Karbowski<sup>5</sup> are a critical element in cost-benefit analysis when the costs and the benefits differ in their distribution over time. Lower discount rates favour future generations, but it is unclear how low it should be. Rates that are closer to the value of zero will give equal weight to both future generations and the present.

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<sup>4</sup> Sen A. On Optimizing the Rate of Saving. *Economic Journal*. 1961;71 (September); Sen A. Isolation, Assurance and the Social Rate of Discount. *Quarterly Journal of Economics*. 1967;81 (February).

<sup>5</sup> Karbowski, A. (2016), Discussion on the Social Rate of Discount: from Sen to Behavioural Economics, *Economics and Sociology*, Vol. 9, No 2, pp. 46-60.

Environmental and conservationist-oriented decision makers prefer low discounting rates to be adopted. In a survey of about 200 experts conducted by Moritz Drupp et al.<sup>6</sup>, 75% recommended that a social discount rate of 2% be used. But many current commercial valuation methods use higher discounting rates for infrastructure investments or other assets, thus embedding a bias against future generations.

The second answer to 'Who Should Own the Earth?' is that it ought to be owned at every point of time in history by all sentient beings who share the basic preference to live well and happily, whether they be animals or human beings.

As Buddha said, "All that moves on earth are supported by the Earth." In other words, all that moves on the earth should receive equitable support from the Earth's resources. Increasingly, however, use of the Earth's resources is not equitable, whether we consider that in terms of conventional material means such as income and assets, or experiential outcomes of wellbeing and happiness such as psychological wellbeing, ecological resilience, community vitality or balanced time-use in everyday life<sup>7</sup>.

By having a more in-depth and holistic system to measure experiential outcomes as well as material means, people in Bhutan should, in course of time, attain a maximum level of happiness and wellbeing that is sustainable for future generations. By managing 52% of the land in Bhutan as protected nature reserves, Bhutan has created a carbon well and protected biodiversity for sentient beings that fares a reasonably balanced course.

The choice of intergenerational resource allocation can be based on various rules such as discounting methods, or legislative-constitutional provisions. Discounting based on market logic, however, does not offer

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<sup>6</sup> Discounting disentangled Moritz Drupp, Mark Freeman, Ben Groom and Frikk Nesje November 2015 Centre for Climate Change Economics and Policy Working Paper No. 195 Grantham Research Institute on Climate Change and the Environment Working Paper No. 172

<sup>7</sup> This refers to the nine domains of the Gross National Happiness Index as researched by the Centre for Bhutan and GNH Studies.

long-term guidance for intergenerational equity. The constitution and legislation are therefore an additional recourse to help define the parameters for intergenerational equity.

In the case of Bhutan, 'environment' is defined in the broadest sense of the term, so that it can be entrusted to every Bhutanese citizen for preservation. The Constitution of Bhutan, written under the leadership of our kings, has certain provisions and institutional structures favourable to forest and biological preservation. Article 5 of the Constitution says "Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of present and future generations."

In this line, the Bhutanese Constitution prescribes a minimum of 60% forest cover. Bhutan currently has 72% forest cover. The country is presently carbon negative.

"Greenhouse Gas emissions will exceed carbon sink after 2030 in a business as usual scenario. In the carbon neutral scenario, Bhutan can remain carbon neutral at least until 2050" according to Kei Gomi et al, 2019.<sup>8</sup>

Although the Constitution of Bhutan is explicit in terms of forest ratio, it does not specify other resource bases for intergenerational equity, besides saying that Bhutan should "ensure sustainable use of natural resources and maintain intergenerational equity."

The third answer to 'Who Should Own the Earth?' is a traditional-historical Bhutanese one. Traditional Bhutanese beliefs say that mountains, for example, are owned by local Mountain Deities. The current inhabitants in a territory are only transient occupants and users.

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<sup>8</sup> Development of Carbon Neutral Scenario in Bhutan towards 2050 with Socio-Economic Development and Forest Carbon Sink Change Kei Gomi, Yuki Ochi, Akio Ito, Tomoko Ishikawa and Shuzo Nishioka. In: Urban Planning and Wellbeing Proceedings of the International Conference on Urban Planning & Wellbeing May 16-17, 2019 Thimphu, Bhutan. Published in 2020 by Centre for Bhutan and GNH Studies.

In psychoanalytic terms, mountain deities are the personification of nature; rivers, clouds, rainfall, snowfall, weather, forests, wildlife. All their ineffable interrelations are personified by deities. If the Earth is owned by Mountain Deities, who personify nature, then vital parts of nature have rights on their own, like a person.

Human being's property rights cannot be extended over Nature's resources, or rivers and springs, just as it would be odd for us to claim ownership over clouds and mist. At the most, they can be common to the locality and accessed equally by its inhabitants who are seen more as stewards of the resources they need.

Bhutan has of yet been unable to give explicit rights to any parts of nature, such as legal rights of rivers or mountains, to be undisturbed, in the way Thomas Berry conceptually established in 2001. Traditionally, however, the climbing of a set of snow peaks was not accepted, because they are regarded as the abode of Mountain Deities.

The concept of rights of a place or a natural phenomenon such as a river or mountain, seems to have been recognised traditionally. Bhutanese believed, and most still believe, that lakes- or river-beings (*mtsho smanmo*, *bla tsho*) dwell in such water bodies. Sensitive micro-ecologies such as cliffs, marshes, and rich groves are also considered the abodes (*gnas khang*) of earth deities (*gnas bdag zhi bdag*) and thus were off limits to be exploited by people.

Unfortunately, the legal rights of Nature's elements have yet to find their place in modern Bhutanese laws such as the Forest and Nature Conservation Act, Environment Assessment Act, or Biodiversity Act.

The fourth answer to 'Who Should Own the Earth?' is that in the contemporary period, in principle, the earth is owned through agreements and laws within and among nations. Part of our collective inheritance, such as air quality, internet connectivity, oceans, or space and so forth are managed within and among nations through regulations, treaties and agreements. States or governments are managers of the great commons of the earth. They are not owners. Owners, as I stated earlier, are all sentient beings of

the Earth, whom themselves are reproduced in a cycle of birth, death and, perhaps, rebirth, according to Buddhism.

An important endeavor for all states and governments is to think of their afterlife, or legacy, i.e. what we do today has an impact on the infinite future, as opposed to the brevity of present tenures, and we need to help bring birth to policies and laws that listen intently to the voices from the future, through an awakening induced by both science, and the non-dual imagination and compassion of a Bodhisattva, who is here to relieve suffering for all beings.

The fifth answer to 'Who Should Own the Earth?' is that, in terms of political economy, the Earth has been increasingly owned and used by the market, commercial corporations, and the owners of capital. Although all human beings have equal rights to the Earth's three principal resources in terms of source, sink and services, in reality, the polluters, commercial-exploiters and capitalists have hijacked the Earth's resources.

The rights of labour, the rights to common properties, the rights of the community, which depends on the commons, and the intrinsic value of Nature to exist, have all been diminished respectively by the rights of capitalists, the rights to private properties and the rights of individuals. The rise of market has also led to the abolition of non-market exchange of labour that is a crucial aspect of social support and solidarity.

Corporate and private rights have been privileged increasingly over the rights to the Commons. In an evolutionary context, the inhabitants of the earth have thrived so far because of the richness and abundance of the Commons from which all sentient beings drew. But the great Commons of the earth are being over-exploited on the one hand, and over-polluted with toxicities on the other. Corporate and private rights have also, to a lesser extent, been privileged over the rights of the vast majority of human beings and other sentient beings.





Zhabdrung Ngawang Namgyal (1594-1651), considered to be the architect of Bhutan. Painted by Dasho Karma Ura, and his apprentices Kinley Tenzin and Yeshey Namgyel, 2016. Reproduced with the kind and gracious permission of His Revered Majesty the King of Bhutan.

**In his biography, the monk-founder of Bhutan, Zhabdrung, made an astonishing statement. He wrote that the animals found in Bhutan, like elephants, bears and rhinos, are Bodhisattvas existing to lead all beings to enlightenment, instead of the other way around.**

**He saw formations of clouds over mountain peaks, and stunning natural beauty and described them in terms of wondrous spiritual symbols. A sense of beauty of nature penetrated him completely, and he was able to see the earth itself as the beginning and end of aesthetic wellbeing.**

**It seems that these concepts are as valuable today as they ever were and might offer us a way to recover the Earth's abundance as source of wellbeing for present and future generations.**



# *Placing the Commons in a Temporal Framework: The Commons as a Planetary Regeneration Mechanism*

Michel Bauwens<sup>1</sup> and Jose Ramos<sup>2</sup>. Ed. by Mayssam Daaboul<sup>3</sup>

## ABSTRACT

This article starts with a historical overview of the periodic local and regional resource exhaustions that have marked the existence of countries, nations and empires that have relied too overtly on the extractive capacities of markets and states, i.e. the drive for the accumulation of wealth and power in competition with others in a peer polity. We argue that there is historic and contemporary evidence of a regular ‘pulsation of the commons’ in which periodically, local populations and spiritual reformers engage in the reorganizations of their local economy and social order by re-instituting commons institutions and practices, which heal the land and protect resources for the longer term, paradoxically recreating a surplus that generates a new expansive cycle. However, as our global system has exhausted several ‘frontiers’, we have reached a situation of global overreach. Our article therefore, inquires into the possibility of re-enacting the restoration of the commons at a global scale, through protective ‘Magisteria of the Commons’, i.e. global institutions that create a counter-power to the inter-state system as well as to transnational capital. We thereby also present an alternative paradigm to interstate competition and the domination of transnational capital, in the form of a cosmo-local world order, a new arrangement between the local and the global, whereby ‘everything that is heavy is local, and everything that is light is global and shared’.

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<sup>1</sup> Foundation for Peer-to-Peer Alternatives, Ghent, Belgium, michel@p2pfoundation.net

<sup>2</sup> University of the Sunshine Coast, Australia, jose@actionforesight.net

<sup>3</sup> Carpe Verum, Lebanon, mayssamdaaboul@gmail.com

## The Commons As A Perennial Mode Of Exchange

This text centers around the importance of a perennial human institution, that of the commons, which is one of the four basic modes of exchange identified by anthropologists.

Alan Page Fiske, in his landmark book *Structures of Social Life* (1991), offers a fourfold typology of modes of exchange. A mode of exchange focuses not on how things are made and what the relations are of productive communities, as Marx did when he talked about a 'mode of production', but looks at what the criteria are for the exchange of value, i.e. the allocation methods for who gets what in a given society.

Fiske called these modes of exchange: *Communal Shareholding*, *Equality Matching*, *Authority Ranking* and *Market Pricing*.

Commoning occurs whenever human groups exchange with a 'whole' following the logic 'give a brick, get a house'. Commoning, doing something for the tribe, clan and family rather than for one's own, is the primary way in which value was exchanged at the dawn of humanity. A hunter or gatherer would bring back the proceeds of their search for food, but this was often done on behalf of the kin group, and there was a pre-established way in which these proceeds would be shared. Later on, human communities would collectively manage natural resources on which they were co-dependent, such as forests, estuaries, fishing rights, mountain slopes, grazing rights, etc... In the European Middle Ages, farmers would have access to a family plot, would have to work for their lord, but would also have access to common fields, managed by the village as a whole. Such commons are still widespread in the Global South, while they have been massively privatized in the Western world. In this fashion, the commons have always been a part of the overall mix of value exchange, though the relative weight of the commons in the overall mix has ebbed and flowed. The 'market exchange' system in its capitalist form, has been the system most intent on diminishing the place of the commons in social life, as its advocates generally believe that private property is a more productive arrangement than commoning. In her seminal book *Governing the Commons*, Elinor Ostrom (1992), the Nobel Prize in Economic Sciences winner in 2009, has been the author that most cogently studied the logic

of commoning. Essentially, the market is based on the underlying assumption of scarcity, with the belief that the pricing mechanism will direct the resources needed for production more efficiently. Psychologically, it assumes competition for rival goods which cannot simultaneously belong to different people, hence it promotes fear of scarcity. Commons on the other hand, promote an idea of sufficiency and even abundance, since it can be assumed that private failure can be compensated by the availability of commons-based resources. Physical commons, who need regeneration for stability, were therefore regulated to avoid overuse through common accords by the user communities. While digital commons have the advantage of becoming more valuable through usage, hence they are called 'non-rival', or even anti-rival.

Gradually, after the core role of commoning in the early human arrangements had been established, tribal arrangements became more complex and grew in scale, and at this stage, the gift economy became more important, over-shadowing commoning. In this allocation method, an individual, family, or clan would make a gift, which would create gratitude and a sense of obligation in the recipient, who would at a later time, want to give another gift and return, so as to re-establish the 'equality' which had been disturbed by the gift. Hence the concept of *Equality Matching* to denote this type of exchange. One of the primary authors on the gift economy has been Marcel Mauss in his essay *The Gift: Forms and Functions of Exchange in Archaic Societies* (Mauss, 1954).

However, once we see stratified class societies emerging, and a division in 'classes' under the 'civilizational' model, the primary determinant of allocation becomes distribution according to rank, under the adage "*rule, protect and distribute*", hence *Authority Ranking*. These were the tributary or feudal modes. These systems still contain the logic of commoning and of the gift, but the primary means of exchange becomes the distribution according to rank, with priesthoods and nobility (the latter as the warrior class) the primary recipients of the 'surplus' value.

Since the 1600s, the primary mode of allocation has been *Market Pricing*, i.e., the capitalist form of the market, in different forms of its evolution. Here goods are exchanged according to a common standard of value, i.e., the 'price'.

While these modalities have co-existed across regions, cultures and epochs, their relative importance has evolved over time, as we already indicated. One modality dominates and the other modalities adapt to its dominance and find new niches where persistence makes sense. We have already indicated the overlap in which these different modes of exchange became the dominant modality, but Alan Page Fiske's work is actually a synchronous comparison of these modes of exchange. It is Kojin Karatani, a Japanese philosopher, who has provided an account of the same changes in a relative hegemony of the different modes of allocation, in a remarkable book called *The Structure of World History: From Modes of Production to Modes of Exchange* (2014). Karatani posits a succession of modes of exchange in terms of relative dominance, in other words, he attempts to historicize more precisely how the different modalities posited by Alan Page Fiske, evolve over time.

To briefly summarise:

- *Mode A is association, or rather the reciprocity of the gift.*
- *Mode B is brute force, or rule and protection.*
- *Mode C is commodity exchange.*
- *There's also a Mode D, which transcends the others.*

Mode A consists of 2 phases, which correspond to the distinctions made by Fiske: the first modality of intra-tribal exchange is 'non-reciprocal exchange', in other words 'commoning', exchanging with a whole. The second phase, used for inter-tribal trading when these societies become more complex, is the reciprocal gift, used to create mutual social obligations and therefore also 'peace'. When sedentarization occurs, and conflict can no longer be avoided through nomadic strategies, the gift logic becomes necessary for inter-tribal peace-keeping. Mode D, emerging today, then combines the historical modalities A, B, C but under the coordination of a 'new associationism', a concept that is very close to commoning as we could confirm in a private email exchange with Kojin Karatani.

Of special interest in this specific context is Karatani's treatment of mode C, commodity exchange, where he introduces the idea of the simultaneous emergence of a triarchical system of institutions, i.e. the State, the Nation, and the Market, with each of them supporting each other.



The triarchical system also introduces a cyclic pattern within capitalist evolution. In this vision, which comes close to the ideas of Karl Polanyi which we will introduce shortly, the Nation is what remains of community under a capitalist political economy, and the State continues to exist with an arbitrage function between the People and the Market forces.

## History of the Commons

As we agree with this interpretation of human history, we can apply these insights for a stylized summary of the history of the commons:

- In early tribal societal forms, commoning is the central mode of allocation and is used for all resources pertaining to the survival of the kinship group; it remains important in gift economy systems.
- In feudal and state forms (*Authority Ranking*), the commons and the gift lose their dominance, but the commons retain an important function for guaranteeing the collective management of vital natural resources; commons-based communities compose with the feudal order but also defend themselves. For example, in European medieval history, the most important communal ritual was the Rogation Procession<sup>4</sup>, or the 'Gang Days', in which the community, under the leadership of the parish priest, did a walk around the village and their commons, to reconfirm their borders and importance for the community. This ceremonial pilgrimage was also called 'Beating the Bounds'. It was only abandoned after the Reformation, i.e. after the emergence of the capitalist social order.
- Under capitalism, a massive amount of common lands and other common resources have been privatized, the so-called 'Enclosures of the Commons', a process that started in the UK.
- But the exodus of the farmers from the countryside in order to become workers in the cities, coincided with the emergence of a

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<sup>4</sup> The Sunday before fast in the Roman Catholic calendar. Fast was observed four weeks before Easter, the celebration of Resurrection.

new form of commons: barring control and access to common natural resources, workers commodified their life risk through a massive mutualization of income and health resources, which became the basis of the welfare state. Thus we could claim that capitalism privatized the natural resource commons, but “state-fied” the social commons.

- With the emergence of digital networks, the commons are again emerging as a substantive practice, starting with the emergence of knowledge and open source commons after 1993, with the invention of the web and the browser, which democratized access to the Internet. As mentioned above, digital resources are not depleted through sharing, as the cost of an extra copy is marginal. Hence digital commons promote the widest possible usage of the resource, and in this context, they can be considered abundant. However, they do require energy and resources for their infrastructure, production, and maintenance. But digital commons introduce the capacity for non-territorial cooperation and for the rapid diffusion of innovations. Rather than based on economies of scale, such as material production in a market context, i.e. producing more by goodwill brings down the value of an individual item, digital commons are based on ‘economies of scope’: any innovation anywhere in the network is available instantly throughout that network.
- At the current moment in history, after a period of eclipse under the capitalist mode of production and allocation, the commons seem to be re-emerging, particularly using the mechanism of what we call ‘peer production’, using “peer to peer” modalities. Peer to peer is any social and technical system, in which peers can connect with each other, in order to communicate, exchange, but also self-organize and even create new ‘value circuits’. Decentralized and ‘distributed’ computing systems, such as the internet, have enabled many people in the world to self-organize in open collaborative systems, which are able to create shared resources, i.e. commons. Open source communities consist of communities of developers who freely associate themselves to create ‘free’ software, free in the sense that everyone is able to use, share and transform/improve them; but they are also creating joint open designs, shared knowledge, and more. The latest iteration of open source production has been the develop-



ment of decentralized blockchain or 'Web3.0' technologies. These are based on open source code, collaborative production, and open ecosystems that agents can freely join or leave, using common incentive schemes to align the different stakeholders. It is accompanied by technical attempts to create real data commons, in which the data are owned by the producers of those data, with stronger protections for decentralization. Tokens are used to recognize contributions to the network, which can be used to partake in the growth of value of the network, but also for democratic participation in decision-making.

- Since the crisis of 2008, we also see the emergence and growth of urban commons, which have grown tenfold in a decade. Urban commons do not necessarily entail autonomous production but are a form of mutualizing consumption and the use of common services. A study in the city of Ghent, Belgium, for example showed a tenfold increase in the number of initiatives in just ten years. Urban commons entail the mutualization of provisioning systems such as shared access to organic food, shared urban gards, cooperative housing, cooperative and associative carsharing, etc ...
- Finally, we see the emergence of eco-systems of material production, which are also inspired by commons-based logic. For example, the multi factory-model, used by a network of 120 craft-based 'maker spaces' across Europe, works around a common ecosystem for shared knowledge, their *Invisible Factory*. We could say that if the internet of communications stimulated the 'peer production' of so-called immaterial goods, i.e. knowledge, software and design, then the 'internet of transactions', which came into being with the blockchain, represents, through its shared and distributed ledgers which can be used for coordinating production flows, the possibility of material peer production.

## **New era of the commons**

The new technological affordances are only part of the explanation. We want to show and argue, in this paper, that there is a historical pattern in the ebb and flow of commoning in human history. Why are commons

sometimes weakening to the point of disappearance, while they make strong comebacks at other times? We believe, and posit with some confidence, that we are now entering a 'new era of the commons' in which we expect them to take center stage.

The basic idea of the 'pulsation of the commons' is the following: Throughout history, even as the arrow of time proceeds and societies become more complex and evolve, there is also a cyclic pattern.

The full pattern has two different moments:

1. in the expansive/degradative phase, competing entities in a peer polity system (which can be a system of tribes, kingdoms, empires or nation-states), enter into an expansive but also degradative phase of consumptive expansion. They do this by over-using both their core territories and frontier areas, leading to inevitable overshoot and then decline and collapse.
2. as a reaction to this degradative phase, local productive communities, rooted in their territory which is degrading, seek to resist and eventually to redress, linked to religious and spiritual movements which express this discontent and desire for social harmony. If this movement overtakes the degradative forces, the commons, the mutualizing of resources to create abundance within a context of sufficiency, recreate old and new commons which had been degraded and weakened in the expansive phase. At some point, the health of the system is restored to such a degree that the desire for expansion grows again.

This dynamic is what we like to call: *the pulsation of the commons*

Perhaps a word here for the visually oriented readers: what do you get when you combine a successive evolution of systems, each more complex than the other (which doesn't mean superior in any moral sense, nor progress, but only: a tendential complexification of the social systems over time), which are also determined by 'polarity switches'? The answer is: a spiral. In a spiral we can visualize each phase of complexity but at the same time, the line moves between polarities and the downward direction

of the crisis moment becomes visible. However, it would seem that for most of the transitions, the downward arc never reaches below a certain threshold, so that there is an accumulation of knowledge and technology remaining from previous phases. This can serve as the new starting point for a new positive growth cycle

While Oswald Spengler argues in his masterpiece, *The Decline of the West* (2020), that all civilizations have a life cycle, they are born, mature, and decline, and do not learn from each other; other macro historians, like Arnold Toynbee in *The Study of History* (1961), see at least three generations of civilizations, each with higher knowledge and technical level than the civilizations typical for an earlier phase. In this context, as civilizations are seen as a particular arrangement between the agricultural countryside and the city, the digitalization of technology would suggest a fundamental re-arrangement of time and space, and therefore, up-ending the civilizational model that we have known for 5,000 years. Hypothetically, this would allow us to speculate about 'fourth-generation civilizations'.

## The Temporal Ebb And Flow Of Commoning

### Introducing Pogany: The Time for The Chaotic Transition Has Begun

The initial temporal framework we present is that of Peter Pogany. Pogany is a very original but rather unknown Hungarian-American thinker who published two books (Pogany 2006, 2015). *Rethinking the World* (2006) is an arduous but rewarding new view of the world system and its structures. Pogany is one of the very few thinkers who links the thermodynamic basis<sup>5</sup> of our world to the socio-economic system. More importantly, he links both these levels to a third system, the 'mode of apprehension': how human cultures see the world, what they can 'see', and most importantly, what they cannot 'see'. This can be equated with a 'mode of consciousness' and Pogany uses the schemes developed by Jean Gebser in the

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<sup>5</sup> i.e. How much matter and energy is at our disposal in the medium and long term, given the second law of thermodynamics, which states that the quality of matter degrades in an 'isolated' system like planet Earth. (We get energy from the universe, but hardly any new matter).

book, *The Ever-Present Origin* (2020). This is important since typical left-of-center analyses usually focus on material structures, but often ignore a systematic vision of human agency; right-of-center analyses usually focus on human agency and responsibility, but often ignore the structural constraints on human and natural systems. Pogany offers a sound integral theory that holds three levels of reality, material, economic and cultural, in an organic and holistic embrace.

Based on findings of biophysical economics and complexity theory, Pogany concludes that our world, i.e. human society embedded in nature, is a 'complex adaptive system' and reminds us that such systems change through 'punctuated equilibrium', 'chaotic transitions', and 'bifurcations'. This is a huge statement as it means that humanity would not adapt to radically new situations through reasoned debate, but through shocks in the system. First, the old system disintegrates and old institutions lose legitimacy. Then, a Cambrian explosion<sup>6</sup> of alternatives emerges, carrying the seed forms of the next system. But these alternatives need to fight themselves out before a new stable system emerges.

This also means that societal transitions are about the installment of new logic rather than a re-arrangement of the old system. For example, the Christian feudal society that replaced the imploded Roman Empire believed that work was positive and sacred, rather than exclusive to slaves. Christians and monks believe in the adage, *ora et labora*, pray and work. This view was fundamentally opposed to the Greco-Roman vision of work as a degrading activity. The Greeks believed that people who depended on work to survive, could not become autonomous beings able to think for themselves.

So, a new mode of organizing productive life in more harmony with the limitations of the material planet and its living beings will require more than a 'business as usual' adaptation. The new system must either disintegrate to a lower level of complexity or 'transcend and include' some of the achievements of the previous system while addressing its problems at a

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<sup>6</sup> The Cambrian Period marks an important point in the history of life on Earth, appr. 500 million years ago; it is the time when most of the major groups of animals first appear in the fossil record.

higher level of complexity and integration. The two may of course coincide, i.e. an initial regression is needed for the new system to be able to reorganize itself at a higher level.

Pogany explores our current context based on his analysis of three succeeding 'global' stable systems. Global System 0 (GS0), or a proto-global society, was the mercantile system that dominated Europe under the absolute kings of the 17th-18th centuries. This stable system ended with a period of 'chaotic transition': the French Revolution and the Napoleonic Wars (1789-1815).

The second stable system, which emerged after the chaotic transition period, was the first truly global system. Global System 1 (GS1), also called the 'Smithian' capitalist system. It was based on the full domination of Capital over Labour. GS1 and its institutions have been in turn interrupted by the period of chaotic transition between WW1 and WW2. During this transition, 3 different systems fought for dominance: democratic capitalism, fascism, and (Soviet) communism.

The third stable system, Global System 2 (GS2), emerged after 1945. This system of 'weak multilateralism' (GS0 had no multilateral institutions) was based, at least in the Western countries, on a contract between capital (Fordist capitalism) and labour (the welfare system). GS2 was based on a hyper-exploitation of natural resources and neo-colonialism. While the Global South had largely obtained its political independence, new countries had been locked in unfavorable terms of trade and had little or no power in new international institutions dominated by the winners of WW2.

Here is what Pogany wrote after the onset of the global systemic crisis of 2008:

*It is hardly a mere coincidence that the collapse of the global financial casino coincided with the divorce between cheap oil and the full utilization of the rest of productive resources. We will never see the two of them together again – a situation loaded with the awesome implication that the world will be knocked back and forth between recession and aborted recovery as the oil price roller coaster alternatively encourages and discourages profligacy*

*with our body economic vis vitalis (vital force). This emergent cyclicity reveals that the collision between humanity's material ambitions and the planet's physical constraints is not a single dramatic event as symbolized by the more than three-decades-old 'overshoot and collapse' meme. Rather, it is an extended, micro-historically recognizable temporal process. (Pogany, 2009)*

Note the important historical shift that follows from Pogany's conclusion: whereas the earlier cyclic patterns were always local and regional, leaving room for growth in new frontiers or regions, this crisis is planetary: there are no frontiers left. Humanity is facing a closed earth system, which receives energy from the universe, but no matter, and that matter is subject to the degradative effects of the second law of thermodynamics. This time, there is no escape, no 'elsewhere'. This means that any further growth must be compatible with the regenerative capacity of the resource base as well as with other planetary boundaries.

It is fair to say that the GS2 started to dissipate in 2008, when a deep crisis of the financial system has been followed by the weakening of the multilateral system based on US dominance; social unrest eventually resulting in right-populist victories; and rapid realization of the physical unsustainability of our current systems of production. Thus, the world has entered the beginning stages of a new period of chaotic transition. After the 1980s, the social contract between capital and labour slowly dissipated due to neoliberalism. The social contract is still not entirely destroyed but has been weakened, together with the multilateral system.

Covid-19 has since reinforced the crisis, showing that the weakened public systems under neoliberal austerity regimes, left the public sector in the West very ill-equipped to deal with the crisis.

### **Renewed contract with nature; and social equity**

Pogany is quite clear that the next system, Global System 3 (GS3), must be based on a renewed contract with nature – we must learn how to produce for human needs within planetary boundaries. To retain social stability, this process needs to be accompanied by a degree of social

equity – the social contract cannot be abandoned because it is the precondition for a successful ecological contract. This requires a strong two-level multilateralism. A form of global governance needs to embed human production into relatively coercive planning frameworks reflecting the availability of resources for the long-term survival of humanity. This view is expressed for example in the *r3.0* (2021) proposal of a *Global Thresholds and Allocations Council* aimed at establishing ‘an authoritative approach to reporting economic, environmental and social performance in relation to generally accepted boundaries and limits. In this ‘multicapitalist’ approach, the market and public entities must all learn to become accountable, not just for financial capital, but also for human and natural capital. For each stock of capital, of which the flows of use and value to humanity are dependent, there are real physical thresholds, after which a stock starts degrading, and this must be prevented. Therefore, each threshold is accompanied by ‘allocations’, that determine the fair share of each entity of what is essentially a set of scarce resources. Kate Raworth’s, *Doughnut Economics* (2017), shows a system in which humanity must produce below an ecological ceiling, i.e. objective limitations of vital cycles and resources – the so-called planetary boundaries – and a ‘social floor’, the minimal needs of humans as well as the conditions for a stable society. Within those two boundaries lies the ‘safe operating zone for humanity’.

For Pogany, it is uncertain whether humanity will succeed in this coming transition. We may be headed towards regressions to lower levels of complexity that are no longer able to sustain today’s population. A much deeper collapse is also within the realm of possibility. Nevertheless, Pogany’s view of world history as a ‘pulsation’ between stable systems and chaotic transitions is very much in line with other understandings of long-term human and natural history, and offers a clear meta-historic vision of the priorities we need to pursue in our current chaotic transition.

## **Hypothesis: re-emergence and centrality of the commons**

It is our hypothesis that our current period of chaotic transition pushes towards a re-emergence and eventual centrality of the commons. This hypothesis can also be supported by a ‘cyclical’ argument.

In summary:

Alan Page Fiske (1991) has established a relational grammar for the allocation of resources in society. *In The Structure of World History: From Modes of Production to Modes of Exchange*, Kojin Karatani (2014) has examined the evolution of modes of exchange (unlike Marx, who examined the modes of production), and historicized their development.

- The original modality of humankind is commoning, which is when everyone contributes and partakes in a common pool; it is a prime mode in hunter-gathering bands.
- The gift economy, in which the gift creates social obligations for a counter-gift becomes the dominant modality in more complex tribal societies.
- Authority ranking, when in a class-based polity, the rulers must legitimize their domination through the redistribution of resources.
- Market pricing, where prices allow for the exchange of resources deemed of equal value.

These four modes have co-existed for a long time, but their relations have evolved. Nomadic and horticultural societies predominantly practiced commoning and gift economy. State-based societies practice redistribution through taxation (Turchin 2018). Today's redistribution is dominated by the capitalist market and the state is largely at market's service – See also Philip Bobbit's *The Shield of Achilles: War, Peace and the Course of History* (Bobbitt 2002).

### **The HANDY Project and Mark Whitaker's Ecological Revolution**

The commons always had an important role in class societies, until its recent marginalization by capitalism. But there is strong historical evidence of a pulsation of the role of the commons vis-à-vis extractive economic systems. The HANDY report<sup>7</sup> on human and nature dynamics (Moteshar-

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<sup>7</sup> The Human and Nature Dynamics Project (HANDY) is a 4-variable thought-experiment



rei, Rivas, and Kalnay 2014) examines human societies since the Neolithic, through a predator-prey hypothesis. This refers to the biological reality that a predator species will over-eat prey, until the population of the prey starts declining, depriving the predators of food, which then starts a new and opposite phase of the cycle. The report concludes that all class-based peer polities, which are locked in a competition with each other, routinely (in fact: always) end up over-using their resource base. At this point, the extractive logic stutters and a strong pressure to provide the commons with a more important role in the overall mix emerges.

At such moments of crisis, reducing carrying capacity through mutualization is one of the most efficient ways to avoid, soften, or recover from societal collapse. Pooling of resources is a key way of reducing matter-energy footprints (Motesharrei, Rivas, and Kalnay 2014). The report stresses that equality is a key predictor of crises' depth and severity. Egalitarian societies are more sensitive to the signs of a coming collapse, so their transitions are reasonably smooth and their recovery periods are shorter. By contrast, authoritarian and extractive societies insulate the ruling class from growing environmental problems, which means they fail to capture the signals in time, and so the fall of such societies is deeper and their recovery time is longer.

These observations correspond to Turchin et al.'s (2009) research of 'secular cycles' which combines two factors: the evolution of demographics i.e. the increase and decrease of the raw numbers of the population, and the evolution of state and elite extractive mechanisms, i.e. how much more is consumed by individuals in the elite. Peter Turchin and the cliodynamics school of historical research, study the temporal dynamics of large societies using a vast set of databases containing historical records<sup>8</sup> (wars, conflicts, famines, political and social revolutions, etc.). They conclude that there are long-term oscillations that are related to how population numbers tend to exceed the local carrying capacity of the societies in question, and how ruling-class extraction aggravates those conditions. So far, the

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model for the interaction of humans and nature (Motesharrei, Rivas, and Kalnay 2014)

<sup>8</sup> See the *Seshat: Global History Databank*, which "was founded in 2011 to bring together the most current and comprehensive body of knowledge about human history in one place", <http://seshatdatabank.info/>

authors of this article feel confident to assert that these secular cycles do occur systematically in agrarian societies. See for example Thomas Abel *Pulsing and Cultural Evolution in China* (Abel 2007). Although we are unaware of similar studies related to capitalism, we posit that within those oscillations, at times of crises, mutualization contributes to remaining within local carrying capacity boundaries. This hypothesis is confirmed in the historical record as analyzed by Karl Polanyi in *The Great Transformation*, which sees an eb and flow, contrasting periods when the market is 'freed' from society, creating first growth but followed by dislocation (the 'lib' periods), and periods in which popular revolts force a re-embedding of the market under more societal regulations (the so-called 'lab' periods).

Mark Whitaker's (2009) work seems well suited to testing this generic hypothesis. In his 3,000-year review of ecological crises in Europe, Japan and China, the commons have repeatedly played a crucial role in their overcoming. This is expressed in political, social, and religious movements of the past, where the productive classes would follow the lead of religious reformers and/or revolutionaries, who insisted on a new balance between people and nature<sup>9</sup>. Whitaker posits a 'slow ecological devolution', referring to the slow but constant ecological degradation under elite leadership, and 'fast ecological revolutions', the result of popular mobilizations, which in the past, took the form of spiritual-political movements. He writes:

*Most argue environmental movements are a novel feature of world politics. I argue that they are a durable feature of a degradative political economy. Past or present, environmental politics became expressed in religious change movements as oppositions to state environmental degradation using discourses available. Ecological Revolution describes characteristics why our historical states collapse and, because of these characteristics, are opposed predictably by religion-ecological movements. As a result, origins of our large scale humanocentric axial religions are connected to anti-systemic environmental movements. Many major religious movements of the past were environmentalist by being health, ecological, and economic movements, rolled into one. Since eco-*

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<sup>9</sup> Whitaker's work does not remain in the past, and also includes an analysis of the contemporary Green movement in Germany.

*logical revolutions are endemic to a degradation-based political economy, they continue today. (Whitaker 2019)*

A paradigmatic case study in Whitaker's work is the mutualization of knowledge by the Catholic monastic communities during the crisis of the Western Roman Empire. According to Jean Gimpel (1977), Catholic monks were responsible for nearly all technical innovations of their era. Catholic monasteries functioned as commons at three important levels. One, they acted as knowledge commons. Two, they mutualized shelter and common productive units, thus providing shelter, culture, and spirituality at a dramatically lower footprint than the Roman elite. Three, they re-localized production through the feudal 'manor'.

Another example he summarizes in his book concerns China: The Zhou kingdom is the first state to emerge in the rice basins of the Yellow River, and it uses ritualistic forms to be performed by the ruling royal family. But as the royal system expands and degradation ensues, there is a first reaction, that of the first Confucian movement, which according to the authors cited by Whitaker, represents the urban middle classes, the 'shi', that want to be part of the system by being recognized by merit and not by blood. A new degradative phase, at the time of the consolidation of the first Qin Empire, created the counter-movement of the Mohists. This movement of urban craftsmen, allied with the dissatisfied farmers, is based on a doctrine of universal love, calls for welfare systems, and specialized military technology to defend independent cities against imperial and royal expansion. The movement is repressed but the next imperial system will integrate the welfare demands. Whitaker shows how each revolt first shakes up the system but is then 'de-fanged' and integrated into the next phase of civilizational development.

The resemblance with today's conjuncture is uncanny. *One*, faced with ecological and social challenges, we see an exponential rise in knowledge commons in the form of free software and open design communities. *Two*, we see a strong drive towards mutualization of productive infrastructure, for example, the emergence of fablabs, makerspaces and coworking spaces, and the emerging multifactory model (Salati and Focardi, 2018). Rapid developments in the capitalist 'sharing economy', which is focused on creating platforms for underutilized resources, partake in this trend.

Three, new technologies around distributed manufacturing, prototyped in makerspaces and fablabs, point to a re-organization of production under a 'cosmo-local' model (Kostakis et al. 2015; Ramos 2017b). The cosmo-local model combines relocalization of production, with global technical and scientific cooperation through shared designs and technical knowledge.

The study on urban commons in the Flemish city of Ghent, (Bauwens and Onzia 2017) shows the emergence of nearly 500 urban commons active in all areas of human provisioning – as compared to 50 urban commons existing only ten years earlier. However, a difference with earlier cyclical re-emergences of commons in times of crisis is that the current exhaustion of resources and dangers to our ecosystem are global in nature, requiring transnational and globally coordinated responses which are at the same time local – hence cosmo-local.

There is some historical evidence that the 'commonification' response to over-extraction of resources was not just restorative; it also created the conditions for new prosperity. Adam Arvidsson (2019) evokes the remarkable integration of commons and markets from the 11th century onwards. *The First European Revolution* (Moore 2000) which emerged in the middle ages (late 10th century) with the so-called Peace of God (Pax Dei) movement, was a social revolution that united monks and peasants in France and neighbouring countries. It established a social contract (the Peace of God charters were signed in several hundred cities and regions) that pacified both inter-elite and class conflicts and so allowed for a productivity rise in the countryside, creating an exodus to re-emerging cities that had shrunk in the preceding period between the 5 to 10th century. City workers created productive commons in the form of guilds, and free farmers created agricultural commons through land contracts (de Moor 2008). This contributed to the development of a new ethical economy that had strong elements of redistribution and solidarity. During the next 3 centuries, the European population doubled, and in Western Europe, it tripled.

Another example of the re-emergence of the commons is the Tokugawa period<sup>10</sup> (Lane 2014) in Japan (between 1600 and 1868). It started after the emperor (shogun) retook control of a largely deforested Japan and pro-

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<sup>10</sup> For some details, see [https://wiki.p2pfoundation.net/Tokugawan\\_Period\\_in\\_Japan](https://wiki.p2pfoundation.net/Tokugawan_Period_in_Japan)

tected the land as imperial commons. This period was known not only for its prosperity but also because it succeeded in creating a long-term stable ecological society, with a constant population level. It's worth digesting this: a relatively prosperous society, for its time, living for more than 2 centuries within its planetary boundaries and with a stable population: it can be done!

Other authors have made similar observations. William Irwin Thompson (1985) identified the tendency to overshoot natural limits across Babylonian, Greek, Roman and European civilizations. When a civilization's core growth comes at the expense of its peripheries, it begins to undermine the viability of the core civilization itself. Thompson pointed toward a commons framework as a solution, an arrangement he termed "enantiomorphic" - which implies transcendence of binaries, in particular the way in which civilizations generate dualisms and disownments that need to be reintegrated. Thomas Homer-Dixon's (2010) detailed analysis of energy use within the Roman civilization arrived at a convergent view: growth dynamics were early on based on large energy returns on investment, but diminished over time as social and ecological externalities mounted up.

Civilizational crises are linked to a number of related dynamics. *The Image of the Future* by Fred Polak (1973) helped to animate that the extant civilization may begin to lose power. Images of the future may become dystopian, and narratives that are civilization-contradicting emerge and serve to unravel the core belief and logic that have wedded people to the old system. A creative minority from a variety of perspectives produces new seed visions that attempt to offer solutions amidst crises. Some of these may be 'fantasy' visions and solutions that reiterate the core logic of the empire without addressing its contradictions, giving people a false sense of hope. Some visions and solutions, however, are based on a square reading of the limits of their civilization's contradictions (in our contemporary context, growth), and invite new pathways that are outside of the epistemological orbit of the empire.

This comparative review provides an understanding of the non-exceptionality, or even regularity, of civilizational overshoot. For example, Whitaker (2009) argues that every class-based system based on competition between elites creates a 'degradative political economy' and an overuse of

internal and external resources. Against this, in predictable fashion, eco-religious movements arise that stress the balance between humans, the human and the divine, and the humans and the environment. These ideas lead to temporary re-organizations of society. It are these commons-based transformations that allow overshooting systems to find new ways to work within the biocapacity of their own regions. By now, this dynamic has played out locally and regionally. In our age of the Anthropocene, it moved to a planetary scale. Much can be learned from general world history, yet these cycles and rhythms also need to be carefully examined within the framework of capitalism. The two authors that can help us here are Karl Polanyi and Carlota Perez.

### **Karl Polanyi's Double Movement vs Carlota Perez's Adaptation of The Kondratieff Cycles**

Kondratieff cycles, cycles that are related to 50-year patterns in commodity prices, were first remarked upon by the Russian agricultural economist Kondratieff. Although they remain controversial amongst economists, they remain constantly discussed (i.e. controversial!) as a cyclic pattern in capitalism. The theme was taken up by the economist Schumpeter as well as by the neo-Schumpeterian economist Carlota Perez. These analytical schools link the waves to technological innovations that create new techno-social systems. Karl Polanyi's classic work on the history of capitalism since the end of the 18th cy., *The Great Transformation* (1944), sees these cycles at work in the social and political history of the system as well, and he coined the term 'the double movement'. While Polanyi stresses the social and political impacts, Perez focuses on technological and financial infrastructures.

The first framing from Polanyi sees a 'double movement', the 'lib-lab' pulsation: The first period, of high growth and ascendance, is positive for labour (lab) as more work is created and needed. The second, descending and low-growth period which veers to the financialization of the economy, is favourable to capital (lib) but ends in a crisis. At the end of each such crisis, there is a periodic challenge in the balance between the market and the state. This pulsation is accompanied by the ebb and flow of the commons, which in industrial society, takes the form of the creation of cooperative entities.

In *Technological Revolutions and Financial Capital*, Carlota Perez (2002) similarly notices that capitalism is marked by waves of economic progress and stagnation, ending in crises, which last 50-60 years on average. She paints, in detail, the picture described by Polanyi, by adding the logic of experience of capitalist forces during those periods.

Indeed, at some point in the economic arc, a high-growth phase in motion is set by a particular combination of energy use, geopolitical domination, land use, and managerial practice, accompanied by specific forms of technological infrastructures. In this phase, capital needs a lot of labour, which strengthens the power of workers, and is therefore accompanied by pro-labour reforms. As a result, the market becomes strongly embedded in societal needs and demands. The welfare advancements typically made in such a period are not top-down inventions and innovations, but generalizations of mutualized *seed forms* that had been created during the previous crisis. Thus, both the Attlee and Roosevelt *New Deal* reforms were inspired by the forms developed as commons but were then bureaucratized by the state. During the previous era of destruction of the commons, the 'Enclosure movement' fenced in common pastures, woods, and fields. The dispossessed farmers had to flee to the cities, where their only option was to become the 'proletariat', i.e. they had to sell their labour power to the factory owners. Within a context of total lack of social protection, and without access to natural resource commons, the workers, mostly under the leadership of the craft workers which had retained a memory of their guild-based solidarities, started mutualizing their life's risks, creating all types of social insurance systems. It were these civil-society-based structures that were 'statified' and generalized as social rights, during eras of welfare reform. So, to recap the story as it pertains to the fate of the commons and the cooperative endeavours of the working class: the Enclosures that began in the 16th century had started a process of privatizing the physical commons; but the struggles of the working class ended in a nationalization of their common-based solidarity mechanisms, i.e. state-based welfare provisions.

While this suggests a stratification of social welfare, we should also be aware of the other direction. This is pointed out by Arnold Toynbee in his earlier mentioned landmark ten-volume review of human history, i.e. *The Study of History*, (1961). Toynbee points out that when universal states (the last stage of a thriving civilization) start declining, the "internal"

proletariat forms 'universal churches', which re-invent new ways of social solidarity. While new nomadic overlords tend to take over the dying civilizations, as the Germanic tribes did at the end of the Roman Empire.

But back to Polanyi's more short-term lib-lab cycles within capitalism: when the first 'ascending' part of the Kondratieff cycle peaks, it is because there is a supply crisis, as capital makes less profit at the end of such an era of social redistribution. The political form of this cycle is a conservative revolution in favour of capital. This is quite obviously what happened during the Reagan-Thatcher counter-revolutions, which followed the crisis of the Keynesian system in 1970-1973. The conservative revolution 'frees' the market from societal constraints and sets in motion a period of lower growth accompanied by financialization, which creates higher profits. This eventually results in a crisis of demand, which will bring to an end the second phase of the cycle, as citizens/workers/consumers are suffering from stagnant incomes and high levels of debt.

The crisis of demand causes social unrest and pressures to re-embed the market into society. As the conditions of the working and middle classes deteriorate, it also sets in motion a renewal of commoning.

As we indicated before, this double movement is also called the lib-lab pendulum (Polanyi 1944/2001). Lib meaning the phases of deregulation / privatisation / marketisation, and lab referring to re-regulation. In our own interpretation, we can therefore conclude that the oscillations in capitalism are closely connected to oscillations of the commons, though they take the form of labor mutualism, and then of state-based welfare institutions.

So where are we now? Capitalism's long-term trend towards exaggerated extraction, which has created the conditions for the Anthropocene, merges with the short-term ending of a capitalist Kondratieff cycle. A radical transformation of capitalism is very unlikely in the cards in the short run. So, it is to be suspected that capitalism itself will make various attempts to integrate the commons into the next Kondratieff cycle. While there is no guarantee that these attempts will succeed, elements of social commons (such as P2P, climate change and energy scarcity reforms) are on the agenda of capitalist fora. Today's world simultaneously experiences a global loss of balance with nature as well as a change within the cycles of capitalism.



These trends converge in a single global process, which leads to a re-strengthening of the commons. Note that in our view, the commons risk becoming an instrument of both the productive classes and the elite. To use the language of Toynbee: the 'universal church' is first an expression of discontent and needs of the 'internal' proletariat, but ends up being adapted through compromise as the vehicle for a new phase of expansion.

## Revolutions, Phase Transition, and Seed Forms

Following the iconic examples of the French and Russian revolutions, some of the radical left traditions, in particular Marxist-Leninism, have focused on how to strategize the final assault on the bourgeois state. Other left traditions, (e.g., anarchism and autonomism) emphasize an exodus from the state as well. And still, other left traditions such as the social-democratic and Christian-democratic traditions, take a more gradualist approach. However, a closer examination of phase transitions countering industrial capitalism shows a greater variety in the radical processes of change, with many different kinds of actors. This more complex narrative shows the French and Russian revolutions not to be universal norms for a political and social revolution. Examples include Bismarck's introduction of a welfare state in Prussia/Germany, the liberation of serfs by the Tsar in Russia, and the constitutional civil wars in England and the US.

Earlier phase transitions, such as the transition from the Roman system to the feudal system, took many centuries. These transitions were originally based on seed forms that slowly emerge, then start interacting with each other, and only then do they finally create the conditions for a phase change that can take on multiple forms. For example, the seed forms of the capitalist system such as mercantilism emerged as early as the 11th century in Italian city-states, where a relatively autonomous merchant class started to adapt the social and political systems to their own needs. There would be no capitalism without the prior existence of capitalists and their practices, and there would be no commons-centric society without the existence of commoners and their practices, and their efforts to adapt the societal context to their own needs.

Seed forms for a post-capitalist commons-based political economy are much more recent. They appeared in the 20th century, in the distributed

experiments (involving commons and commoning) that bring forth a new organizational logic. It is impossible to say whether humankind will experience more revolutions. Yet if they appear, they will result from these long-term changes in the productive systems and structures, and the social forces they create. So, what is the nature of seed forms for a post-capitalist commons transition? For an initial insight into this nature of the transition process, we turn again to Peter Pogany.

Pogany (2006, 2015) shows that societies change through chaotic phase transitions, where old binding elements disintegrate, and new seed forms, preconfiguring potential futures, compete in a Cambrian explosion. Therefore, it is impossible to predict with certainty which seed forms will succeed in building the successor system. However, given the crucial role of planetary limits to growth, and the equally important role of mutualization in lowering human footprint, we expect that currently emerging P2P and commons-oriented seed forms will play a crucial role in creating the society of the future.

## **The Commons as Mutualization toward the Anthropocene**

Much is written about the Anthropocene – a new epoch that signifies an active relationship between human beings and the planet. For the purpose of the following discussion, we can distinguish three main understandings of the Anthropocene.

The first understanding is the significance of humans as a species with planetary impacts. This is the popular definition of the Anthropocene — humanity has become such a powerful aggregate force that we can assign a geological era to ourselves! If this were the only dimension of the Anthropocene, however, then human beings would be no different from anaerobic cyanobacteria. Approximately 2.5 billion years ago, anaerobic cyanobacteria caused the so-called *Great Oxygenation Event* by rapidly increasing its population. Rising amounts of its waste product, oxygen, have significantly changed Earth's atmosphere, causing the extinction of many species.

However, the Anthropocene also signifies an awareness of ourselves as a planetary species with planetary impacts. We have the power to reflect

on who we are and what we do. While the first understanding of the Anthropocene — human instrumental power — is far more mainstream than the second understanding — reflective planetary awareness — this second understanding rapidly catches up.

The third understanding, *reflexive* planetary response, signifies humanity's capacity to leverage reflective planetary awareness towards coordinated, intelligent responses matching Anthropogenic challenges. Reflexive planetary response is the most embryonic of the three understandings, yet it has the capacity to ensure long-term viability of human survival.

At a planetary scale, these three understandings play out a classic action learning cycle – act — reflect — change. Theory of the commons is a critical part of the second understanding of the Anthropocene – the human capacity to interpret and understand ourselves in the current era. Praxis of the commons, or commoning, is critical to the third understanding of the Anthropocene – human *reflexive planetary responses*. The Anthropocene is a crucial era for humanity. Our very survival is at stake, and the commons have an important role in human collective responses.

This hypothesis on the crucial role of the commons was one of the key reasons for the creation of the P2P Foundation. It is based on the following premises:

1. Our current political economy proceeds from the point of view permanent and unlimited growth, which is both logically and physically impossible on a finite planet. We call this the 'pseudo-abundance' of the material world.
2. Our current political economy proceeds from the point of view that marketization and commodification are the best way to manage and allocate immaterial resources via intellectual property. This creates a scarcity of objectively abundant digital resources. We called this 'artificial scarcity in the world of immaterial resources'.
3. *Pseudo-abundance* and *artificial scarcity* are compounded by the fact that our economic organization produces more and more inequality.

## Commoning as the Third Movement of the Anthropocene

Our capacity to see ourselves as interdependent with other people and species for our wellbeing and common futures brings forth a *reflexive planetary response*. In this movement of 'implication', a person is 'plied into' a shared concern through emerging relational awareness. In the Anthropocene, the commons has shifted from an implicit, real but unidentified concept and has acquired its explicit, relational formulation, as the domain of humanity's shared concern.

Commons arrive in many forms. Elinor Ostrom gained fame for her analyses of natural entities (woods, river, pasture, etc.) which become a commons because they are valued by local inhabitants who want to protect these for their own use. Then there are public and social commons, created by political entities such as municipalities, states, and federal systems, which are meant to extend a common good to a whole political community. One example of such commons is universal healthcare. Seeing these resources as commons in a more narrow definition does require that these resources are managed to some degree with *community involvement* or *multi-stakeholder governance* models. We also have peer-produced commons created by networks of participants, such as open source software and sharing networks. The latter are new since they are made possible only through digital networking. A very short evolutionary history of the commons would see them emerging from natural resource commons, moving to the life-risk commons organized by the working class when the 'enclosed farmers' lost access to productive resources under capitalism; a revival of citizen-produced digital commons after the invention of the Web and the browser; a powerful re-emergence of urban commons after the crisis of 2008; and an emergent commons of material production, through the cosmo-local form of productive organization, which combines re-localized production with planetary cooperation. An example of the latter is the network of multi-factories in Europe, where craftspeople cooperatively unite locally, and share their designs more globally through their knowledge commons, the *Invisible Factory*. One of the next steps in the institutional evolution of the commons is the necessity for *global governance of vital resources, which cannot be the subject of militarized competition by nation-states*.

The value of planetary life support systems is implicit — they do not appear valuable as commons until their value is activated by a contextual shift. For instance, once the ozone layer was depleted by industrial pollutants, threatening human collective well-being, the ozone layer became a commons and an object of commoning. The climate as commons represents the awakening of the individual to the fact that each person shares an atmosphere with seven billion others (and countless other species). With this awakening, the planet's atmosphere has shifted from an *implicit commons* to an *explicit commons*. This movement of self-awareness is mirrored by commoning as an act of governance, because those who share the Earth as commons need to make a shift toward becoming its protectors, shapers, and trustees. This is the movement from a commons-in-itself to a commons-for-itself. With respect to Earth's atmosphere, everyone is a commoner – in the context of this collective publication: an 'Earth trustee' – and this implies a radical democratization of planetary governance.

The transformation of subjectivity in the 21st century, of the experience and the definition of self, is the re-awakening of our embodied relationality in respect to multiple categories of the commons, and their expression through our emergent practices of commoning. This can manifest from our connection to our local community or the resources that the local community manages for its well-being, but can also be in connection to what we experience in relation to the future of Earth's atmosphere and its suitability for human life. This is the global dimension within which the community is a global entity wherein we, and our children and/or grandchildren, all are critical stakeholders<sup>11</sup>.

The emergence of the Anthropocene changes something vital about our understanding of the 'pulsation of the commons', i.e. the cyclic patterns of degradative and regenerative movements in human history. Before the Anthropocene, the cyclical pattern applied to particular territories and regions. What this means is that when faced with degradative ecologies and overshoot, balance could be created within a territory, and that territory could be over-run by more powerful neighbours, or the core area of

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<sup>11</sup> This publication explores the future of global citizens defining themselves as trustees of the Earth.

civilizational management could move to a different geographic focus. For example, this pattern, shown by 'moving capitals', can be seen both in China and Maya. But also at the end of the Western Roman Empire, under 400 years of capitalism, since its emergence in the 16th century. As a solution to the crisis of feudalism, frontiers were always available to keep international dynamics going. But today, these frontiers are gone. Those who invest in the endless march of technological innovation might believe that extensive growth might transform into more intensive growth. But studies like those of Carlota Perez on technological revolutions (Perez, 2002) would indicate that the dynamic periods of growth within the capitalist cycles are combinations of multiple factors and that technology alone cannot possibly be sufficient to solve the ongoing meta-crises that we are facing.

## Abandoning the cycle?

From this follows an important conclusion: it is not enough to change from a degradative to a regenerative cycle, we must abandon the cycle altogether!

Why is this so? The key reason is the global character of our overshoot. Indeed, as long as overshoot crises are local, the locus of civilizational development can move to another place. See for example, how the capitals in the Chinese, Roman and Maya empires moved around, showing the evolution of dominance between different regions. This was often linked to the regional exhaustion of a particular area. If the locus of the Empire moved, that would give the exhausted territories time to heal and generate. Global capitalism has generalized this logic, by serially exhausting territories in succession, but at an unprecedented depth of ecological damage. When exhaustion reaches a global level, there is no more place to go, and the whole world needs to heal and regenerate at the same time.

This means that, in a context of global overshoot, there can be no continuation of the cycle, no return to degradation. The 'pulsation of the commons' becomes obsolete and dysfunctional.

The solution, therefore, is to aim first of all for 'synchronic' degrowth, i.e.

the process of lowering the matter-energy cost of production for human needs. It has to be stressed here, that degrowth does not mean a lowering of living standards of the majority for the benefit of any elite. Degrowth is simply the objective necessity for humanity to learn to use less matter and energy, while maximally maintaining complex public and social services that maintain a quality of life. It is our contention that it is precisely through commons-based mutualization, that we can achieve this. For example, let us imagine that we do appreciate the point-to-point transport capacity of cars. In that case, in addition to good public transport, neighborhoods can create associative and cooperative pools of cars, whereby one single shared car can replace from 9 to 13 private cars. In this scenario, there is both a drastic diminution of the use of matter and energy, as well as a substantial decrease in cost, while at the same time protecting the capacity for point-to-point transport. Imagine using this method for all provisioning systems in a particular rural or urban region.

What happens after degrowth has been achieved by such conscious efforts to reduce the collective human footprint, while maintaining a high quality of life?

The second new logic is that of achieving a steady state economy, a stable relationship between the needs of humanity, and the ecological planetary balance. For this, we suggest the creation of planetary computation, a global cyber-physical infrastructure that would allow for cosmo-local coordination of production for human needs, within planetary boundaries. We propose the creation of a global commission of experts and civic organizations charged with maintaining knowledge about the availability of resources, and the needs of the web of life, so that, through shared accounting, human collective entities can make distributed and on-the-ground decisions, in line with such planetary boundaries. In this way, we believe a steady state economy can be achieved, as was pioneered by Japan in the Tokugawa period, in which the country lived with a stable population without exhausting its regional physical base of resources.

However, we should not conclude that a steady-state economy is static. Growth in the past would move from a focus on material growth, to a focus on the whole of immaterial aspects of life, as was customary in pre-capitalist and traditional societies. At present, we will need to make much more

extraordinary efforts to heal our planet. This means that the coming civilizational model will be geared towards regenerative approaches, systematic efforts to increase the life co-creating capacity of the planet and its beings, and restore the damage that was done to it in the preceding millennia, and in particular under the period of growth-oriented capitalist civilizational models.

## Why Will the Transition Be Cosmo-Local?

Civilization, i.e. the way humanity started organizing after sedentarization and agriculturisation, was, amongst other things, a particular way of organizing the relationship between countryside and city, town and country. Tribal and nomadic societies did not yet have the recent strong contrasts between huge cities and the countryside.

At first, despite the large sizes of empires, local production was the primary locus of value creation, and trade was supplementary. Under global capitalism, especially under the neoliberal regime, that logic was altered. Global trade became primary, and local production was seen as complementary. For example, the Western world actively de-industrialized after the 1980s. Nevertheless, it was mostly a matter of organizing geography, i.e. space. But the advent of the digital age has changed this. We are now dealing with a new profound re-organizing of space and time, by adding digital self-organization and new types of human 'de-territorialized' coordination. The first phase of digitalization involved private telecommunication networks, which themselves were instruments for creating neoliberal globalization. But in the second, public or social phase, after the invention of the web and the browser, the internet created new trans-local and trans-national dynamics in the civic world. One of the deep challenges of current humanity is therefore finding a new equilibrium between the local and the global.

There are currently two hegemonic models, which the authors believe are fighting it out within the perspective of the current Ukrainian crisis. On the one side is the neoliberal model of 'rentier capitalism', based on perpetual growth, and financial profit. It is led by the financial and 'maritime' power nexus of the Anglo-Saxon alliance, in cooperation with Europe and some leading East Asian powers, such as Japan. This alliance is groping for a



new post-neoliberal order, after the global financial crisis of 2008. One of the most likely ideological candidates is the World Economic Forum (WEF) ideology. It aims for global private-public-NGO alliances, to manage global domains of activity. The stress is on the supremacy of capital, in alliance with weakened nation-states, and selected NGOs that would play a similar role as the big religious congregations in pre-capitalist Europe. The rival model is the state-centric, 'sovereignist' model, located at the heart of the Eurasian continent, where the state is in charge of the 'common good' and polices the market to serve the direct interests of an administratively oriented nation-state elite. Though they are different, both Russia and China share this orientation. Remarkably, both mentioned systems - the post-neoliberal order and the state-centric model - favor rivalry and competition and enter into conflict around scarce resources. Both now maintain their own 'globalizing' system, as Russia has been forced (or has chosen to move) into the Chinese orbit. In both these systems, the digital realm is entirely subordinated to the interest of a geographically-based system. Though we have passed 'Peak Globalization', both systems are very similar in how they promote trade, within their own territory and involving the outside world. There is now a huge danger for this competition between the two core systems supremacy of capital and state-centric, leading to war for global hegemony and access to scarce resources.

One of the effects of the necessity to avoid this danger is a change towards a new 'geographic regime'. Premodern and pre-capitalist systems were regional in scope, not global, although they had relations with each other. Capitalism globalised our geographic regime, with huge transfers of people and resources all over the globe, and a transport system that costs us three times as much resources as those needed for production (i.e. we spend three times as much energy and matter on transporting products than on 'making' them). This type of 'neoliberal' globalisation is not sustainable. However, a pure retreat to the local area would also create huge problems. For example, retreating to local fisheries commons offers no solution to much-needed sustainable fishing, as industrial crawlers are emptying the ocean just outside of the national maritime zones anyhow. Many issues, such as climate change, nuclear accidents, the biodiversity crisis, and atmospheric pollution, cannot be solved on a purely local basis.

The challenge, therefore, is to find ways that combine:

1. subsidiarity of material production, with a preference for ‘smart and sensible localization’, since the local is the only dimension to accomplish anti-entropic – or : regenerative – work
2. strengthening of global knowledge commons.

The basic adage is: *“Everything that is heavy is localised to the extent possible; everything that is light is shared globally”*.

The transformation is from ‘economies of scale’ through globally distributed but centrally controlled mass production, to “economies of scope”, i.e. “doing more with less”, bringing the maximum amount of contextualised knowledge, the best insights and innovations from the whole world, at the local point of production.

This alternative regime is what we call cosmo-localization. It is nothing less than a potential alternative civilizational order. The historian Arnold Toynbee and others have distinguished ‘generations of civilizations’. The first generation was local, such as the Sumerian civilization. The second generation is when the Mesopotamian and Egyptian civilizations merged into an interconnected Eur-Asian system. David Wilkinson (1987) called this “Central Civilization”. While the third generation is the Western-led global system that started in the 16th century and included the New World of the Americas. What we are suggesting is the birth of a fourth generation civilizational model, which is based on a new accommodation between time and space, i.e. a successful complementarity between the still vital geographical organization of the world, and the equally important non-territorial cooperation through digital networks, via a new type of human community, and, institutions. Currently, digital networks are dominated by private interests and the needs of states for surveillance and control, and the models of technology create ever-increasing estrangement and distance between humanity and the web of life. What we are proposing is an entirely new orientation towards technology, that is geared towards managing the planet responsibly, by extending human responsibility towards the entire web of life. Our human-to-human social contract will need to be extended to other living beings and resources, in recognition of our interdependency.

We believe that cosmo-localization both transcends and includes the best of the previous socio-economic systems, while negating its degenerative aspects. If the best of the capitalist global system was the social contract between capital and labor, leading to the welfare state; and the provision of rights to previous minority groups, i.e. identity-linked rights, as well as formal decolonization of the former colonies; then we can posit that the new regime must be based on a contract between humanity and the web of life, i.e. between humanity and nature. The form of this social order is to be both based on a revival of the local, and on a continuation of non-territorial, trans-local cooperation.

1. Cosmo-local production requires global and collaborative knowledge production, based on free association; it is a guarantee that ecological and social problems can be solved both locally and globally, without endangering local specificity, adaptations, and differences; it recognizes the true abundance of knowledge and cultural resources that should not be endangered by artificial scarcities.
2. Cosmo-local production is based on the subsidiarity principle in material production, i.e. intelligent localization, which dramatically reduces the footprint of material transport; local communities can choose wisely within their concrete resource boundaries.
3. The local production units are based, to a certain degree, on solidarity and mutualization, in order to radically diminish the 'thermo-dynamic load' of humanity's production pressuring on natural systems.

Indeed, it abolishes the previous civilizational logic, by

1. Negating the artificial scarcity asserted by intellectual property on knowledge systems, which excludes those without means from using the best solutions for ecological and societal problem-solving.
2. It fully recognises the material limitations of our planet and the need of other beings as well as our mutual interdependence, by radically reducing the human footprint.
3. It fully recognises that a successful ecological shift cannot happen without sufficient social justice.

## Cultural aspects of cosmo-localization

At the basic level, cosmo-localization revives local identity, which can express itself in bioregional, regional, national, ethnic and other identities, linked to a relationship with local nature and soil. Cosmo-localism does not abolish nation-state identifications but adds to it, though we foresee a new role of nation-states as 'partner states', i.e. enabling institutions that stimulate individual and social autonomy, and create 'commons of capabilities' for all citizens in an 'equipotential' manner. The latter refers to ensuring that every citizen has the capacity to contribute to common projects.

But cosmo-localism also creates an added layer of identity, i.e. a contributory identity that is both linked to local contributions and to the contributions to the common open source core of cosmo-local collaborative projects. However, we are now, to the contrary, undoubtedly faced with a broad identity crisis:

- because of globalisation, identification with national systems has weakened in important parts of the world
- as a reaction, more conservatively 'rooted' people, i.e. the 'Somewheres', have been identifying more with religious, ethnic, communitarian identities
- while the less 'rooted' the 'Nowheres', have been moving to identity politics based on biological markers

Cosmo-localism advocates, and we believe 'leads to', a more complementary vision of such identity formations. Take the example of a permaculture contributor: such a person is certainly rooted in the hyperlocal, having their 'feet in the mud'; but the same person is linked to the local human community, not linked to the particular soil, i.e. they have their heart in the community. The learning and core common protocols of the trans-local permaculture movement are not located purely in the local, they are part of a global field of cooperation, the transnational 'open design community' of permaculturists.

We believe that cosmo-localism will create a layer of people that are less to be considered rootless digital nomads (the Nowheres), but rather Everywheres, i.e. well-rooted humans that are both linked to the global open design communities (including using post-blockchain based ecosystems of cooperation), and in the same time play a crucial binding role with the local production communities. Thus we foresee the further emergence and growth of cosmo-local ecosystems of value creation and distribution. Case studies are described in *The Cosmo-Local Reader*.

## **Conclusions. Towards Magisteria (Support Coalitions) of the Commons**

As we mentioned before, Peter Pogany explained how the post-World War II system, i.e. the welfare-state, followed by the neoliberal cycle, was marked by 'weak multilateralism' and a social contract between capital and labour. He indicates that the new 'stable system', Global System 3, would be characterised by 'strong multilateralism' and a 'compact between humanity and nature'.

The emergence of new commons-centric *seed forms* may give us an indication of how this could be achieved.

First of all, we have seen in recent times the emergence of global open design communities that co-construct common knowledge, free software and open designs. These communities are digitally self-organized towards producing knowledge commons through global common platforms. But with blockchain we have seen the emergence of open collaborative ecosystems that are based on open source code and community dynamics that operate at the global level, using incentive systems that attempt to align the multiple stakeholders. A number of these communities have been successful (so far) in creating socially sovereign crypto-currencies, a prerogative that used to be reserved to nation-states. They could be in effect considered to be 'virtual nations' that are constructing their own infrastructures.

This hints at the possibility of creating new layers of institutions, which we

could call magisteria<sup>12</sup> of the commons. Magisteria are interlocking sets of institutions that govern a particular domain at multiple levels. We have functioning magisteria for science, for politics, economics and culture. For example, during the Covid pandemic, it has been difficult not to notice that there has been an interlocking management that comprised both pharmaceutical companies, interstate organizations such as the WHO, and networks of national governments and public health authorities. It constituted in effect a multi-stakeholder consortium which determined the generic policy of how to combat Covid. Dissenting countries were put under pressure, showing a very relative sovereignty at the national level. More positive purposes than combating a pandemic deserve similar degrees of organisation.

Notice that what we do not have are magisteria of the commons, i.e. interlocking sets of trans-local institutions that can protect human and “human-nature” institutions and that have major democratic input from the involved citizens themselves.

So, at present we have a combined regime of inter-national state formations, mixed with trans-national capital. What is conspicuously missing is the civic counter-force that existed at the nation-state level. As Karatani (2014) argues, capitalism is a convergence of capital, the expression of private property, the arbitrage function of the state, and the community form that manifests as the nation, and represents the citizens. Moreover, Polanyi could notice that whenever the market freed itself too much from common constraints, the citizenry would force the state to retake control of these market forces, hence the lib-lab pendulum we discussed before. However, no counterforce exists at the global level, which explains the obstruction exercised by the neoliberal ‘situation’: there is no global counterforce, and critical NGO’s are too weak. The private-public domain coalitions proposed by the Great Reset forces of the World Economic Forum are entirely dominated by capital and sovereignist states, even if they would restore somewhat the power of national citizenries. Civil society is not enough of a match for trans-national capital. So how can we imagine effective transnational civic domain organizations?

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<sup>12</sup> A classic term meaning conventionally: “institutional domain of teaching authority”.

An example of a possible *seed form*:

R30.org has proposed a *Global Thresholds and Allocations Council*, an institution of materials scientists that can keep track of the available stock of resources. It would be aware of the negative thresholds that would endanger the continued existence and possibility of the production of a continuous flow of services for the present and future generations. From this knowledge of thresholds follows the establishment of criteria for developing fair allocations of these resources. This would therefore require a 'magisterium', an institution that provides valuable enough services, so that competing entities wanting to avoid war and conflict over dwindling resources, would be motivated to join. Just as European nations found it useful to join the EU after a generation of intense warfare on the European continent.

The way we envisage Magisteria therefore, are not to be compared with the vision of the WEF, which focuses on the key role and power of financial entities, and which invites in nation-state agencies, and 'accredited' NGOs. Magisteria would be rather organically derived from trans-local civic and productive coalitions. Public agencies and formal civil society organizations would be brought in as equal partners. And potentially 'ethical' and 'regenerative' pools of capital. Such Magisteria do not exist, but we believe the *seed forms* are visible in the 'global open design' communities which have emerged in the last two decades. For this purpose, open source communities can develop 'for benefit' associations, which manage the 'infrastructure of cooperation' needed for the trans-local open source development process. These institutions, preferably Foundations, manage a particular domain of ethical and open source production, and are most often designed as multi-stakeholder entities, where the various players of the eco-system can negotiate common agreements.

## Management of vital resources

This implies that the management of vital resources would no longer be solely determined by Westphalian state logics and corporate markets, but would at least be partially managed as commons for humanity and the living planet. The post-transition stable system can be a world that is no longer purely territorial and Westphalian, but has integrated accountability

for the web of life, vital ecosystems and scarce non-renewable resources. It can be alike the world described by Kate Raworth in her *Doughnut Economics*, a safe space for human development, in alliance with extra-human nature, that respects both the social floor of human wellbeing and the ecological ceiling of natural well-being, managed through commons magisteria powerful enough to protect human and extra-human communities.

In a report on the mutualization of urban provisioning systems, and inspired by the experience of the city-commons regulations in Italy, we have proposed a fractal system (Bauwens, Ramos & Kranjc, 2020). The *Bologna Regulation for the Care and Regeneration of the Urban Commons*, taken over by 250 Italian cities and enabling one million citizen commoners in Italy, uses a quintuple helix governance model. This means that the city coordinates a support coalition for the commons-oriented civic initiatives: the city, the commercial sector, the research sector and the official non-profit sector ally to help the fifth partner, the citizens, to take better care of the urban commons, to enable and empower them. What we propose are leagues of cities that collectively decide to create local enabling mechanisms to mutualize provisioning systems at the city level. In effect creating a multi-stakeholder mechanism to support and create autonomous commons. Depending on the domains of shared activity, these city systems also ally with a trans-local system, creating a *support coalition* for the global open design community that creates common protocols. Thus, on the trans-national level, a similar *support coalition* would connect inter-city cooperative agencies, impact driven capital, research universities, nonprofits in supporting these domain specific organizations.

Such 'domain organizations' could also be created by token-driven capital coalitions, with a distributed ownership for the tokens, that includes workers and contributory citizens. It is too early to say what the precise mechanisms and institutions will be, but trans-territorial capacities for collaboration, crowdfunding and collective governance experiences suggest that a commons-driven economic system is technically and socially possible.

In conclusion, in this essay we have argued that human history shows a recurring cycle of various growth-oriented extractive periods, led by state and market institutions, followed by periods of regional over-use of re-



sources. This over-use in turn leads to a revival of local commons, used to regenerate and heal the broken lands, in turn and over time creating the conditions for a new growth cycle. We show that the commons is the institution for peoples that want to preserve resources for the long term. But we also show that with global overreach, we need to globally diminish our matter-energy use now, and we therefore need global common institutions. The relation between the local and the global necessitates a cosmo-global societal order that is based on a contract between humanity and nature. With institutions that are capable of defending these types of commonly needed domain accords. We believe this order will supersede both the neoliberal order of transnational capital and the Westphalian order of state competition, by adding a third layer of commons-based civic institutions. In the first phase, we need to create bottom-up civic *seed forms* to aid in the creation of urban commons that substantially mutualize urban provision systems. But we argue that knowledge and collaboration protocols need to exist at a trans-local level. In this commons-centric global order, geographical institutions such as states, and local and trans-local enterprises still exist, but they operate within the planetary boundaries, and under the guidance of civic institutions that protect human communities and the web of life.

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# *Stable Climate: A Common Heritage of Humankind*

## *Why do we need to recognize Stable Climate as a Common Heritage?*

Paulo Magalhães<sup>1</sup>

### **Abstract**

When, in the last report of the International Law Commission (ILC-UN), it was stated: “*The atmosphere and airspace are two different concepts, which must be distinguished(...)*”, a pathway was open to autonomize the “functional” dimension of the Earth System from the “static” territorial element of sovereignty. This evolution makes it possible to answer: “**What is Climate from a legal perspective?**”.

The current inability to legally portray the functional dynamics of the planet was the origin of the non-recognition of the finite good *Stable Climate* as a Common Heritage of Humanity, instead opting to address **the problem** - *climate change is a Common Concern of Humanity*. This option limited the action strategy to avoid/mitigate/neutralize emissions, preventing internalization of benefits that ecosystems perform by means of a Stable Climate, because they disappear into a global legal void. Thus, it is impossible to build an economy capable of actively care/restore/regenerate the Climate. Today, there is no system that compensates for making negative emissions.

Being a “problem”, Climate has an undefined ownership. As it belongs to no one, the tragedy of the commons on a global scale happened. Recovering implies recognizing a heritage that belongs to all, with congruent rules regulating appropriation and provision, non-existent in the Paris Agreement.

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<sup>1</sup> (CIJE-UP) Center for Legal and Economic Research of the University of Porto, Rua dos Bragas, 223, 4050-123 Porto, Portugal  
paulo.magalhaes@commonhomeofhumanity.org  
<https://orcid.org/0000-0002-2602-0419>. September 2022

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Climate, Common Concern; Common Heritage; Legal Innovation; Static Sovereignty vs functional Earth System; Intangible Natural Heritage; Portuguese Climate Law

## 1. A Problem of theorizing the dynamics of the Earth System

When in the 1980s the problem of Climate Change entered the United Nations (UN)´ agenda, the international community was faced with a crucial question: “**What is Climate from a legal point of view?**” It was then realized how difficult it was to interpret in the international legal context the finite Good - Stable Climate - that until then was considered to be inexhaustible. Climate, and in particular the global average surface temperature, is a property emerging from the dynamics of the Earth System, which affects the entire planet<sup>2</sup>. This functional system exists inside and outside all sovereignties, and it is impossible to divide it, even in a purely abstract way. Climate’s dynamic/functional characteristic creates an “Inextricable link between the activities of States on national territory and their effects on the Climate (...) a situation without precedent in International Law<sup>3</sup>. After more than 40 years, this question still remains unanswered. Although our planet’s “functional” dimension (whose most visible manifestation is Climate) is intangible, it exists *de facto* in the natural world and is the support of life as a whole, and the basis for the functioning of human societies.

The current exclusively territorial, unidimensional, and hyper-simplified legal perspective that considers the planet to be only a geographical

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<sup>2</sup> WILL STEFFEN AND JAMIE MORGAN, “From the Paris Agreement to the Anthropocene and Planetary Boundaries Framework: an interview with Will Steffen”. *Globalizations*, ISSN 1474-7731, 2021, pp. 1-13, in <https://doi.org/10.1080/14747731.2021.1940070> (22.09.2022).

<sup>3</sup> SIMONE BORG, “Climate Change as a Common Concern of Humankind, Twenty Years Later...From UNGA to UNSC”, *IUCN Academy of Environmental Law Towards an Integrated Climate Change and Energy Policy in the European Union*, University of Malta, 2007, in <http://www.iucnael.org> (22.09.2022).

territory of 510 million square kilometres divided among States, leaves out the natural processes, functions, and the whole functional system outside the legal object, addressing only territories or certain specific problems. This perspective considers Common Goods as only being the left over territories from the States' divisions, such as the open sea, the seabed, the polar regions, celestial space, etc.

It was the inability to thoroughly portray the dynamic and functional reality of the planet at the time (1980s) that led to the non-recognition of the Common Good "Stable Climate" as a true legal object subject to a legal regime that organizes its use and maintenance. Consequently, the decision was to consider the problem of Climate Change as a Common Concern of Humanity, which should be avoided/mitigated. Thus, the starting question remains unanswered.

Nevertheless, a few steps have recently been taken towards the recognition of the existence of the functional dimension of our planet - the Earth System - from a legal perspective. The last report of the United Nations International Law Commission (ILC) for the period 2021-2029, in Chapter VI dedicated to the Protection of the Atmosphere, states: "The atmosphere and airspace are two different concepts, which must be distinguished. (...) The atmosphere, as an "envelope of gases" surrounding the Earth, is dynamic and fluctuating, with gases that constantly move without regard to territorial boundaries. The atmosphere is invisible, intangible, and indivisible."<sup>4</sup>

Although this statement is only a confirmation of evidence and a description of natural phenomena now thoroughly described by science, the ILC's remarks are of great relevance to International Law. In these remarks, the ILC made a clear distinction between the chemical composition of the atmosphere, mostly resulting from biochemical processes, and the dynamics of the functioning of the Earth System (in this case, partially represented by the atmosphere), as separate concepts from the airspaces, which are subject to the jurisdictions of the States. The truth is that although

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<sup>4</sup> A/76/10 Report of the International Law Commission – United Nations, seventy-second session, 26 April - 4 June and 5 July - 6 August 2021, in [https://legal.un.org/ilc/reports/2021/english/a\\_76\\_10\\_advance.pdf](https://legal.un.org/ilc/reports/2021/english/a_76_10_advance.pdf), pp.29 (22.09.2022).

these two concepts coexist in an overlapping manner, they are actually entirely distinct. The airspace refers to a static and spatial entity over which the State, within its territory, has complete and exclusive sovereignty. The atmosphere, on the other hand, is considered as a “functional” entity, which consists of large-scale air movement with dynamic and fluctuating characteristics<sup>5</sup>.

The step, taken by the ILC, may be the starting point for an evolution that overcomes the current dysfunctionality between the concepts of static sovereign territory **vs.** the functional dynamics of the Earth System.

Although the distinction pathway seems to have been opened, a legal gap still remains, since the due legal consequences deriving from making the aforementioned distinction have not been established. That is, if this report already recognizes the situation of the atmosphere as an indivisible, intangible, and non-separable good *de facto*, completely distinct from the concept of airspace, the international community has not yet committed to the next logical corollary: to recognize the existence of a functional dimension - the Earth System - as a Common Good from a legal perspective, with all the consequences that this entails. Legally, this would imply considering the duty to respect an asset that should belong to all, the duty to comply with the rules of use and sanction those who harm its functioning state, and the right to be rewarded for the benefits performed to the Common Good – which comprise the first basic structural conditions, as recognized by economic doctrine, to allow for a successful management of a Common Good<sup>6</sup>, and thus avoid the inevitability of the “Tragedy of the Commons”<sup>7</sup>.

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<sup>5</sup> A/76/10 Report of the International Law Commission – United Nations, seventy-second session, 26 April - 4 June and 5 July - 6 August 2021, in [https://legal.un.org/ilc/reports/2021/english/a\\_76\\_10\\_advance.pdf](https://legal.un.org/ilc/reports/2021/english/a_76_10_advance.pdf), pp.17 (22.09.2022).

<sup>6</sup> ELINOR OSTROM ET AL., “Revisiting the Commons: Local Lessons, Global Challenges”, *Science* 284(5412), 1999, pp. 278–282.

<sup>7</sup> GARRET HARDIN, “The Tragedy of the Commons”, *Science*, 162(3859), 1968, pp. 1243–1248.



The absence of a legal status concerning this functional, systemic, and non-territorial dimension of the planet has definitively shaped the strategy to fight Climate Change. The fact that a common good exists in the natural world and is not recognized as such within the organization of human societies is a structural problem that underlies the successive decades of failures of climate negotiations. To adequately portray the facts of the ecological dynamics and to overcome the current legal hazy and undefined concepts that fill International Environmental Law texts requires legally representing the functional dimension of the Earth System. The lack of representation of the functional aspect of the Earth System drives some countries to still have doubts and ask questions about the ILC's statement, such as: "That may be the case... but what is the legal status of the atmosphere? Is it different from the high seas or international waters?"<sup>8</sup>.

## 2. Which legal status of Stable Climate?

Despite the uncertainties that the characteristics of the Common Good Stable Climate raise in legal terms, the vital essential character that Climate represents for human life motivated the Maltese proposal of September 12th, 1988, that recommended for the recognition of Climate as a "Common Heritage of Humankind"<sup>9</sup>. However, the United Nations General Assembly Resolution of December 6th, 1988, opted to consider Climate Change as a "Common Concern of Humanity"<sup>10</sup>, a concept enshrined at the Earth Summit (Rio, 1992). This remains the legal framework for the 2015 Paris Agreement.

The "Concern" concept derives from the Heritage principle and it was the approach choice due to, among other reasons, the fact that it was technically impossible to apply the status of Common Heritage of Humanity to Climate by then. At the time, there were no scientific tools that allowed

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<sup>8</sup> A/CN.4/735, UNITED NATIONS GENERAL ASSEMBLY, 11-February-2020, "Protection of the atmosphere Comments and observations received from Governments and international organizations", pp 20/45.

<sup>9</sup> A/43/241 UNITED NATIONS GENERAL ASSEMBLY, 12 September, 1988, in <https://digitalibrary.un.org/record/46039> (22.09.2022).

<sup>10</sup> A/43/905 UNITED NATIONS GENERAL ASSEMBLY, 30 November 1988.

for the delimitation, explanation, and definition of the Stable Climate as a legal object. There is another possibility for opting to consider the problem of Climate Change as a Common Concern instead of recognizing the Common Good Stable Climate as a Common Heritage. The Concern option bypasses the direct approach of the subversive character of Climate in relation to the static characteristics of the territoriality principle of International Law. This may have been the most determinant factor for the Concern approach. The Climate's legal status problem was thus "circumvented", but the basic legal problem - static sovereign territory vs. functional dynamics of the Earth System - remains unsolved and this has had tragic consequences for the Earth System, and consequently for territories and society.

The term Common Concern is still considered a vague<sup>11</sup> and undefined concept, which since its creation raises implementation problems. As early as 1991, Mostafa Tolba, one of the personalities who contributed the most to formulating this concept stated: "It is very important that the concept of the Common Concern of Humankind be further elaborated to make its content and scope understandable and clear; it is also important to see how this concept can be interpreted in terms of the rights and obligations of States in the process of its implementation"<sup>12</sup>. Thirty years after the formulation of the project to define the "Common Concern of Humankind", claims continue to be made about the need for its evolution towards defining rights and obligations: "Although its contours have, so far, remained vague and indeterminate, we suggest that a future principle may emerge in a process of claims and responses (...)"<sup>13</sup>. This fact was determinant for the ILC itself to refuse to use the concept: "Although several treaties and some literature show "some support for the concept of Common Concern

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<sup>11</sup> ZAKER AHMAD, "The Prospects of Common Concern of Humankind in International Law", T. Cottier (Ed.), *The Prospects of Common Concern of Humankind in International Law* (pp. Hi), Cambridge, Cambridge University Press, 2021.

<sup>12</sup> MOSTAFA K.TOLBA, "The Implications of the "Common Concern of Mankind Concept in Global Environmental Issues", *Revista IIDH*, 13, 1991, in <http://www.juridicas.unam.mx/publica/librev/rev/iidh/cont/13/doc/doc27.pdf> (22.09.2022), pp. 237-246.

<sup>13</sup> ZAKER AHMAD, "The Prospects of Common Concern of Humankind in International Law", T. Cottier (Ed.), *The Prospects of Common Concern of Humankind in International Law* (pp. Hi), Cambridge, Cambridge University Press, 2021.

of Humankind”, the Commission decided not to adopt this language for the characterization of the problem, as the legal consequences of the concept of common concern of humankind remain unclear at the present stage of development of International Law related to the atmosphere.”<sup>14</sup>

The structural legal issue of the choice to consider “Climate Change as a Common Concern of Humankind” rather than the “Stable Climate as a Common Heritage of Humankind” has negative systemic cascading effects, some of which we highlight below.

### **a) Climate Change as a Common Concern of Humankind**

*“A Common Concern of Humankind remains a vague political formula, which could be used to legitimize the lack of concrete actions simply by declaring an environmental concern”*<sup>15</sup>. This warning from 1991 was given during a meeting of legal experts about the concept, after this option already had been approved<sup>16</sup>, and which definitively marked its path to the present day.

As the semantics of the word itself indicates, Concern (preoccupation) results from a feeling of responsibility, an idea of anticipation (pre-occupation) in relation to something that may cause us suffering and which motivates us to have behaviours that avoid the danger. From a legal perspective, in the case of Climate Change, the practical effects of a “Common Concern of Humankind”<sup>17</sup>, imply a commitment of self-restraint

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<sup>14</sup> A/73/10 ILC REPORT - Chapter VI Protection of Atmosphere, p. 164.

<sup>15</sup> MOSTAFA K.TOLBA, “Implications of the “Common Concern of Mankind” Concept in Global Environmental Issues”, Notes from the executive Director of UNEP to the Group of Legal Experts Meeting, Malta, Revista IIDH. Vol 13, December 13-15, 1990.

<sup>16</sup> A/43/905 UNITED NATIONS GENERAL ASSEMBLY, 30 November 1988.

<sup>17</sup> Para um estudo mais aprofundado sobre a problemática, características e conteúdo do conceito de Preocupação Comum da Humanidade em matéria climática, consultar PAULO MAGALHÃES, “Common Interest, Concern or Heritage? The “commons” as a structural support for an Earth System Law. Earth system law: standing on the precipice of the Anthropocene”, Routledge, 2021, e ainda “Climate as a Concern or a Heritage? Addressing the legal structural roots of climate emergency”, RED — Revista Electrónica de Direito, n.º 1, 2020,

of the amount of greenhouse gas emissions by States, in which each one commits to make efforts to **reduce** new emissions, trying to **avoid, mitigate or neutralize new damages**, with the aim of limiting the temperature increase well below 2°C<sup>18</sup>. This approach can be summarized by the two statements as follows:

- Common concerns do not define specific rules or obligations (neither of result, nor of conduct), but rather establish a general basis for cooperation (in its own right, or even by mandate) so that the concerned community can act to address the concern.<sup>19</sup>
- “The concern” element presupposes nothing more than that the States are objectively invited towards joint and concerted actions”.<sup>20</sup>

The current Concern option is not to recognize the existence of the Common Good, but rather to recognize the existence of the problem of Climate Change, and, therefore the current strategy is an agreement to mitigate this problem, and not the recognition of the Good Stable Climate as a legal object. Consequently, it does not establish its own legal regime, which is necessary to institutionalize the management of this Common Good.

The current strategy for action is in line with the “legal revolution” that the 21st principle of the 1972 Stockholm Declaration<sup>21</sup> represented for International Law at the time. This principle proclaimed that: “States shall ensure that activities under their jurisdiction or control do not cause damage to the environment of other States or of areas beyond national jurisdiction,”

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vol. 21, in [https://cije.up.pt/client/files/0000000001/6-artigo-paulo-magalhaes\\_1592.pdf](https://cije.up.pt/client/files/0000000001/6-artigo-paulo-magalhaes_1592.pdf) (22.09.2022).

<sup>18</sup> PARIS AGREEMENT, COP21, 2015, in <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (22.09.2022).

<sup>19</sup> DINAH SHELTON, “Common Concern of Humanity”, *Environmental Policy and Law*, 39/2, 2009, p. 3.

<sup>20</sup> *Idem* 25.

<sup>21</sup> STOCKHOLM DECLARATION, 1972, in <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf> (22.09.2022).

and reappeared as Principle 2 in the Rio Declaration, adopted at the 1992 Earth Summit. Probably the most significant principle of both Declarations is the “no-harm”<sup>22</sup> rule, now widely recognized as a principle of customary International Law by which a State has a duty to prevent environmental harm to other States. The problem is that, in practice, the *no-harm rule*, not only fails to include the Global Commons, but confines the strategy for action to damage control, hiding the need to safeguard, manage, and restore - that is, to positively and actively ensure the provision of the Global Commons. The exclusively “negative” approach of avoidance or mitigation remains the cornerstone of all climate action policy, and is in the percussive line of the very concept of *Common Concern* and the current strategy of the Paris Agreement.

If this strategy could make some sense thirty years ago, when the effects of human activities on Climate were still shrouded in substantial uncertainties, today, with this problem being an emergency and with the awareness that only through a large-scale cleanup of the atmosphere (removal of CO<sub>2</sub>) we can achieve Paris goals and avoid catastrophic Climate Change, the current model of approach to the problem, without recognizing the existence of a Common Good that must be managed, restored, and maintained, has been demonstrated to be clearly insufficient.

The impossibility of acting positively in the restoration of the Common Good of the *avoided damages/no-harm rule* approach happens because it is impossible to define the rights and respective duties that have been claimed since the *Common Concern* conception. As Pham King Hang<sup>23</sup> explains, what is most relevant is not the subject/object relationship, but rather the relationship between individuals that results from the relationship with the object. That is, the structure of relationships that emerges around the forms of use or the ownership regime that is exercised over a given good. As in the case of Climate, the object is not even recognized, the structure of relationships that results from the shared use of this object

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<sup>22</sup> KLAUS BOSSELMANN, “Where is “Earth” 50 Years after Stockholm?”, 2021, in <https://www.pathway2022declaration.org/article/where-is-earth-50-years-after-stockholm/> (22.09.2022).

<sup>23</sup> PHAM HANG, “Essays on Game Theory and Natural Resource Management”, PhD thesis, Tilburg University, 2003.

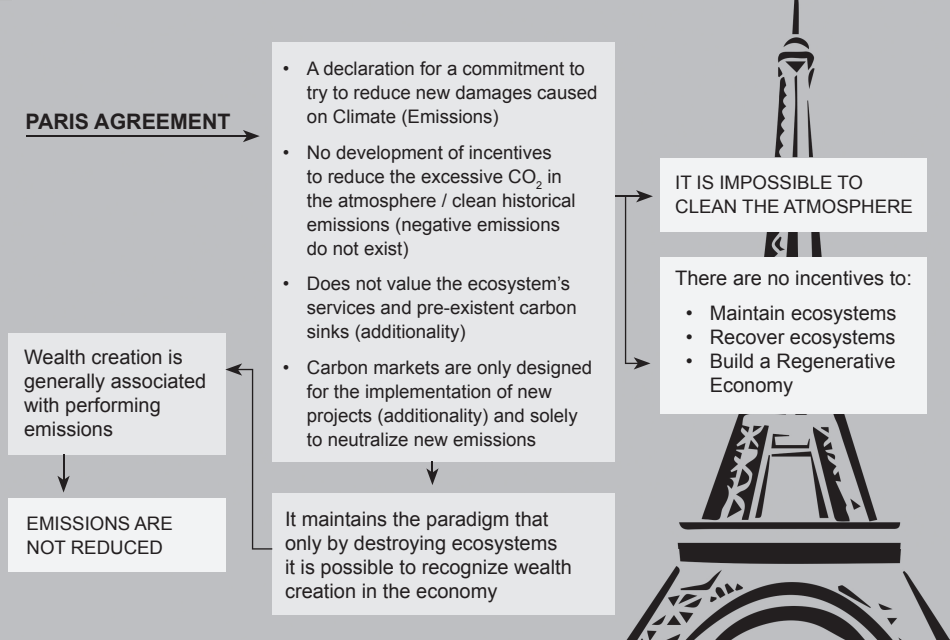


Fig.1 – The Paris Agreement as an attempt of voluntary commitments to reduce new emissions

- the Common Good Stable Climate - is not only, not recognized, but it is no subject to a legal regime.

While it is true that there is already a voluntary system with the goal of controlling damage, as part of the content of COP's negotiations, Kyoto's protocol, and the Paris Agreement, the creation of a system to ensure the provision of a Global Public Good Stable Climate is still missing. In this sense, neither the duties that should emerge from the use/depreciation of the Common Good Stable Climate - nor the rights that should result from the provision of a Stable Climate, are recognized. This is also a structural problem, as the only object from which these rights and obligations could emerge - the Stable Climate - does not exist from a legal standpoint.

### b) A "Concern" does not clear the atmosphere

The goal of voluntary creating limits for emissions and control systems, omits the vital need to create incentives for provision of the Common Good Stable Climate, and all the "restoration" dynamics that could emerge from this. "Currently, there are no economic mechanisms designed to pay for

negative emissions”<sup>24</sup>, and CO<sub>2</sub> removals are still seen as a future activity<sup>25</sup>. The construction of a climate policy capable of making viable the cleaning of what belongs to everyone - removing CO<sub>2</sub> from the atmosphere/negative emissions - will also be crucial to overcome the current paradigm that only tries to avoid emissions, without, however, changing the concept of value that is at the base of the emissions. If we recognize the true wealth creation for societies that the provision of a Stable Climate represents, this evolution in the concept of value will have positive cascading effects on the current logic of emissions production and reduction.

In the current model, because the objective of the Common Concern is exclusively to mitigate new emissions, the wealth creation recognized by society is in the reduction and/or neutralization of new emissions and not in the recognition of the value arising from the provision of the Global Public Good Stable Climate. This happens because the environmental services that make this provision spread throughout the Earth System, in this Global Intangible Good that is a Stable Climate, is a legal vacuum at a global level, making these benefits “external” to the social system, the so-called positive “externalities” to the economy. Although “external” in relation to the concepts of sovereignty and economic value, these factors are vital to the adequate functioning of the Earth System, and therefore assume an existential character for humanity.

Because Climate benefits are an “externality” to the economy, the only way to get financial credits is through avoided or neutralized new emissions, by selling carbon credits that have not been used. But no one is compensated for removing the existent excess CO<sub>2</sub> from the atmosphere in the interest of all humanity (negative emissions).

Perversely, to have “value”, there must be new emissions from those who need to pay to neutralize their emissions, or have to buy the credits in order to emit. The result is a zero-sum or neutral-sum game, and this has been a decisive factor in the results obtained until now in fighting Climate Change.

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<sup>24</sup> ENERGY & CLIMATE INTELLIGENCE UNIT, “Negative Emissions: Why, What, How?”, 2018.

<sup>25</sup> STEVE ZWICK, “Article 6 and its Glasgow Rulebook: the Basics”, Ecosystem Marketplace, 2021.

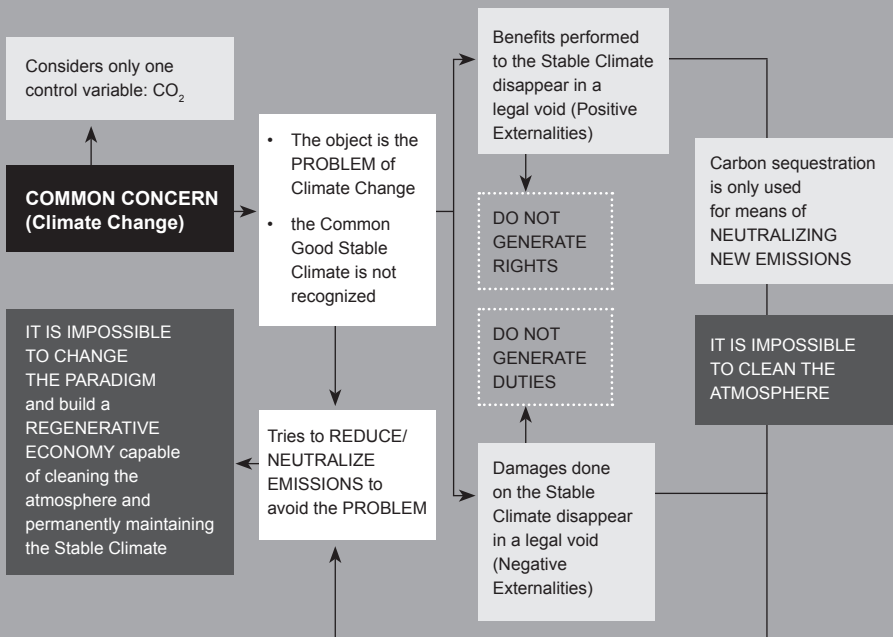


Fig.2 – The Common Concern does not provide the structural basis for cleaning the atmosphere

In this sense, the still prevailing concept of Common Concern prevents us from doing what is now considered essential to be able to meet the goals of Paris Agreement and avoid catastrophic Climate Change - restoring terrestrial and marine ecosystems on a large scale, removing excessive CO<sub>2</sub> and cleaning the atmosphere, as already demonstrated in the latest IPCC reports<sup>26</sup>. Because the benefits are not internalized and globally disappear in a legal void resulting from the non-recognition of the Common Good, these positive externalities remain invisible to nations' economies and thus, remain outside the wealth production chain and any decision-making by governments.

With the Common Concern approach, the natural processes that support life and all wealth production are invisible to the economy. Even current

<sup>26</sup> IPCC, "Summary for Policymakers, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change" [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2021, pp. 3-32, in 10.1017/9781009157896.001.



projections of the total amounts of CO<sub>2</sub> that will be possible to remove from the atmosphere - CDR - Carbon Dioxide Removals - through different solutions (nature based solutions, nature restoration, DACCS, Biochar, BECCS...) <sup>27</sup> are seen as an aid for the emission reductions that are needed and not cleaning the liabilities. Still, the projections about the estimates of the needed CDRs to avoid going over the 1.5°C limit, always neglect how these plans can be applied on the ground, how they are able to perform the recovery of all those natural areas, and the implementation of other CO<sub>2</sub> removal techniques.

### 3. A legal imperative for Innovation

There is a long history of conflicts between the international legal-political regulations, based on an exclusively territorial vision of the planet still resulting from the Westphalia Treaty on 1648, and an Earth System, global, *uno*, indivisible and highly interconnected. Initially local in character, these conflicts resulted from the confrontation between the global circulation of water and the atmosphere, or migratory species vs. the static character of sovereignty. With Climate Change this conflict has reached a systemic character due to human interference in global biogeophysical cycles. Regardless of the scale, the dysfunctionality resulting from the exclusively territorial view of International Law to explain, represent and harmonize the global interdependencies arising from the global functioning of the Earth System, was the backdrop of the failure of Environmental Law. “Fifty years after Stockholm, it is obvious that International Environmental Law has failed” <sup>28</sup>.

But if this “functional” reality has already been identified in the atmosphere by the ILC, as previously mentioned, its origin, constraints, interactions, and consequences are still outside this analysis. The atmosphere itself is not an element that can be separated from the system. However, the ILC

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<sup>27</sup> ENERGY TRANSITIONS COMMISSION 2022: “Mind the Gap: How Carbon Dioxide Removals Must Complement Deep Decarbonisation to Keep 1.5°C Alive”, 2022, in <https://www.energy-transitions.org/publications/mind-the-gap-cdr/> (22.09.2022).

<sup>28</sup> KLAUS BOSSELMANN, “Where is “Earth” 50 Years after Stockholm?”, 2021, in <https://www.pathway2022declaration.org/article/where-is-earth-50-years-after-stockholm/> (22.09.2022).

noted, right at the preamble, the close interaction between the atmosphere and the oceans. Oceans, are determinants to Climate, while the United Nations General Assembly has already recognized the effect of Climate Change on the oceans and “stressed the importance of increasing scientific understanding of the oceans-atmosphere interface”<sup>29</sup>.

Separating oceans from the atmosphere and biodiversity is something that exists only in humans’ imaginations and representations, as means to allow for the articulation and organization of narratives in an attempt to explain a single reality, where emergent phenomena cannot be explained, neither by simple division, nor by the summation of its different parts. In recent years, the Earth System Science has represented a significant paradigm shift, an authentic scientific revolution in Kuhn’s language<sup>30</sup>, because it revealed a new way of conceiving and thinking about a deeply interconnected Earth.

“Earth System Science represents an integrative meta-science of the entire planet as an interconnected, complex, and ever-evolving system, far beyond a mere collection of isolated ecosystems or global processes. In this sense, only by approaching the System as a whole, and not the atmospheric or oceanic circulation separately, and how the System is influenced and influences biodiversity can we portray the facts more accurately. This paradigm shift is already recognized in several official United Nations documents: “The proliferation of multilateral environmental agreements and the resulting separate and distinct mandates ignore the unity, interconnectedness and interdependence of the Earth’s ecosystem”<sup>31</sup>.

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<sup>29</sup> GENERAL ASSEMBLY RESOLUTION 71/257 of 23 December 2016 on oceans and the law of the sea, paras. 185–196 and 279.

<sup>30</sup> THOMAS S. KUHN, “The structure of Scientific Revolutions”, 1962.

<sup>31</sup> A773/419 – “Gaps in international Environmental law and environment-related instruments: towards a global pacy for the environment”, 30 November 2018, in [https://www.commonhomeofhumanity.org/\\_files/ugd/deeeae3\\_0054f53a156a46989d5b84bb50ca5eb9.pdf](https://www.commonhomeofhumanity.org/_files/ugd/deeeae3_0054f53a156a46989d5b84bb50ca5eb9.pdf) (22.09.2022).

A new principle of International Law is already emerging<sup>32</sup>. Addressing this unity and the interconnections is not only an enormous challenge for the natural sciences, but it will be above all for Law, Political Science, and Economics. In short, it is an exceptional governance challenge. As Gomes Canotilho teaches us, “as all knowledge obeys to mechanisms of permanent changing and learning, decisions on innovative issues also move away from stable and definitive administrative models, to adapt with flexibility and dynamism to the challenges brought by the instability of knowledge”<sup>33</sup>.

The inability of legal developments to evolve and adapt to the growing knowledge about the functioning of the Earth System, is at the base of the actions that try to adapt. Without however, structurally evolving they have the slightest chance to succeed, and integrate and cooperate with the functioning of the system on which these actions depend. The truth is that in response to climate and environmental urgency, the approach has been one of slowing down, reducing the pace and intensity of the most impactful activities, and strengthening resilience and recovery after disasters. In essence, the concept of resilience corresponds to a conformation with the inevitability of the trend and the inability to bend it, minimizing the ambition to only reduce the slope of the line that draws the future trend.”<sup>34</sup> And what is certain is that “*incremental improvements to the current socio-economic system, are not sufficient to stabilize the Earth System.*”<sup>35</sup> If the moment we live in is quantitatively and qualitatively essentially different, more of the

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<sup>32</sup> PAULO MAGALHÃES, WILL STEFFEN, ANA BARREIRA, KATE MEYER, JOSÉ MANUEL VIEGAS, KLAUS BOSSELMANN, ET AL., “Integrity and Unity of the Earth System – A new principal of International Law”, 2019, in [https://wedocs.unep.org/bitstream/handle/20.500.11822/27974/IIDMACHH\\_proposal.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/27974/IIDMACHH_proposal.pdf?sequence=1&isAllowed=y) (22.09.2022).

<sup>33</sup> JOSÉ JOAQUIM GOMES CANOTILHO, “A crise do direito e o direito da crise”, Boletim da Faculdade de Direito da Universidade de Coimbra, Coimbra, v. LXXXVIII. t. II, 2012, p. 1073 e ss.

<sup>34</sup> ALEXANDRA ARAGÃO, “Densificação jurídica do princípio daecoinovação. A inovação jurídico-ecológica como resposta adequada à emergência climática e ambiental”, in GOMES, ANA CLÁUDIA NASCIMENTO; ALBERGARIA, BRUNO; CANOTILHO, MARIANA RODRIGUES (Coord.), Direito Constitucional: diálogos em homenagem ao 80.º aniversário de J. J. Gomes Canotilho, Belo Horizonte Forum, 2021.

<sup>35</sup> WILL STEFFEN ET AL., “Trajectories of the Earth System in the Anthropocene”, Edited by WILLIAM C. CLARK, Cambridge, MA, Harvard University, and approved July 6, 2018 (received for review June 19, 2018).

same is not the appropriate response. Quantitatively and qualitatively different measures are required. The need to innovate for ecological transition is, therefore, undeniable. We are facing what the Organization for Economic Cooperation and Development (OECD) has already called the “innovation imperative”<sup>36, 37</sup>.

#### **4. Stable Climate as a proxy for an Earth System favourable to life**

A Stable Climate is a visible manifestation of an Earth System in a well-functioning state from the point of view of human interest, which in turn, depends on a functioning and resilient biosphere. This relative stability is based on well-defined patterns of atmospheric and oceanic circulation. A pattern of stable dynamics of the Earth System’s functioning can be understood as the ‘software’ of the planet. This ‘software’ is being “attacked”, that is, modified by human activities. This attack changes the chemical composition of the atmosphere, cause an increase in global temperature, which, among many other consequences, is contributing to the melting of the ocean’s ice, which in turn, leads to a decrease in the reflection of solar radiation, which will be absorbed more in the ocean, increasing its temperature and also that of the atmosphere, contributing to a change in the thermodynamic behaviour between the poles and the tropics, leading to the destabilization of atmospheric circulation patterns and the deceleration of ocean circulation.<sup>38</sup> All of this results in climate change with cascading effects on all natural systems and, consequently, on all social endeavours. This cascade of interdependent effects, interconnections, and feedbacks makes the intellectual operations of separating the atmosphere, oceans, and biodiversity, a dangerous and dysfunctional exercise. However, this does not prevent these intellectual divisions from being necessary to organize human thought and action. The problem is not the abstract operations of territorial (borders) or sectorial (oceans,

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<sup>36</sup> OCDE, “The innovation imperative. Contributing to productivity, growth and well-being”, Paris: OCDE, 2015, in <http://dx.doi.org/10.1787/9789264239814-en> (22.09.2022).

<sup>37</sup> Idem 34.

<sup>38</sup> PAULO MAGALHÃES E WILL STEFFEN, “Why we need a critical legal innovation to save our climate”, 2021, in <https://www.commonhomeofhumanity.org/climate> (22.09.2022).

biodiversity or atmosphere) division, but the absence of a framework capable of representing and integrating the global dynamics, and in this way giving meaning to territorial or sectorial actions. For all intents and purposes, what is missing is a new concept capable of giving representation to the interconnections - to the global and deeply interdependent functioning of an indivisible Earth System.

The fact that a Stable Climate corresponds to a certain pattern of functioning of the whole Earth System and that this pattern represents a well functioning state of this system, makes the Stable Climate a *proxy* of the whole system (including the atmosphere, oceans, and biodiversity, etc...). The fact that Climate is an “intangible natural resource, which crosses and goes beyond the national territories of States”<sup>39</sup>, is highly challenging for one of the fundamental pillars of International Law - the territoriality principle.

We know today that it is possible to perform an operation of abstract legal division of the geographic space of the oceans by creating borders and different maritime zones, or by dividing the atmosphere into different airspaces through legal abstractions, which are absolutely valid and necessary for the organization of human communities; however, we must also be aware that a similar operation of legal division, even in a purely abstract way, cannot be performed at the level of the biogeochemical composition of the atmosphere, the oceans, or the Climate, since the fluids that compose them flow all over the planet. Thus, although subject to depreciation, these biogeochemical compositions cannot be appropriated or divided. Representing these two deeply connected and mutually influencing, yet distinct realities, the *territory* - where legal abstractions of division are possible - and the *Earth's functioning system* - where no legal abstraction of division is possible, in a new concept that represents the Functional System as a single whole, capable of adequately reflecting the facts, is the challenge that the ILC brought us in its latest report.

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<sup>39</sup> SIMONE BORG, “Climate Change as a Common Concern of Humankind, Twenty Years Later... From UNGA to UNSC”, IUCN Academy of Environmental Law, Towards an Integrated Climate Change and Energy Policy in the European Union, University of Malta, 2007, in <http://www.iucnael.org> (22.09.2022).

## 5. Stable Climate, an Intangible Good?

As ILC recognizes, the atmosphere has “physical and functional components”<sup>40</sup>, that is, a chemical composition and a circulation pattern. And its functioning pattern - the *software* - is truly intangible.

“When we refer to the relatively stable pattern of the dynamics of the Earth System, which corresponds to a Stable Climate, we are not referring to “matter” or the physical planet, but to the way how matter and energy move and circulate around the planet. Matter is always in transformation through chemical reactions and physical processes - and, in the long run, through biological evolution. But the patterns and rates of these changes and their interactions that form higher-order structures, such as ecosystems, follow well-defined patterns of organization and stability. At the planetary scale, the ways in which matter and energy move around the planet, creating various patterns of atmospheric and oceanic circulation, follow the laws of thermodynamics and result in a Stable Climate. A Stable Global Climate is something that can only be legally classified as an intangible natural asset”<sup>41</sup>. Because this vital good for humanity is a way of functioning, a pattern of atmospheric and oceanic circulation, this proper mode of functioning is an intangible good. And there are already several references<sup>42</sup> in doctrine and in official documents, which recognize Climate as an Intangible Good.

Human societies have a long history of recognizing intangible assets, as is the case of intellectual property protection, in its two aspects (copyright and related rights, and industrial property), and it was this legal evolution that created the necessary structural conditions and allowed for the development of the society of knowledge and technological innovation. But the

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<sup>40</sup> A/73/10 ILC REPORT – “Chapter VI, Protection of Atmosphere”, p. 179.

<sup>41</sup> Idem 38.

<sup>42</sup> SIMONE BORG, “International law itself was (and to a certain extent remains) ill-equipped to address state activities affecting negatively an intangible natural resource which spans across and beyond the national territories of states”, Key Note Speech at the unveiling ceremony of the Climate Change Initiative Monument, University of Malta, 21 April 2009, p.1, in <https://www.um.edu.mt/newsoncampus/features/?a=62770> (22.09.2022).

recognition of intangible assets did not stop with the innovations and intellectual creations that are born from the human spirit, but have already extended to intangible natural phenomena, such as the geostationary orbit or radio-magnetic frequencies, in the domain of Space Law. However, “International Law itself was (and to some extent, still is) ‘ill-equipped’ to address activities, public or private, that negatively affect an intangible natural resource that extends within and beyond the national territories of states”<sup>43</sup>. It is already recognized that Climate is a result of a certain *modus operandi* of the Earth System, and that it is an intangible asset. If Law since the early 18th century<sup>44</sup> recognizes the existence of intangible assets, and if this recognition is no longer exclusive to human creations and has already extended to natural phenomena whose use had to be regulated, why can we not innovate legally and recognize also from a legal point of view the most valuable asset of our planet - the life support system - a functioning pattern of the Earth System, to which corresponds a relatively Stable Climate?

Because the recognition and valuation of intangible assets determines the way we manage tangible assets, recognizing the existence of a global intangible legal good may not only be determinant in overcoming the problem that results from the incompatibility between global ecological dynamics and the static/territorial approach to sovereignty, but may also make visible in the economy the vital value of the services that tangible ecological infrastructures produce in the intangible functioning of the Earth System.

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<sup>43</sup> SIMONE BORG, “Climate Change as a Common Concern of Humankind, Twenty Years Later...From UNGA to UNSC”, IUCN Academy of Environmental Law - Towards an Integrated Climate Change and Energy Policy in the European Union, University of Malta, 2007, in <http://www.iucnael.org> (22.09.2022)..

<sup>44</sup> Promulgada durante o reinado da Rainha Ana de Inglaterra, entre 1709 a 1710, entrou em vigor em 10 de abril de 1710. The Statue of Anne ou Copyright Act, concedeu aos editores de livros proteção legal por 14 anos com o início após a publicação. Também concedeu 21 anos de proteção para qualquer livro já impresso. (Portuguese)

## 6. A legal conceptualization of Climate

### a) The Tragedy of a Common Good on a global scale

Climate Change is often described as a “Tragedy of the Commons on a global scale”<sup>45</sup>. According to classical economic doctrine, the fatality of the tragedy in the management of commons is associated with the fact that the benefits resulting from the use/appropriation of an asset/resource are readily accessible to all on a free access basis, a situation that is often also associated with uncertainty about the ownership of the asset. The “insufficient delimitation of property rights resulting in over-exploitation of natural resources.”<sup>46</sup> Beyond the propensity for misuse/appropriation of a good/resource, the vagueness surrounding the ownership of the good, results in another consequence with greater relevance: the impossibility of a collective/governmental solution that can actively ensure the maintenance and provision of the Common Good over time.

Currently, the Common Concern - Climate Change - focuses on the causes and consequences of the problem, without recognizing or defining the Common Good itself - Stable Climate - nor defining to whom it belongs. The “Concern element carries with it no meaning of ownership, but relates to the causes as well as the responses to the Common Concern”<sup>47</sup> to mitigate the problem, that is, acting only as an attempt to control the Good’s use to avoid damage. On the other hand, the concept of Heritage focuses on the exploitation/management of a resource that has the meaning of shared Heritage, *a Common Heritage that belongs to all humanity*. “The concept of the Common Heritage of Humankind generally applies to geographic areas or resources, while the concept of the Common Concern of

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<sup>45</sup> SHAHZAD ANSARI, F. WIJEB AND B. GRAY, “Constructing a Climate Change Logic: An Institutional Perspective on “Tragedy of the Commons”, *Organization Science*, Vol.24, No.4 July-August 2013.

<sup>46</sup> GARRET HARDIN, “The Tragedy of the Commons”, *Science*, 1968, 162(3859), pp. 1243–1248.

<sup>47</sup> WERNER SCHOLTZ, “Human Rights and Climate Change: Extending the Extraterritorial Dimension Via Common Concern”, Chapter 7, *The Common Interest in International Law*, Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann and Christina Voigt (Eds) Intersentia, Cambridge, 2014.



Humankind applies to specific issues.”<sup>48</sup> .

The whole problem is centred on the option of considering Climate Change as a “specific issue”, in the interest of humanity. Avoiding and/or mitigating this problem is a consequence of the abusive use of a good that we thought as being unlimited. This has given rise to the tragedy of the depletion or deterioration of this Good; as opposed to considering the good Stable Climate as a natural phenomenon that represents the favourable functional dimension of the entire Earth System, which exists *de facto* in the natural world. In this sense, this Good should be managed as a Common Good, which implies defining the Good, and giving the ownership of that good to someone. As Alexander Kiss teaches us, “how can a Good that belongs to no one be subject to a legal regime?”<sup>49</sup> .

If preventing Climate Change is a fundamental Common Interest of humanity, it must be recognized that “this notion of common interest of humanity is the fundament of the common heritage of humanity and even, we may say, that this heritage is the materialization of the common interest of humanity, in one area or in certain resources<sup>50</sup> (...)”. Given that Climate Change is not just a feeling/concern, like a war that should be avoided or disarmament that should be promoted, but rather an alteration of a certain natural phenomenon - the functioning pattern of the Earth System that corresponds to a Stable Climate - it is legitimate to state that the Stable Climate, although being an intangible asset, is the materialization of this concern.

The point is that we didn’t know it was finite, nor could we define it. Today not only it is possible to define it, but we know that since it is not a free and

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<sup>48</sup> CHELSEA BOWLING, E. PIERSON AND S. RATTE, “The Common Concern of Humankind: A Potential Framework for a New Internationally Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas”, 2016, in [https://www.un.org/depts/los/biodiversity/prepcom\\_files/BowlingPiersonandRatte\\_Common\\_Concern.pdf](https://www.un.org/depts/los/biodiversity/prepcom_files/BowlingPiersonandRatte_Common_Concern.pdf) (22.09.2022).

<sup>49</sup> ALEXANDER KISS, “La notion de patrimoine commun de l’humanité”, Académie de droit international de La Haye, Recueil des cours, tomo 175, 1982, pp. 103–256.

<sup>50</sup> ALEXANDER KISS, “La notion de patrimoine commun de l’humanité”, Académie de droit international de La Haye, Recueil des cours, tomo 175, 1982, pp. 226.

unlimited Good, it is necessarily a Common Good. Basically, we have to accept that Climate Change is a Tragedy of a Common Good. But because this good is intangible, indivisible, and does not respect State borders, not only has the existence of the good itself not been accepted, but also its inevitable common ownership has not been defined. By not belonging to anyone, the structural conditions are created for the Tragedy of the Common Good to happen. Avoiding the fatality of this Tragedy implies creating the structural conditions for the successful management of this Common Good.

As Ostrom<sup>51</sup> explains to us, there are three fundamental initial conditions to avoid this fatality: a) define and delimit the Common Good that is at stake, b) define a community willing to act as steward – or trustee – of this user/holder resource, c) build a congruent system between the rules of Common Good provision and appropriation.<sup>52</sup>

### **b) Defining the Common Good: Stable Climate as a Common Heritage of Humankind**

The biogeophysical conditions that enabled the pattern of the favourable functioning of the Earth System for the past 11,700 years are the result of millions of years of interactions in the history of life on the planet, and are a true heritage to humanity. These were the intangible conditions that allowed for the development of civilizations, and therefore have a vital/existential value for humanity. They are a true *Grundnorm*<sup>53</sup> on which all other legally protected values depend. In this context, there is a vital need to pass on to future generations the biogeophysical conditions that support

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<sup>51</sup> ELINOR OSTROM ET AL., “Revisiting the Commons: Local Lessons, Global Challenges”, *Science* 284(5412), 1999, pp. 278–282.

<sup>52</sup> A enumeração das regras de Ostrom para uma gestão bem-sucedida de bens comuns, usualmente é seguinte: Limites do bem comum claramente definidos, Equivalência proporcional entre benefícios e custos, Arranjos governativos resultantes da escolha coletiva, Monitorização permanente, Sanções graduadas, Resolução rápida e justa de conflitos, Autonomia local, Governança Policêntrica. (Portuguese)

<sup>53</sup> KIM RAKHYUN & KLAUS BOSSELMANN, “International Environmental Law in the Anthropocene: Towards a Purposive System of Multilateral Environmental Agreements”, *Transnational Environmental Law*, 2, 2013, 285–309, in 10.1017/S2047102513000149.

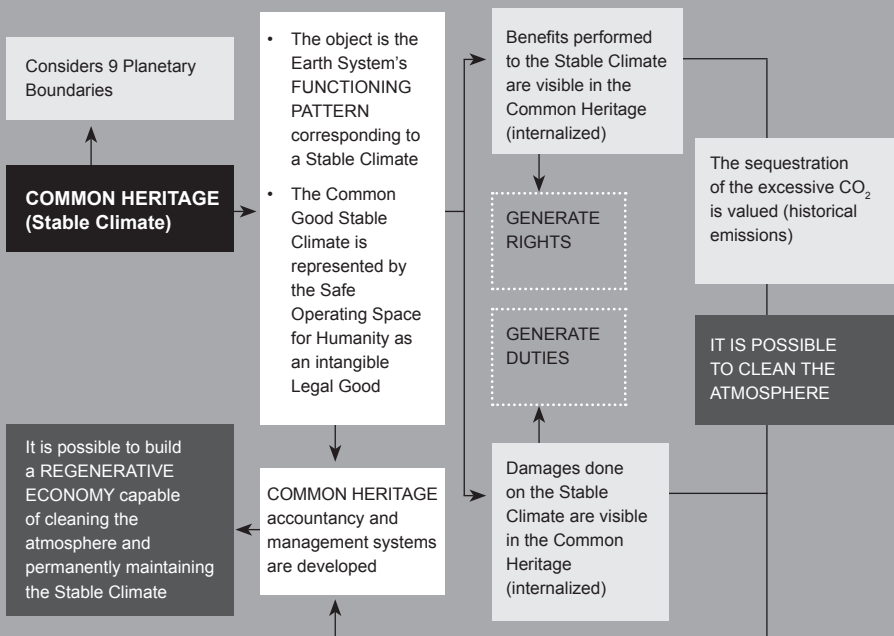


Fig.3 The Common Heritage concept applied to the Stable Climate provide a structural basis for cleaning the atmosphere.

this favourable mode of functioning of the Earth System. Thus, we can argue that the specific state of the Earth System corresponding to the geological period of the Holocene carries the meaning of Heritage, as something we need to maintain in the interest of all. “Heritage is an idea. It is a philosophical idea, a legal concept, because it is something we need to conserve.”<sup>54</sup> Today the Heritage idea can be scientifically defined and measured. “Recognizing the imperative need for an operational law, without resorting to indeterminate and diffuse references, it is necessary, (...) to delimit its object, a task that methodologically is accomplished by importing the pre-legal data provided by the best state of science.”<sup>55</sup>

<sup>54</sup> JOSÉ MANUEL SOBRINO, “Patrimônio é Uma Ideia (...) Patrimônio é Algo que é Necessário Conservar no Interesse de Todos”, *Jornal Quercus*, 50 (Jan-Fev), 2012, 4–5, in <http://www.quercus.pt/images/PDF/QA/QA50.pdf> (22.09.2022). (Portuguese)

<sup>55</sup> MARIA REGINA REDINHA, MARIA RAQUEL GUIMARÃES, “Clima estável: a urgência de um direito, a propósito do caso *Milieudéfensie et al. v. Royal Dutch Shell*”, *RED — Revista Eletrônica de Direito*, Outubro, n.º 3, 2021, p. 3, (Vol.26), in 10.2480/2182-9845\_2021-0003\_0001.

The growing scientific knowledge about the Earth System and the recent description of the nine main control variables that determine its functioning state, through the *Planetary Boundaries (PBs)*<sup>56</sup> provides a possibility to better understand this interconnected functioning state. The PBs consider the highly interconnected intrinsic characteristics of the Earth System, and define a combination of variables, relationships, and parameters that together describe the state of the Earth System. This enables a better understanding of the role of the interaction between chemical, biological, and physical processes in maintaining an Earth System favourable state of functioning for humanity (i.e., the Holocene). As well as humanity's role in pushing this System out of this stable and desirable state. These limits are a combination of science-based limits regarding nine fundamental processes (e.g., climate change, ozone depletion, biosphere integrity, ocean acidification) that together describe the intangible functioning of the Earth System and the limits to the degradation of these processes.<sup>57</sup>

In this context, the favourable biogeophysical state corresponding to an Earth System in a well-functioning state, can be defined quantitatively - the Safe Operating Space for Humankind. Within this space's limits, the system is resilient - that is, it has the capacity to absorb "shocks", maintaining its way of functioning.<sup>58</sup> When these limits are exceeded, the system no longer tends to regain its original "identity", but tends toward a different configuration.<sup>59</sup>

Thus, by delimiting this safe space, a non-territorial and intangible space, this common interest of humanity has been "materialized" in a quantifiable and definable natural resource.

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<sup>56</sup> JOHAN ROCKSTROM ET AL., "A Safe Operating Space for Humanity", *Nature*, 2009, 461 (7263), 472.

<sup>57</sup> TIMOTHY M. LENTON, MARCEL VAN OIJEN, "Gaia as a Complex Adaptive System", 357: 1421 *Philosophical Transactions of the Royal Society B*, 2002, p. 683.

<sup>58</sup> CARL FOLKE ET AL., "Resilience and Sustainable Development: Building Adaptive Capacity in a World of Transformations", 2002.

<sup>59</sup> KIM RAKHYUN & KLAUS BOSSELMANN, "Operationalizing Sustainable Development: Ecological Integrity as Grundnorm of International Law", *Review of European Community & International Environmental Law*, RECIEL 24 (2) 2015 ISSN 2050-0386, 2015, in 10.1111/reel.12109.

“Since literally everything in our society is based on a Stable Climate”<sup>60</sup>, the need for the restoration and maintenance of this Common Good, is a fundamental structural issue for the organization of human societies and existential for the whole humanity, thus cannot be tackled solely with the current strategy of *no-harm/avoided damages*.

Going beyond concern and mitigation, and moving towards a strategy of actively cleaning the atmosphere, regenerating the biosphere, and reversing the Tragedy of the Common Good, implies defining the Common Good, assigning its ownership to all humanity and all generations, and creating a governance system capable of developing incentive mechanisms for the maintenance and restoration of that Good.

We, therefore, propose the implementation of the legal regime of the Common Heritage of Humankind to the Stable Climate, represented by the Safe Operating Space for Humanity, a non-territorial natural reality, intangible, indivisible, and materially non-appropriable, but depreciable and limited, and therefore, subject to the Tragedy of the Commons.

### **c) Heritage - the legal support of a regenerative economy of nature**

In any case, the unavoidable conceptual challenges that Climate imposes on Law and Economics have been, unfortunately, circumvented through the undefined concept of the “Common Concern of Humankind”. The recognition of the existence of a Common Good that spans across borders was avoided, and by doing that, the current concept of wealth creation was maintained, making it impossible to internalize benefits (positive externalities), that is to compensate those who practice positive actions to the Common Good. The consequences, positive or negative, of individual decisions to make benefits to the Common Good Stable Climate, do not fall on those who made the decisions. Instead, the consequences spread across the Common Good that belongs to no one. And because the Common Good does not belong to anyone, no one will be willing to economical-

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<sup>60</sup> JOHAN ROCKSTROM, 10 Year to Transform the future of the Earth, TED, 2020, in [https://www.ted.com/talks/johan\\_rockstrom\\_10\\_years\\_to\\_transform\\_the\\_future\\_of\\_humanity\\_or\\_destabilize\\_the\\_planet](https://www.ted.com/talks/johan_rockstrom_10_years_to_transform_the_future_of_humanity_or_destabilize_the_planet) (22.09.2022).

ly compensate those who performed benefits to a Good that belongs to no one. Consequently, there is no economic rationality for benefits to be produced.

Since in a Global Common Good, it is impossible to make the positive consequences fall entirely on those who produced these benefits, the only way to internalize the benefits to those who practiced them is by creating a compensation system. This would fulfil the second structural condition identified by Elinor Ostrom for the management of Common Goods and allow for collective action: the existence of a congruent system between the rules of provision and appropriation of the Common Good. Currently, neither one of these conditions is present in the Paris Agreement.

That is, those who produce benefits for all do not receive the proper compensation, and therefore, nobody takes care of or is responsible for something that belongs to nobody. Currently, wealth creation emerge from activities that are usually associated with emissions, or in the reduction/neutralization of emissions, but the vital wealth creation that the provision of the Common Good Stable Climate generates throughout society is not recognized. States and individuals driven by self-interest have no incentive to maintain and restore ecosystems, once the benefits are spread in a Common Good where no one can be excluded from access to those benefits, and today there is no way to internalize those benefits.

This perpetuates the machine that is set up to destroy the foundations of life, because only through the extraction/destruction of natural resources, wealth creation is recognized in society. Changing this cycle of destruction implies representing/capturing and internalizing the value of intangible services produced by tangible natural infrastructures - in the economy. For example, ecological economists estimate that the ecological services provided by a whale (absorption of CO<sub>2</sub>, oxygen production, organic matter, etc.), are valued at about 2 million Euros.<sup>61</sup> If this value is much higher than the value of whale meat, how will it be possible to incorporate this

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<sup>61</sup> RALPH CHAMI, ET AL., “Nature’s Solution to Climate Change, International Monetary Fund, Finance & Development”, 2019, in <https://www.imf.org/en/Publications/fandd/issues/2019/12/natures-solution-to-climate-change-chami> (22.09.2022) and <https://oceana.org/blog/watch-why-each-whale-worth-more-2-million/> (22.09.2022).

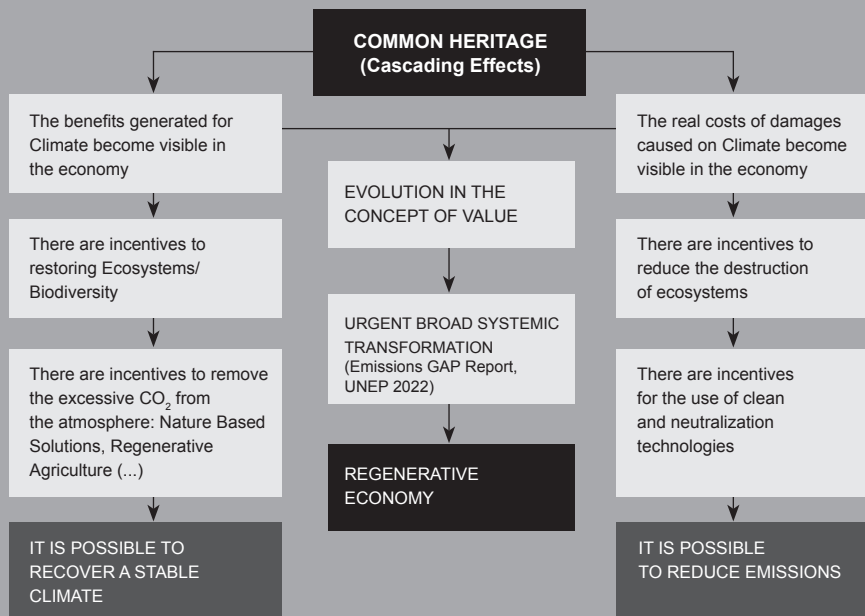


Fig.4 – Possible cascading effects following the recognition of the Stable Climate as a Common Heritage of Humankind.

value into the economy, and by doing so ensure the survival of these animals and the maintenance of the services they provide to the functioning of the entire Earth System? Who owns these whales that migrate throughout the oceans and territorial waters of various countries? Who should be compensated based on the corresponding value of these vital services to promote the continued existence and the maintenance of these services? And what is applicable to whales could be applied to forests, mangroves, tundra, wetlands, mountain areas, and all ecosystems whose ecological services represent a much higher value to humanity, when compared to the value obtained by simply destroying the ecosystems or the species.

Today, the economic value of functional dimension of the ecosystem services is already recognized and measurable, apart from the intrinsic value of ecosystems and native species, based on the extensive work already done by ecological economists. The challenge is to find solutions to internalize these benefits, and this involves defining the Common Good.

Therefore, recognizing the Stable Climate as the Common Heritage of Humankind, defined as the Intangible Global Common Good that exists within and outside of States, is the structural basis that will allow for building an economy capable of regenerating the natural processes that support life, and recognizing the value that these services represent to humanity. “It is clear that the restoration of the Common Good, or the common intangible software of the Earth System, will imply some evolution in the interpretation of the Common Heritage of Humanity, but the “diversity of regimes corresponding to the Common Heritage of Humankind and unity of its foundations.”<sup>62</sup> This clearly indicates the possibility of improvement and adaptation.” The most important is to give visibility to the positive contributions derived from its maintenance, accompanied with incentives, mechanisms and balance sheets for contributions to each of the parts.<sup>63</sup>

#### **d) The Portuguese Climate Law - Climate Heritage as a goal of Climate Diplomacy**

The reopening of the discussion about the legal status of Climate began when the Recommendation for a Climate Law of the Portuguese National Council for the Environment and Sustainable Development (CNADS)<sup>64</sup> stated: “In a matter such as Climate, in which the property itself is difficult to define and frame in the existing legal framework, it is essential to resort to the most recent scientific knowledge in order to build upon them definitions that can ground the legislative options. When climate becomes an issue that needs to be addressed, the problem arises of which good is to be restored and maintain. With two distinct approaches emerging: (a) Good that should be the object of restoration and permanent maintenance,

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<sup>62</sup> ALEXANDER KISS, “La notion de patrimoine commun de l’humanité”, Académie de droit international de La Haye, Recueil des cours, tomo 175, 1982, p. 225.

<sup>63</sup> PAULO MAGALHÃES, “Common Interest, Concern or Heritage? The “commons” as a structural support for an Earth System Law”, Earth system law: standing on the precipice of the Anthropocene, Routledge, 2021, in <https://www.routledge.com/Earth-System-Law-Standing-on-the-Precipice-of-the-Anthropocene/Cadman-Hurlbert-Simonelli/p/book/9781032056241> (22.09.2022).

<sup>64</sup> CONSELHO NACIONAL DO AMBIENTE E DO DESENVOLVIMENTO SUSTENTÁVEL (CNADS), Recomendação sobre uma Lei do Clima, 12 Fevereiro de 2021, [https://www.cnads.pt/images/documentos/2021\\_recomendacao-leiclima.pdf](https://www.cnads.pt/images/documentos/2021_recomendacao-leiclima.pdf) (22.09.2022).



which implies the concept of Stable Climate – the Common Heritage Stable Climate; (b) Damage that should be avoided, centred on Climate Change – the Common Concern Climate Change. The current need to go beyond emission reductions, by using new CO<sub>2</sub> capture technologies and nature-based solutions, and to actively and deliberately restore Climate requires a new legislative framework to regulate these activities.

”Considering the technological options that are required and the time period that the future Climate Law aims to frame and adapt, it is important to mention that the future regulation of these activities should be guaranteed within the international framework. (...) The restoration of a Stable Climate implies an integrated approach to the Earth System. It is recommended that the Climate Law recognizes the functioning pattern of the Earth System corresponding to a Stable Climate as a Common Heritage of Humankind, a legal support for the management of this Global Common Good at the international level.”<sup>65</sup> This recommendation was accepted by the Portuguese Parliament on November 5th, 2021, through the inclusion of the diplomatic goal of recognizing the Stable Climate as a Heritage of Humankind by the United Nations in Art.15, f) in the Climate Law. This can be a contribution of the Portuguese language to a new world order, and start a process of building a common future around the management, restoration of a Common Heritage that all peoples and generations depend on - the Stable Climate.

“A consistent proposal would be, perhaps, to bring into the *camera obscura* of Law the notion of a Stable Climate - manifestation of a stable and definable pattern of the functioning of the Climate System, within the limits of natural variability that was observed after the last glaciation (Holocene period), and that resulted in a rich functional biodiversity. A notion that passes the sieve of the strictest legal technique because, despite its intangibility, it is based on a measurable physicality that gives it an objective determination and a concretizing drive. The Law has, moreover, a secular experience in dealing with intangible assets. *Et quidem naturali jure communia sunt omnium haec: aer, aqua profluens, et mare et per hoc litora*

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<sup>65</sup> CONSELHO NACIONAL DO AMBIENTE E DO DESENVOLVIMENTO SUSTENTÁVEL (CNADS), Recomendação sobre uma Lei do Clima, 12 Fevereiro de 2021, [https://www.cnads.pt/images/documentos/2021\\_recomendacao-leiclima.pdf](https://www.cnads.pt/images/documentos/2021_recomendacao-leiclima.pdf) (22.09.2022).

*maris* (Institutas, II, I, §I - the Institutes of Justinian I -) and increasingly refines a flexible instrument of adaptation (indeterminate concepts, general clauses, “recomendology”, codes of good practices, etc.) to the times of acceleration and fluidization of modernity (Zygmunt Bauman) which, undoubtedly, make it possible to accommodate a notion that, although complex, has the added advantage of scientific parameterization over others”<sup>66</sup>.

## 7. Conclusion

The recognition of a Common Heritage that spans across and beyond all borders, that belongs to all humanity and to all generations, should become the structural basis for the development of a regenerative economy of nature, that is, one that allows the transition from an exclusive logic of no-harm rule to a logic of production of benefits to the Common Heritage, of cleaning up and ensuring the maintenance of what belongs to all. And this implies the institutionalization of the management of this Common Good, which also means an evolution of global governance. Without this profound but necessary change of perspective in public International Law (the recognition that a “functional aspect” of the Earth System, which, although overlapping, is distinct from the static concept of territorial sovereignty, and which must therefore be autonomized), it will not be possible to find an effective platform for global political and economic cooperation. It is the only possibility for overcoming the current impasse that seems to be leading the international community towards an irreversible collapse, despite the increasingly painful warnings. The current model of considering Climate Change as a Common Concern (no-harm rule) has clearly been proven to be insufficient and prevents the development of a society capable of aiming at sustainability, and of doing what is necessary to avoid climate catastrophe. Climate Change is not a Concern, but rather a crucial problem of our society, on whose resolution depends the very historical and existential continuity of humanity. Discussing the legal status of our most vital and precious Common Good is not something to postpone any further.

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<sup>66</sup> MARIA REGINA, REDINHA e MARIA RAQUEL GUIMARÃES, “Clima estável: a urgência de um direito, a propósito do caso”, *Milieudéfensie et al. v. Royal Dutch Shell*, RED - Revista Eletrônica de Direito, Outubro 2021 – Nº 3, pag.3, (Vol 26), in 10.2480/2182-9845\_2021-0003\_0001.

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# ***Earth Trusteeship and Restorative Justice***

by Femke Wijdekop

*“Restorative justice is the pathway to a truly just future. The current adversarial legal system permits or even promotes destructive actions as long as they are compensated for in one way or the other. Restorative justice promotes a fundamental sense of seeking to maintain a balance in Nature, leveraging on the interconnectedness of beings and seeing offenses as aberrations. In terms of ecological crimes, restorative justice can help offenders unlearn environmental bad behaviours, repair harms and not merely pay for such, and wake up to living responsibly and in less disruptive manners.”*

Nnimmo Bassey, environmental activist and writer

## **Introduction**

Our legal system contributes to our disconnection from the Earth. It mistakenly treats nature as a commodity and entitles us to own and exploit the natural world. However, treating nature as property leads to violations of both human rights and nature’s rights. When we continue to exploit nature, this will sooner or later result in human suffering. Examples of such human suffering include:

- Unbridled extraction of natural resources and fossil fuels leads to climate change and environmental destruction.
- Climate change and environmental destruction result in the violation of human rights such as the right to life and the right to health. For example, European countries recorded thousands of additional deaths during the July 2022 heatwave according to POLITICO’s analysis of data published by several national

statistics offices.<sup>1</sup>

- Environmental defenders who stand up against the exploitation of nature are under attack. According to Global Witness' 2021 report *Last Line of Defence*, more than four environmental defenders are murdered every week.<sup>2</sup>

Ecologically conscious lawyers are putting forward innovative solutions to counter the exploitation of nature – solutions that also question the outdated economic growth imperative and anthropocentric bias of our legal system. Among these solutions are climate cases that focus on inter-generational justice, the movement to criminalize the mass damage and destruction of ecosystems (i.e.; “ecocide”), initiatives to acknowledge the rights of nature and of course the efforts to develop Earth Trusteeship as a new governance paradigm, as discussed in this book.

But are the biodiversity crisis, ecosystem destruction, and climate change best addressed within the traditional adversarial legal system? If we ostracize those responsible for large-scale environmental harm, does this not strengthen the separation consciousness that we are trying to rise above? A more peaceful and system-oriented approach towards protecting the integrity of the Earth's ecological systems seems better equipped to contribute to a culture of interbeing. Could Restorative justice, therefore, help humanity to once again become a member of good standing within the Earth Community?

## Restorative Justice

Restorative justice is a fast-growing social movement that aims to redirect society's retributive response to crime. It is a process whereby all the parties with a stake in a particular offence come together to collectively resolve how to deal with the aftermath of the offence and its implications

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<sup>1</sup> Giovanna Coi and Zia Weise *Excess deaths surged as heat wave hit Europe* (3 August 2022) POLITICO <[www.politico.eu](http://www.politico.eu)>

<sup>2</sup> *Last Line of defence* (13 September 2022) Global Witness <[www.globalwitness.org](http://www.globalwitness.org)>.,

for the future.<sup>3</sup> Restorative justice emerged in North America during the 1970s when alternative approaches to the criminal justice system were becoming a trend. The Mennonite Church played an important role in developing the first restorative processes in Canada and the United States. At the same time, many of the values, principles, and practices of restorative justice reflect those of indigenous cultures, such as the Māori in New Zealand and the First Nations People of Canada and the United States. In these indigenous cultures, community members collectively participate in finding a solution for conflict.

Restorative justice views crime as a wrong against other members of the community rather than a depersonalized breaking of the law. It emphasizes healing the wounds of the victims, offenders, and communities, caused or revealed by the criminal behaviour. It seeks to achieve such healing through community-based processes, which offer an inclusive way of dealing with offenders and victims of crime through facilitated meetings. These processes focus on accountability, education of the offender, and seek to repair the damage done by crime. They also create the possibility of reconciliation through practising compassion, healing, mercy, and forgiveness.

Even though restorative justice today is still a strongly anthropocentric approach, thanks to its underlying relational philosophy, it has the potential, more than any other justice approach, to incorporate ecocentric perspectives, indigenous justice approaches and perspectives from the rights of nature movement.<sup>4</sup> Restorative justice approaches crime as a violation of relationships and emphasises the need for relational healing. Our relationship with the other, non-human members of the Earth community is in urgent need of healing and this calls for a questioning and correcting the dominant anthropocentric worldview.

Restorative justice processes allow for a wide range of values and world-

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<sup>3</sup> T F Marshall *The Evolution of Restorative Justice in Britain* (1996) 4 *European Journal on Criminal Policy and Law* 21 at 37.

<sup>4</sup> Brunilda Pali and Ivo Aertsen *Inhabiting a Vulnerable and Wounded Earth: Restoring Response-Ability* (2021) 4(1) *The International Journal of Restorative Justice* 3 at 5.

views to be expressed and because of this 'open character', it might be uniquely positioned to facilitate indigenous perspectives and rights of nature approaches that can challenge this anthropocentric worldview. The fact that restorative justice has indigenous roots and uses indigenous processes such as peace-making circles, might further assist in creating a conducive and culturally appropriate environment for the expression of Indigenous cosmologies and justice approaches while strengthening the agency of indigenous people as spokespersons for the harmed environment.

As other contributions in this book have demonstrated, a function of Earth Trusteeship is to give legal expression to the inherent value of nature and to cultivate a culture of harmonious relationships between nature and humans. Restorative justice aligns with this reconciling feature of Earth Trusteeship, as it is concerned with rehabilitation of offenders through reconciliation with victims and the community at large and with the cultivation of harmonious relationships.

## **Restorative Justice applied to environmental harms**

In New Zealand, Australia and Canada, restorative justice has been successfully applied to environmental harms. Case law from these countries shows a variety of restorative outcomes, including: apologies, restoration of environmental harm (e.g.; ecosystem restoration) and prevention of future harm through environmental education of the offender, compensatory restoration of environments elsewhere, payment of compensation to the victims, and community service work.<sup>5</sup>

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<sup>5</sup> Femke Wijdekop *Restorative Justice Responses to Environmental Harm* (IUCN, Amsterdam, 2019) at 79.

*Increasing cultural and ecological awareness through restorative justice: Garrett v Williams*

The Australian case of *Garrett v Williams* (2007) 151 LGERA 92 is a good example of how a restorative justice intervention can increase cultural and environmental awareness and sensitivity in the offender. In this case, Garrett's company destroyed several Aboriginal artifacts and damaged an Aboriginal natural sacred site while conducting mining operations. During the restorative justice conference, an Aboriginal tribal elder expressed her grief and outrage at the damage. After listening to her, Garrett expressed regret and asked the elder for forgiveness for destroying her cultural heritage. The outcome of the restorative justice conference was Garrett's commitment to financially compensate the victims, to provide future training and employment opportunities for the local Aboriginal community, and to involve the community in any future salvage operations of Aboriginal artifacts.

In New Zealand and Canada, trees and rivers have been recognized as victims of environmental crime in their own right and have been represented by indigenous organizations in the restorative process.<sup>6</sup> In Brazil, Dominic Barter's work with restorative circles in the aftermath of the Doce River ecocide has contributed to the awakening that the said river is an entity with its own rights which needs to be restored to health.<sup>7</sup> Recognizing the environment as a victim of environmental crime and representing it in the restorative justice process grants the Earth a voice, validity, and respect. This is a transformative act as it recognizes the intrinsic value and 'aliveness' of the Earth. It contributes to transforming humanity's relationship with the Earth from one of exploitation to that of Earth Trusteeship.

<sup>6</sup> Wijdekop, above n 5, at 41–43.

<sup>7</sup> *Interview with Restorative Circles pioneer Dominic Barter* Earth Restorative Justice <[www.earthrestorativejustice.org](http://www.earthrestorativejustice.org)>.

Another interesting pioneering effort took place in Uganda. On 22 December 2020, the Council of the Buliisa District in Western Uganda, in collaboration with the indigenous Bagungu People, passed an Ordinance that recognised the customary laws of the Bagungu, who live along the shores of Lake Albert. The Ordinance provides for the protection of an interconnected network of sacred natural sites embedded within Bagungu ancestral territory - places of high spiritual, cultural and ecological significance. The Ordinance recognises the rights of the custodians of the sacred natural sites to continue to access these sites, to carry out ceremonies and to protect the sites. Furthermore, it calls for restorative justice in case an offence is committed against the sacred natural sites. Those who violate customary laws are required to make amends in ways that restore the dignity and integrity of the sacred natural sites, such as restoring damaged areas, planting trees or offering seeds.<sup>8</sup> The restorative provision in this Ordinance makes it clear that the sacred natural sites have intrinsic rather than utilitarian value, and are considered as legal subjects rather than 'lifeless' objects. It will be interesting to see how the restorative justice provision of the Ordinance will be upheld and function in practice. If successful, it could be a template for other jurisdictions that would like to make local ordinances that seek to address violations of sacred natural sites and infringements of Earth Trusteeship duties by using restorative tools.

Finally, there has been a promising experiment with restorative processes at the 2011 Ecocide Mock Trial, organised by the late Scottish barrister Polly Higgins in the Supreme Court of England and Wales to demonstrate the viability of a law of ecocide. Ecocide, according to the definition revealed in June 2021 by the Independent Expert Panel for the Legal Definition of Ecocide<sup>9</sup>, means: "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."<sup>10</sup> Examples of ecocide include large-scale deforestation of the Amazon,

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<sup>8</sup> *Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites* (29 March 2021) The Gaia Foundation <[www.gaiafoundation.org](http://www.gaiafoundation.org)>.

<sup>9</sup> *Independent Expert Panel for the Legal Definition of Ecocide Ecocide Law* <[www.ecocidelaw.com](http://www.ecocidelaw.com)>.

<sup>10</sup> *Legal Definition of Ecocide Stop Ecocide International* <[www.stopecocide.earth](http://www.stopecocide.earth)>.

oil spills in the Niger Delta and the Athabasca Tar Sands. Higgins, who passed away on 20 April 2019 at age 50, but whose pioneering work to recognize ecocide as an international crime is continued by her foundation Stop Ecocide,<sup>11</sup> saw Earth Trusteeship as a new paradigm in which we take care of our land and recognise the inherent value of life.<sup>12</sup> She was also very interested in the use of restorative justice as a dispute resolution mechanism. According to Higgins:<sup>13</sup>

*It (restorative justice) offers a safe space for a CEO, company director, whoever, to accept responsibility for decisions they have made which lead to Ecocide, and then to step into a restorative justice circle. There, they come together with others who represent the beings who've been harmed, and collectively they decide what can be put in place to restore the land, to mend the damage. That's the really radical part of the Ecocide law, offering up the tools to allow those who have made decisions which cause harm to face that harm in a healing space. Yes, accountability is essential – but it's no use just locking people up, or perpetuating a culture of blame. It's about finding ways of healing, and so changing things – and people – in a more meaningful and enduring way.*

In the 2011 Mock Ecocide Trial, two fictional Chief Executive Officers were put on trial for causing ecocide in the Athabasca Tar sands and the Gulf of Mexico. As part of this Mock Trial, King's Counsel and former Chair of the UK Restorative Justice Council, Lawrence Kershen, facilitated the restorative circle that was part of the Athabasca Tar Sands case.<sup>14</sup> He says:

*The Ecocide Restorative Justice process was very successful in demonstrating how restorative justice could be used in cases of*

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<sup>11</sup> Stop Ecocide International <[www.stopecocide.earth](http://www.stopecocide.earth)>.

<sup>12</sup> Polly Higgins *What Will Your Legacy Be?* Resurgence & Ecologist <[www.resurgence.org](http://www.resurgence.org)>.

<sup>13</sup> Sharon Blackie *If Women Rose Rooted: The Journey to Authenticity and Belonging* (September Publishing, Tewkesbury, 2016) at 56.

<sup>14</sup> Watch the recording of the restorative circle here: <https://www.youtube.com/watch?v=PSDMXpKNQzk>

*major environmental harm, within the limitations of it being a role play. One of the major lessons was the challenge of identifying who are appropriate parties and what interests could and should be represented. So, we had participants who spoke on behalf of the Earth, the birds, Future Generations, as well as those who were more immediately harmed by the ecocide such as the Haisla People, a First Nations group that had in reality been profoundly affected by the Athabasca tragedy. Another lesson was how it was possible to distinguish in sentencing between the CEO who declined to take part in the restorative process (who received a sentence of four years imprisonment) and the other CEO who agreed to take part, whose sentence was deferred to allow him to demonstrate that he was willing to implement the Action Plan that had been agreed in the restorative process. And it was hugely gratifying how the judge was able to incorporate the points of the Action Plan into the conditions of the Deferred Sentence - which would be a very powerful incentive for a defendant to implement the necessary action arrived at in the restorative process.<sup>15</sup>*

The Action Plan for the Athabasca Tar Sands case stipulated among others that the CEO of Global Petroleum Company (GPC) would set up a working group that would study the possibility of establishing a Council of Legal Interests to oversee GPC's future projects, in which representatives of future generations and the Earth would have a seat. The outcome agreement of the restorative circle also included restoration orders to remove all tailing ponds and restore the affected area to the condition which predated the pollution and damage, to promote the restoration of birdlife, fauna and wildlife within the affected area, and to suspend operations and cease all tar sand extraction.<sup>16</sup>

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<sup>15</sup> Email from Lawrence Kershen KC, and former Chair of the UK Restorative Justice Council, regarding the Mock Trial on the Athabasca Tar Sands and the Gulf of Mexico (23 April, 2019).

<sup>16</sup> Wijdekop, above n 5, at 106–110.



## Conclusion

Because of its open character, indigenous roots, and focus on reconciliation, restorative justice holds great potential to address the deeper causes of our ecological crisis and to help humans become ecologically literate, mature and rehabilitated members of the Earth Community. Restorative justice is based on the assumption of our interconnectedness and on the view that wrongdoing is a symptom that something is out of balance in the web of relationships. Indeed, environmental harm is a symptom of our dysfunctional relationship with the Earth and that relationship is in dire need of restoration. Restoration in this sense means that we as humans realize our shared belonging to the living Earth. We are not separate, atomized individuals or a mere “homo economicus” as neoliberalism would like us to believe. Rather, we are embedded in the wider self of the Earth’s body and because of this, our wellbeing depends on the Earth’s wellbeing.

Pope Francis echoed this message of interconnection when he wrote the following words in a letter sent to the Argentinean Association of Professors of Criminal Law on 9 November, 2022:<sup>17</sup>

*We need jurists to debate and propose new forms of legal protection of Nature, for the human right to a healthy environment cannot be safeguarded without first safeguarding the rights of Nature. More specifically, the human right to life is meaningless if the ecosystems that sustain humanity do not have the right to exist. It is therefore indispensable to create a normative system that includes insurmountable limits and ensures the protection of ecosystems.*

In the same letter, the Pope reaffirmed his support for the recognition of ecocide as a crime against peace. Other faith leaders also voiced their support for the recognition of ecocide as an international crime, on the basis of their understanding of our interconnection with the natural world,

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<sup>17</sup> Pope Francis Repeats Call For The Inclusion of Ecocide As a Fifth Crime Against Peace (14 November 2022) Stop Ecocide International <[www.stopecocide.earth](http://www.stopecocide.earth)>.

in the book *Faith Voices for Ecocide Law*. *Faith Voices for Ecocide Law* is a remarkable collection of texts, drawing on the vast wisdom, teachings and practices of the world religions and indigenous spiritual traditions, that was launched during COP27.<sup>18</sup>

This chapter attempts to demonstrate that the much needed awareness of our interconnectedness with nature can be advanced through restorative conferences and circles, in which the harmed environment and even future generations are represented by a human guardian or spokesperson. Recognizing the environment as a victim of environmental crime and representing it in a restorative justice process grants the Earth a voice, validity, and respect. This is a transformative act as it recognizes the intrinsic value and 'aliveness' of the Earth. And when an offender is confronted with the harmful effect of his or her actions on the natural world in a restorative process, this might even plant seeds for ecological awakening and a change of heart.

Pioneering efforts from New Zealand, Australia, Canada, Brazil, Uganda and the United Kingdom can inspire us in developing restorative responses to environmental harms in our globalised yet local context. The fact that ecosystem restoration is among the outcomes of restorative processes in cases of environmental harm, pinpoints to how aligned restorative justice really is with the spirit of The 2021–2030 UN Decade on Ecosystem Restoration, and with the principles of Earth Trusteeship.

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<sup>18</sup> A free digital format of *Faith Voices For Ecocide Law* can be found here: <https://www.faithforecodelaw.earth/2022/11/08/book-release-at-cop27/>

# *Earth Trusteeship: Laying a Foundation Stone for Eco-Peace*

## **Governance innovations to protect, care for, and cultivate our Planet**

**Hans van Willenswaard, Thailand / the Netherlands**

**Right Livelihood College Bangkok**

*“Every man or woman should not only ask himself or herself what he or she is going to do in the world, but also ask ‘Will there be a world in which I can live?’”*

U Thant (1909-‘74), United Nations Secretary-General 1961-‘71.  
First speech abroad, Uppsala, Sweden, May 6, 1962.

### **Abstract**

Confronted with an emergency where humanity is more than ever at risk of extinction, bold action is needed. Food security not only is under threat from an unexpected and cruel war, droughts and extreme weather impact harvests all over the world. Sea levels rise. Pollution increases, biodiversity goes down. Current Secretary-General of the United Nations António Guterres exclaimed at the Petersberg Climate Dialogue, Berlin, 18 July 2022: “We have a choice. Collective action or collective suicide. It is in our hands.” From this perspective, the UN *High-Level Advisory Board on Effective Multilateralism* (HLAB) – appointed by the Sec.-General – instigates “open coalition networking” towards the *Summit of the Future*, September 2024. The summit is due to bring together progress on all issues articulated in the *Our Common Agenda* document proposed by the Secretary-General.

HLAB’s focus is on the global commons and global public goods. New, 21st-century governance principles to be formulated from the unique ‘global commons’ angle may ultimately apply to all good governance. It would be proof of their quality and strength, if these principles were valid both

within and without national jurisdictions. Global commons are by tradition beyond, but climate governance operates simultaneously within and outside national regimes. “*Earth Trusteeship*” – defined here as: the responsibility to exercise collaborative co-ownership rights over Earth, for the common good and the wellbeing of future generations – may offer a new foundation for international law and consequent global governance innovation. We may consider the whole Earth as our global commons. The HLAB launched open consultations and Right Livelihood College Bangkok – initiator of the Earth Trusteeship Working Group (ETWG)<sup>1</sup> – submitted concrete recommendations.

Are we on our way to forming an Earth community, a self-determining global citizenry of *Earth trustees* caring for the *community of life*? This is the leading question of this article.

At stake are two extremely vital paradigms determining current climate governance: the sovereignty of nation-states (anchored in the UN Charter) and “property” (Art. 17 of the Universal Declaration of Human Rights); more in particular the impacts of corporate property rights and legal personhood of corporations. As the said paradigms are so vital, it may be very controversial – but unavoidable – to place them on agendas of public, *academia-civil society* as well as international diplomatic dialogue. This article concludes with the identification of three future trends toward “the transformation we need”: trusteeship, global citizenship, and Eco-Peace. And recommendations for do-able steps toward *Earth Trusteeship Dialogue*.

## **A peace pact with Nature. Can Earth Trusteeship lay a foundation stone?**

“We are finally starting to form a peace pact with Nature” said UN Sec.-General Guterres at the Biodiversity COP15, December 2022<sup>2</sup>, just months after his Berlin statement where he warned of collective suicide. A major

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<sup>1</sup> The publisher of this book. Membership in Appendix.

<sup>2</sup> UN News, 19 December 2022 <https://news.un.org/en/story/2022/12/1131842>

achievement of COP15 being the “30x30 frame”. Did we reach a turning point?

Fiore Longo, Director of the French chapter of *Survival International*, a Right Livelihood Award-winning organisation for the protection of indigenous peoples, said in an interview<sup>3</sup>: “The idea to set aside 30 percent of the land and oceans and protect these areas sounds very good for the environment.” The so-called 30x30 frame was accepted by a majority of participating countries in the Biodiversity COP15. Fiore Longo continued:

*“But this doesn’t mean 30 percent of the land and biodiversity will be protected. It means that they will be turned into Protected Areas (PAs). You might think that extractive industries will not get into these areas, but this is not the case. The moment these areas are notified as PAs, indigenous and local communities will lose access to these areas.”*

Indigenous peoples want to see their contribution to nature protection and their rights fundamentally recognized not only by law but in practice.

*“We demand that indigenous peoples have the full and effective participation of any decision-making process at all U.N. meetings and forums using the principles of free, prior and informed consent,” “At COP15, indigenous peoples’ rights need to be in all targets,” said Joziléia Daniza Jagso, a member of Brazil’s Kaingang people and co-founder of Brazil’s National Association of Ancestral Indigenous Women Warriors.”<sup>4</sup>*

The question is whether existing legal and governance regimes can effectively facilitate durable self-organisation and communal natural resourc-

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<sup>3</sup> COP15 Montreal: ‘30x30 will create more militarised Protected Areas’, Down-To-Earth website <https://www.downtoearth.org.in/interviews/forests/cop15-montreal-30x30-will-create-more-militarised-protected-areas--86534>

<sup>4</sup> *The clash between indigenous rights and nature preservation* Politico <https://www.politico.eu/article/cop-15-montreal-biodiversity-the-clash-between-indigenous-rights-and-nature-preservation/>

es management. Can various stakeholders reconcile their interests and develop *consensus* on how to govern our ‘global commons’?<sup>5</sup> Here is where Earth Trusteeship comes in. Can an attitude of care for the community of life and regenerative cultivation of the Earth for the common good be translated into effective 21st-century, multilateralism?

## Introduction. A layperson’s contribution.

In early 2022 I had an unexpected chance to briefly contribute to an experts’ *roundtable on Governance of the Global Commons and Global Public Goods*. The roundtable was convened by the United Nations University Centre for Policy Research (UNU-CPR) as public input in an emerging UN Advisory Board. The invitation for a virtual meeting on 18 February 2022, with due sense of urgency, explained<sup>6</sup>:

*“In the **Our Common Agenda** report, the Secretary General laid out a broad vision for a revitalized approach to global governance, announcing the formation of a High-Level Advisory Board on Global Public Goods (HLAB). This body will be tasked with identifying where governance improvements are most needed and proposing options for how this might be achieved. One of the most important areas for the HLAB’s work will be the environment, where decades of work to build global governance regimes have yet to address the triple planetary crisis of global warming, biodiversity loss, and pollution.”*

Recommendations of the High-Level Advisory Board (HLAB) – later named “on Effective Multilateralism” – feed into the *Summit of the Future*. The summit was expected to be held in conjunction with the 78th session of the General Assembly, September 2023, but due to its complexity and importance, was postponed to 2024. The summit is anticipated to build

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<sup>5</sup> A point in case is the Global Commons Alliance with “Earth HQ” in New York, financed by Rockefeller Philanthropy Advisors, a powerful philanthropy arm of the business sector <https://globalcommonsalliance.org/>

<sup>6</sup> Governance Innovations to Protect our Planet. An Experts Roundtable in Support of Our Common Agenda, 18 February 2022. UNU/CPR communication, 7 February 2022.

on a (hoped for) emerging – critically needed – turning point in global governance co-design: from un-sustainable, short-term and unjust practices and principles toward new 21st century governance dynamics inclusive of a perspective on future generations. Right Livelihood College Bangkok, from the periphery of the international arena, synthesizes – and proposes for consensus – *Eco-Peace* as a common goal.

Within this framework, my layperson’s roundtable contribution simply was: **“No Global Governance without Global Citizenship”**. This is a challenging statement as it tears open a creative space partially beyond the power of nation-states. So, outside – albeit logically complementary to and overlapping – the jurisdiction of the sovereign member states system constituting the “United Nations”. At this stage in history, there is no organization, no political body, no governance entity that global citizens can consider their legal home<sup>7</sup>. Is contemporary *global citizenship* therefore limited to a “cultural identity”, at most?<sup>8</sup> Or are we, in efforts of redefining our relationship with Earth, with Nature, indeed on our way to forming an Earth community, a self-determining global (or world<sup>9</sup>) citizenship of *Earth Trustees*? Could a growing awareness and adoption of Earth Trusteeship co-create an era of Eco-Peace?

Arthur Lyon Dahl<sup>10</sup> formulates in an article *Addressing sustainability*

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<sup>7</sup> The High-Level Panel on UN-Civil Society. Civil Society and Global Governance, 2016, chaired by Fernando Henrique Cardoso remained largely inconclusive and was criticized for lack of “mapping” of civil society. Later the International Service for Human Rights (ISHR) identified in 10 appalling case studies The Backlash Against Civil Society Access and Participation at the UN, 30 May 2018.

<sup>8</sup> UNESCO Global citizenship education <https://en.unesco.org/themes/gced>

<sup>9</sup> The We The Peoples Campaign of Democracy Without Borders, Democracy International and CIVICUS, supported by a growing number of organisations uses both terms “world citizens” and “global citizens”.

<sup>10</sup> Arthur Lyon Dahl has been a consultant to the World Bank on indicators of development, Visiting Professor at the University of Brighton (UK) and Senior Advisor to its project on values-based indicators of education for sustainable development, and Co-coordinator of the UNEP Major Groups & Stakeholders Advisory Group on International Environmental Governance. More generally, his consultancies have covered indicators of sustainability, environmental assessment and observing strategies, coral reefs, biodiversity, islands, environmental education, and social and economic development. A specialist on coral reefs

**challenges: a framework for material and spiritual transformation:**

*“This collective trusteeship constitutes the moral foundation of human rights and a sustainable society. It follows that the welfare of each country and community can only be derived from the well-being of the whole planet.” (Dahl, 2014).* From this perspective, Right Livelihood College Bangkok made a passionate recommendation for global citizenship empowerment by means of attributing global citizens with trusteeship responsibilities-and-rights toward global governance.

Moreover, empowerment of global citizenship should be complemented with an expansion of the common purpose underpinning the UNU round-table convening message – as well as the purpose of the later HLAB – from “protecting the environment” to “care for and cultivation of the community of life”.

Community of life was introduced, in The Hague 2000<sup>11</sup>, as a core concept of the Earth Charter<sup>12</sup>. The community of life embraces all living beings and includes humanity as its integral part. This in contrast with “environment” which is surrounding humanity as an external condition. Care and cultivation imply full engagement and inter-connectedness, whereas protection may be performed from an external position.

## **Right Livelihood College Bangkok: action-research platform**

Uncharacteristically for participants of an experts’ panel on this subject, I am a complete layperson in international law. I made my comments, and

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and small island developing States (SIDS), he spent many years in the South Pacific and organized the Pacific Regional Environment Programme (SPREP).

<sup>11</sup> Earth Charter website

<sup>12</sup> Remarkably, the Earth Charter was strongly promoted by Mikhail Gorbachev. Its launch was supported by the Dutch government.



I am writing this essay as a “cultural worker” cum social entrepreneur; and as a civil society Advisor (and co-founder) of the Right Livelihood College Bangkok. What is RLC Bangkok?

RLC Bangkok provides an independent platform for *academia–civil society* collaboration and action-research. RLC Bangkok is one of nine “campuses” worldwide – and, including additional partners – associated with the Right Livelihood Foundation in Stockholm, Sweden. “Right Livelihood”, in brief, stands for a long-term mission of social change.

*“Since 1980 each year, we present the Right Livelihood Award. By recognising the actions of brave visionaries and building impactful connections around the world, the Award boosts urgent and long-term social change. 186 Laureates from 73 countries have received the distinction to date.”*

The foundation puts it boldly: *“Right Livelihood” is a courage-powered community for social change.*

In 2020 RLC Bangkok initiated the *Earth Trusteeship Working Group* (ETWG) as the result of a dedicated gathering at Wongsanit Ashram, Thailand. The ashram, a small resort 40 km outside megapolis Bangkok, is the (shared) physical campus of RLC Bangkok. The co-creation of ETWG followed the adoption of a *Declaration on Education for Earth Trusteeship* proposed by Neshan Gunasekera, international law advocate, Sri Lanka<sup>13</sup>. Neshan made his proposal at the occasion of the *Forty Years Right Livelihood conference*<sup>14</sup> at Chulalongkorn University, partner university of RLC Bangkok, which was concluded at Wongsanit Ashram.

The human-scale ashram provides context for the declaration. It is an inter-cultural learning centre established by Right Livelihood Laureate

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<sup>13</sup> Now based at Lund University, Sweden.

<sup>14</sup> The Right Livelihood Award was established by Jakob von Uexkull in 1980.

Sulak Sivaraksa, Thailand. “Ajarn” Sulak<sup>15</sup> as he is known among his students of all ages and from many countries, and who is the Patron of RLC Bangkok. He is recognized for the intellectual and political space he created for growth of civil society in the context of post-WW II modernization of South- and Southeast Asia<sup>16</sup>. Various oppressed dissenting groups over the years, e.g., from Sri Lanka, Myanmar, environmental protectors, and Thai student activists, found refuge at Wongsanit Ashram. Ajarn Sulak, who lived in exile for many years due to his fierce outspokenness, received the Right Livelihood Award in 1995:

*“For his vision, activism and spiritual commitment in the quest for a development process that is rooted in democracy, justice and cultural integrity.”*

Neshan Gunasekera, a member of the World Future Council, was a long-time right hand of Judge C.G. Weeramantry (1926 - 2017), also a Right Livelihood Laureate. Weeramantry was a former Vice President of the International Court of Justice (ICJ), based in The Hague. Weeramantry was also a founding member of the World Future Council<sup>17</sup>. Judge Weeramantry formulated a ground-breaking ICJ Separate Opinion concerning a dispute between UN member-states caused by conflicting interests of on the one hand economic benefit and on the other hand environmental conservation<sup>18</sup>. The dispute confronted the court with a historic precedent, which required a contemporary and future-proof approach to the recurrent global and existential “economy versus ecology” dilemma. Judge Weeramantry hypothesized in that context the following law innovation:

*Trusteeship is “the first principle of modern environmental law”<sup>19</sup>*

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<sup>15</sup> Doctor or Professor Sulak. Also, the headmaster of a primary school or local wisdom bearers will be called “Ajarn”.

<sup>16</sup> Sulak Sivaraksa was the publisher of the Social Science Review of which he was a founding editor since 1963.

<sup>17</sup> World Future Council <https://www.worldfuturecouncil.org/about/>

<sup>18</sup> ICJ case, 25 September 1997. See Introduction of this book.

<sup>19</sup> Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7 at 102 and 108.

Trusteeship can be defined, among others, as executing ownership responsibilities for the benefit of others. Earth Trusteeship, more in particular, benefits future generations and the integrity of the “community of life”. The *Declaration on Education for Earth Trusteeship* takes this governance and legal principle as its departure point. The declaration was endorsed by 14 Right Livelihood Laureates, or their representatives, Youth and a diversity of partners<sup>20</sup>.

## Global Commons and Common Public Goods: inadequate global governance

Following the UNU-CPR roundtable of 18 February 2022, and the actual appointment of the HLAB<sup>21</sup>, more consultations were conducted. The expectations around the HLAB became a focal point for exchanges among members of the ETWG who often were involved in its public consultations and roundtables. It became clear that “governance of global commons and public goods” and “nature as a global common” are extremely critical issues. And so is “global citizenship”. The UN system cautiously adheres to the supremacy of national sovereignty of its member-states as a perceived, non-negotiable, a-priori principle. However, the far-reaching implications of a discussion on the Global Commons and Global Public Goods were frankly anticipated by the UNU-CPR in its initial background paper<sup>22</sup>.

*“The Our Common Agenda report described GPGs (Global Public Goods) as “those issues that benefit humanity as a whole and that cannot be managed by any one State or actor alone.”<sup>23</sup> It identifies the climate, the environment, and Earth as “critical global*

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<sup>20</sup> See: article by Neshan Gunasekera

<sup>21</sup> HLAB website <https://highleveladvisoryboard.org/membership/>

<sup>22</sup> The Environment as a Global Public Good. Framing Paper for the 18 February Roundtable on Our Common Agenda produced by Dr. Mayesha Alam, Senior Visiting Fellow at UN University Centre for Policy Research <https://cpr.unu.edu/people/researchers/mayesha-alam.html>.

<sup>23</sup> Guterres 2021, 18, as quoted in this paper

*commons that must be protected for all people, now and in the future.*"<sup>24</sup> Proponents of nature as a global common and environmental protection as a global public good argue that **constricted and outdated conceptions of sovereignty dominate existing global governance approaches, which are inadequate for catalysing the kind of transformative change necessary to mitigate and overcome existential threats to the planet's health.**"<sup>25</sup> (emphasis added).

The critical assessment of governance as inadequate when primarily left in the hands of sovereign nation-states may be perceived as novel and showing disrespect to the UN architecture and its historic achievements. However, this critique is not new at all and has been openly expressed from within the United Nations itself. Secretary General U Thant, Burma / Myanmar, (who served from 1961-1971) stated<sup>26</sup>:

*"Another great fact of our times is the myth of the absolute sovereign state. (...) In San Francisco, 17 years ago (note added: this lecture was delivered May 1962) the assembled statesmen of the world clung to this myth. They still conceived it possible to have a peaceful world consisting of a number of armed sovereign states without any thought of abandoning an iota of this sovereignty."*

One area of governance where national sovereignty clearly demonstrates its limits is what conventionally is called "the global commons": the geographic area outside the legal reach of countries: the seas and high oceans, the remote atmosphere and the biosphere; or: "life" itself? From this point of view, it is remarkable that in the course of events, the HLAB Secretariat expressed a distinct preference for the use of *Global Public Goods (GPG)*, while language referring to *Global Commons* was increas-

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<sup>24</sup> Ibid, 55, as quoted in this paper

<sup>25</sup> Dahl and Karlsson-Vinkhuyzen 2021, 70, as quoted in this paper

<sup>26</sup> The Small Nations and the Future of the United Nations – address delivered by Acting Secretary General U Thant, 6 May 1962. Public Papers of the Secretaries-General of the United Nations, Volume 6, 1961-1964. Andrew W. Cordier and Max Harrelson (Eds), page 109, 1976.

ingly deemed “not helpful”<sup>27</sup>. This avoidance – subtle but telling – seems to be only understandable from a conventional state-driven perspective. It seems to be a symptom of an era tending to commodify natural resources and even nature itself as “public goods”. In order to, seemingly, “enclose” the commons within existing governance and business models based on prevailing interests.

## Beyond States and the Markets, domain of the commons

The global commons, conventionally defined, not only constitutes more than half of the Earth system. Global governance and “effective multilateralism” will, in addition, require a “new” understanding of the global commons which also includes practices and principles in the domain “beyond states and the markets”. This is the domain explored by Nobel Prize-winning economist Elinore Ostrom.<sup>28</sup>

This domain not only extends across the traditional commons which are estimated to harbour 80% of biodiversity and are primarily “stewarded” by indigenous peoples<sup>29</sup>. The global commons in a broad sense also include the domain of the contemporary “commons movement”. This movement consists of manifold initiatives all over the world with the aim to bring back and co-create “commoning”<sup>30</sup> as the most effective governance modus operandi of land and natural resources compliant with sustainability princi-

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<sup>27</sup> Oral explanation by Dr. Adam Day, Head Geneva Office, UNU-CPR, during a consultation with Earth Trusteeship Working Group, Geneva, 9 December 2022.

<sup>28</sup> Elinor Ostrom – Prize Lecture. NobelPrize.org. Nobel Prize Outreach AB 2022. Sat. 3 Sep 2022.

<sup>29</sup> “Despite the fact indigenous peoples make up around 15 percent of the world’s extreme poor and just five percent of the global population, they are protecting 80 percent of the world’s remaining biodiversity, according to data cited in Australia’s newly released 2021 State of the Environment report. This highlights how indigenous communities have mastered how to live alongside nature in a way that other communities have not.” Statista, Anna Fleck, 19 July 2022.

<sup>30</sup> In contrast to “commons” as a good or as “common property”, David Bollier and Silke Helfrich emphasised the importance of understanding the commons as “commoning” dynamics, a co-creative process of people. *Free, Fair and Alive. The Insurgent Power of the Commons*. 2019.

ples. And, more than that, it implies practicing commoning by means of participatory ecosystem restoration and regenerative cultivation of the Earth.

On 29 July 2022, the United Nations General Assembly declared by landslide majority<sup>31</sup> that it is a Human Right to have access to a healthy environment. This recognition strongly strengthens the conceptualization of the environment, or: Nature, as a global common. Nation-states can whether facilitate or disturb this access but the right to it is in the hands of citizens. This right enables citizens to be responsible trustees of the Earth.

The physical space beyond national sovereign borders like the high seas and the growing space “beyond states and the markets” is where Earth Trusteeship principles and practices can primarily emerge, ultimately laying a new foundation for effective multilateralism in general.

## Protecting the environment. Care and cultivation?

Already in April 2022, the UN Human Rights Council had declared “access to a clean, healthy and sustainable environment” a human right. This is not a simple given. Indeed, the council also reported that:

*“Earlier this year, countries in Latin America and the Caribbean pledged more protections for environmental defenders, including indigenous peoples campaigning against logging, mining and oil exploration in protected areas. In 2021, 227 environmental defenders were reportedly killed. Changes come as environmental campaigners increasingly use the law to force countries to address environmental problems like climate change.”<sup>32</sup>*

The General Assembly’s decision to recognize a healthy environment as a universal human right hopefully strengthens the security of citizens and

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<sup>31</sup> <https://news.un.org/en/story/2022/07/1123482>

<sup>32</sup> <https://www.unep.org/ru/node/32364>

environmental protectors in situations where nation-states – often claiming immunity based on sovereignty – fail to do so.

Even though there is progress in legal innovation, many questions remain unanswered. Should the environment be protected only for the sake of fulfilling human rights? Should not Nature have the intrinsic right to be protected *per se*?<sup>33</sup> Should Nature have rights? And if so, who can speak on behalf of Nature, define and guarantee as well as operationalize the rights of Nature? Is “protection” enough to shape a new relationship of humanity to Earth, or should we include care and cultivation? What is the (global) entity that can enforce the human right to a healthy environment, in contrast with the perceived interests of sovereign nation-states and powerful corporations? Can civil society organise itself such that it can fulfill this role? How can nation-states, responsible corporations and civil society become reliable partners in collaboration toward the common goal to save the Planet? What is *climate justice*?<sup>34</sup>

The impulse to articulate Earth Trusteeship as a universal foundation for effective environmental governance arises from collective efforts to address essential questions on humanity’s relationship with Earth.

## Who Owns the Earth?

The worldview of a “cultural worker”, a profession taught in the roaring sixties at Amsterdam University of Applied Sciences<sup>35</sup> – of which I am a stubborn, albeit retired, practitioner – is shaped by observation of, and engagement with change agents at all levels; the cultural embedment of their existential experiences; and how empowerment of their efforts toward “transformation” can be fundamentally enabled; and mutually shared with citizens.

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<sup>33</sup> See Global Alliance for the Rights of Nature <https://www.garn.org/>

<sup>34</sup> AOICJ campaign for an Advisory Opinion of the International Court of Justice on “climate justice” <https://www.pisfcc.org/icjao> and <https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/603ecf15f4b6024aaf1d5481/1614728983441/Advisory+Opinions+101+.pdf>

<sup>35</sup> Inspired by the practical philosophy of Paolo Freire.

What I learned over the years, from this innovative perspective and in particular after completing a mid-career residential course in rural development at Emerson College, U.K. – including praxis of small-scale communal farming in the Dominican Republic, Caribbeans – that the obstacles to a fair economy, so seriously confronting community-care for the environment, more than often arise from unfair land property claims. These claims are justified by mainstream legal systems, manipulative cultural constructs and the power of holding elites. Self-interest driven corporate, public (governmental) as well as disproportionate private property regimes overrule any, human-scale, good-willing collaboration towards what we in Asia call – in a more traditional context – “Right Livelihood”<sup>36</sup>.

Multilateralism, as manifested in the United Nations, hardly has a grip on the problem. Adam Day and Jessica Caus write in *Rule of Law and Sustaining Peace. Towards More Impactful. Effective Conflict Prevention*<sup>37</sup>:

*The UN seldom has a direct mandate to assist communities in resolving land disputes, though across the cases, issues of land ownership and access to resources were frequently seen as major conflict drivers.*

Monopolized property rights are often anchored in sovereignty of nation-states. Sovereignty of nation-states systemically perpetuates the legal personhood of extractive corporations as well as the legal protection of imperium building rich. Multiple observations, including by my students

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<sup>36</sup> Traditionally “Right Livelihood” is one of the steps in the “Eightfold Path”, a key element of Buddhist philosophy. The contemporary connotation, as e.g. exemplified by Right Livelihood Laureates, resonates with “Buen Vivir” in Latin America and “Ubuntu” in Africa.

<sup>37</sup> However “Where the UN was able to support local conflict reconciliation related to land, the impact was significant.” (...) “(...) when the Secretary-General visited Colombia to witness the passage of the Land Restitution Law in 2011 this sent a strong signal that the UN was addressing elements of transitional justice that held meaning for the broader population.” In: *Rule of Law and Sustaining Peace. Towards More Impactful. Effective Conflict Prevention*. Dr. Adam Day and Jessica Caus. Overarching Paper. UNU-CPR. Chapter 3 Lessons from the case studies. Land matters, page 15.



of Development Studies<sup>38</sup> over the years, and in the first place by our partners in the Global South, strengthened a growing awareness that it needs the perception of independent *global citizens* to fully assess the grip nation-states and corporations exercise on our basic realities. More often than not suppression manifests in a (post-) colonial context. From this perspective empowerment and recognition of the intrinsic status of *global citizenship* “beyond states and the market” – attributed with Earth trusteeship responsibilities and rights – can be envisaged as the final stage of de-colonization to be urgently completed in order to save the community of life.<sup>39</sup>

Judge Weeramantry conceptualised trusteeship, as a governance mode reconciling specific interests (and worldviews) with *common interests*, including these of future generations<sup>40</sup>. His insights were based on the way traditional farmers and landowners in Sri Lanka succeeded in managing integration of their needs for water. They realised their needs by means of an extremely sophisticated irrigation system that worked out in the shared benefit of all – including the needs of consumers – in a long-term inter-generational perspective. While covering vast geographic areas as well as whole ecosystems. This multi-stakeholder collaboration not only was rooted in the understanding of the principle of trusteeship but also in the accompanying living art of consensus building in its true sense.

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<sup>38</sup> Zeeland University of Applied Sciences - Hogeschool Zeeland, Development Studies Programme

<sup>39</sup> This is one of the reasons why re-purposing the UN Trusteeship Council, as proposed in Our Common Agenda, could create a Peace building mechanism. The function of the Trusteeship Council was to govern territories and peoples, in many cases, former colonies, to fully independent states. The purpose of an “Earth Trusteeship Council” could be to gradually add a dimension of public trusteeship to property over natural resources, liberating it from “colonisation” by vested interests in favour of the common good and the wellbeing of future generations.

<sup>40</sup> He passionately promoted inter-generational equity.

## Choice for neo-liberalism or communism. Or threefold dynamics?

My understanding of land issues grew over time. The contradictions between land as a commodity, land as property, versus the understanding of land as a public good – like air and water – cultivated by communities for the common good, were lucidly articulated in Vandana Shiva's books – and her living message – in particular *Earth Democracy: Justice, Sustainability and Peace* (Shiva, 2005). Vandana Shiva received the Right Livelihood Award as early as 1985:

*“For placing women and ecology at the heart of modern development discourse.”*

Her foresight and emphasis on “reclaiming the commons” matched with sound confirmation – later – by word of a well-documented book written by veteran science writer Fred Pearce. The title is *The Landgrabbers: The New Fight Over Who Owns the Earth* (Pearce, 2012). The situation, since, got only worse. I learned a lot from Rajagopal P.V.\*), a down-to-earth land reform activist from India in the tradition of Vinoba Bhave. From Prof. Wen Tiejun, China, and the New Rural Reconstruction movement. And from the work of activist-scholar Jun Borrás. He wrote in 2016, at the start of his academic career at the International Institute of Social Studies (ISS), Erasmus University, The Hague:

*“Today, nearly half of the world’s population remains rural. Three out of four poor people live and work in the countryside. (...) Peasant wars of the past century ended or waned at the same time that neoliberalism surged in the beginning of the 1980s. (...) Most socialist experiments collapsed, and so did their agricultural pillars such as the agricultural collectives and state farms. Conventional land reform disappeared from official policy agendas save for a few national initiatives. Promotion of market-based land reforms, land markets, formalization of private land property rights, and partial reversals of previous land reforms dominated*

\* Rajagopal received the Niwano Peace Prize in 2023.

*the land policy thinking from the 1980s to the present.*"<sup>41</sup>

If a turning point is emerging, it should be felt in this area. Implementation of the 30x30 frame decided during Biodiversity COP15 can become “the biggest land grab in history”<sup>42</sup> or it can become the start of a new approach to “governing our global commons” in the spirit of Earth Trusteeship.

Experiences and observations on the role of rural development defenders and pioneers of shifting ideologies guiding land reform, lead to the question: is it a solution when governance is primarily neo-liberal, corporate driven, or – in contrast – guided by state-driven, communist system governance?

Both, one could say in brief, demonstrate a tendency to become oligarchic and authoritarian, albeit by different political-economy strategies. Where a compromise between fiercely competing forces does not work, or where these forces merge whether into “state-capitalism” (China) or “capitalism-supported-by-the-state” (USA), in both cases hardly any space for prospective sustainable alternatives is left.

So, can we envision the emergence of a “*radical*” *middle path* “beyond states and the market”?<sup>43</sup> A middle path being able to push back on the one hand malign neo-liberalism to a benign liberalism in its original philosophical and practical manifestation? And on the other hand, moving suppressive communism towards an authentic peoples’ empowering socialism? Resulting in “threefold”, polycentric, world economic dynamics?

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<sup>41</sup> Land politics, agrarian movements and scholar-activism, Saturnino M. Borras Jr.. Inaugural Lecture, 14 April 2016, ISS Erasmus University

<sup>42</sup> *Cop15 strikes historic deal to protect 30 percent of Earth – at whose expense?* Geneva Solutions, 19 December 2022 <https://genevasolutions.news/climate-environment/cop15-strikes-historic-deal-to-protect-30-per-cent-of-earth-at-whose-expense>

<sup>43</sup> *The Wellbeing Society. A Radical Middle Path to Global Transformation*, Hans van Willenswaard. School for Wellbeing Studies and Research, 2016.

A “radical” middle path would be indeed radically different from either individualistic liberalism or collectivist socialism, because **it would be commons driven**. It would be an economy of care<sup>44</sup> of equal strength in dynamic interplay with economies driven by nation-states or corporations. This “third way” would not replace state- and corporate- driven economies, but would innovate new, *threefold* or *tripartite* dynamics. Interaction between three contrasting, however collaborating socio-economic streams is needed for the global transformations waiting to be realized. The emerging, commons-driven middle path, inciting transformative threefold dynamics, basically is a *feminine development scenario* with care and cultivation of Earth at its heart.<sup>45</sup>

## A renewed social contract

Our Common Agenda advocates not less than *A renewed social contract*.

- at national levels
- a new deal at the global level

This represents an enormous ambition. That is why it is realistic, as our Planet’s problems are of gigantic and fundamental order<sup>46</sup>. UN Secretary General António Guterres stated on Nelson Mandela International Day<sup>47</sup>:

*“People want social and economic systems that work for everyone. They want their human rights and fundamental freedoms to be respected. They want a say in decisions that affect their lives.*

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<sup>44</sup> Growing a care-based commons food regime by Marina Chang in Routledge Handbook of Food as a Commons edited by Jore-Luis Vivero-Pol, Tomaso Ferrando, Olivier de Schutter and Ugo Mattei. 2019.

<sup>45</sup> See: Connecting the Commons. Report of a Right Livelihood College Bangkok and partners initiated project supported by Heinrich Boell Foundation Southeast Asia, available at INI Books.

<sup>46</sup> The SDGs are important stepping stones towards this aim. At this point however they miss the systemic cohesion to qualify as a proposed and needed “social contract”.

<sup>47</sup> Secretary-General António Guterres delivers the 18th Nelson Mandela Annual Lecture virtually on Nelson Mandela International Day, July 18, 2022.

*The New Social Contract, between Governments, people, civil society, business and more, must integrate employment, sustainable development and social protection, based on equal rights and opportunities for all.”*

Earlier he said<sup>48</sup>:

*“The Paris Agreement is essential to the rights of women and girls. Addressing biodiversity loss, land degradation and pollution is vital to creating lives of dignity for all on a healthy planet. But the goals will not be met without women’s full and equal participation and leadership.*

*Gender equality and women’s rights must be at the heart of a renewed social contract that is fit for today’s societies and economies.*

*Women’s equal leadership and participation are vital to creating peaceful, resilient communities and societies. The perilous state of peace in today’s world cannot be separated from long-standing structures of patriarchy and exclusion.”*

Governance innovation should empower women at all levels, but also induce a shift towards a feminine worldview which can be adhered to by citizens of all gender. This worldview can be characterized as a turn from an extractive, exploitative masculine economy treating “natural resources” and labour as commodities, to a worldview of care and cultivation of Mother Earth – and thus, of the community of life of which humanity is fully part – for the common good. This paradigm shift would result in an envisaged “new social contract”.

However, in the 21st century, a “social contract” is not complete without

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<sup>48</sup> UN Secretary-General Antonio Guterres during the opening of the 66th session of the Commission on the Status of Women at the UN Headquarters in New York on March 14, 2022.

including the Earth as essential partner. The global commons are emancipating themselves from state- and corporate- driven governance regimes, towards a genuine commons-driven socio-economic model which includes Earth as partner. Realistically, in dialogic interface with a diversity of economic “schools”.

The new model will be in essence founded on *trusteeship* as the leading mode of governance, transcending exclusive self-interest. Trusteeship provides ownership rights, however constituted on a new foundation including the wellbeing of future generations.

This emancipatory development would evolve toward Earth Trusteeship as a foundation stone for Eco-Peace.

## Gaps in international environmental law: windows of opportunity

In summary, approaching *Global Governance Innovation* from the perspective of the Global Commons and Global Public Goods, as *Our Common Agenda* proposes, opens two unusual legal perspectives:

*“The conventionally understood commons (oceans, atmosphere, Antarctica, outer space) are **beyond national jurisdiction**” (Our Common Agenda). Moreover, if we start understanding the whole Earth, or Nature, as global commons and recognize the need for consequent fortified global governance, national jurisdiction will have to function increasingly in tandem with global jurisdiction.*

*Public goods are global in nature as they cannot be adequately provided by any one State acting alone. They concern **the wellbeing of humanity as a whole**” (Our Common Agenda).*

Right Livelihood College Bangkok proposes to add two more perspectives, creating windows of opportunity for law and governance innovation:

- Public goods as “commons” – i.e., self-organised, collaborative, social and economic organisms – in essence operate “**beyond Markets and States**” (Elinore Ostrom),, even though if they must comply with existing regulations. A lack of commons-appropriate legal systems is increasingly experienced<sup>49</sup>. Customary and community rights are often in a weak “informal” position vis-à-vis mainstream private, public and corporate property claims.
- Law innovation into this direction would require structural strengthening of civil society as a “third sector” equal to the strength of the sectors of nation-states and corporations<sup>50</sup>. A step into this direction would be the appointment of a Special Civil Society Envoy.<sup>51</sup>
- The **lack of an appropriate legal governance framework for global citizenship** can also be considered a gap in international law. Efforts to fill in this gap positively do not imply an intention to replace or weaken national citizenship, these efforts urge the addition of a new governance dimension to the present legal status of citizens. Earth Trusteeship would be an integrating element of citizenship at all levels. In parallel with global citizenship, local citizenship should be strengthened, leaving national citizenship in an important enabling central position.

## International customary law, world religions and indigenous world views: towards an eco-social contract

Judge Weeramantry demonstrated that world religions and indigenous peoples’ world views actually share a consensus regarding trusteeship (in diverse cultural manifestations) as primary principle governing the relation-

<sup>49</sup> Reinventing Law for the Commons. A Strategy Memo for the Heinrich Böll Foundation. David Bollier, September 1, 2015.

<sup>50</sup> Right Livelihood Laureate Nicanor Perlas, Philippines: Shaping Globalization, Civil Society, Cultural Power and Threefolding (2000).

<sup>51</sup> We The Peoples’ Campaign. Call for Inclusive Global Governance <https://www.wethepeoples.org/>

ship “humanity – Nature”. He even held – as an eminent expert on international law and Judge of the International Court of Justice – that *international customary law* could establish this foundational legal framework of responsibilities and rights – in that order: responsibilities first – already at the present day.<sup>52</sup> The Hague Principles, 10 December 2018, emerged<sup>53</sup> within this visionary context.

Human rights as well as Rights of Nature find their source in “existence” as the justification of rights<sup>54</sup>, or, arguably, in the co-origination of Nature. Vandana Shiva spoke these historic words, at the 40-year Right Livelihood conference in Bangkok, 20-23 February 2020:

*“Human rights flow from the rights of the Earth,” Shiva said. “Earth comes first because we are part of her.”<sup>55</sup>*

If the implicit consensus on **trusteeship as the first principle of international environmental law**, as hypothesised by Weeramantry, now articulated as *Earth Trusteeship*, indeed carries the weight of international customary law, it may play an important role in the constitution of what could be anticipated as an “eco-social” contract to result from the *Summit of the Future* in 2024.<sup>56</sup>

## Geopolitical realities

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<sup>52</sup> Tread Lightly on the Earth. Religion, the Environment and the Human Future, C.G. Weeramantry, 2009/2014.

<sup>53</sup> Following international consultations at Utrecht University, July 2017, and at Elisabeth Vreedehuis, The Hague, 22-23 June 2018.

<sup>54</sup> Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles. GARN website <https://www.garn.org/rights-of-nature/>

<sup>55</sup> Quoted from video report, Forty Years Right Livelihood Conference, Bangkok, February 2020.

<sup>56</sup> It is extremely meaningful that the Secretary General of Religions for Peace, reputed platform for interreligious cooperation, Prof. Azza Karam, is a member of the HLAB on Effective Multilateralism.



The year 2000 marked an optimistic start of global collaboration, prompted by the dawn of a new millennium. It resulted in the “millennium development goals”<sup>57</sup>. But unexpected geopolitical conflict, economic crisis and competition flared up in the first decades of the 21st century leading to war in Europe, a crisis of democracy in USA and geopolitical tensions in Asia.

Even though countries are members of the UN, they however supposedly ignore or violate regulations and principles; or mend them to match competing ideologies and interests. Reform of the UN is needed but may take contradictory directions guided by different worldviews and interests. Moreover, UN’s transformation towards more effective multilateralism may imply – in order to be genuinely effective – extremely sensitive amendments and reformulation of international law including the UN Charter regulating the rationale and operation of nation-states<sup>58</sup>. Equally, changes may be needed to re-shape the governance principles of corporations, rooted in shareholder interest-driven legal personhood<sup>59</sup>. Historic landmarks for the legal determination of nation-states being the Treaty of Westphalen in 1648; and for corporations, the verdict of the Supreme Court of the USA in 1819, granting organisations legal personhood including property rights. Innovation of governance and law – not promoting a complete departure from the present situation but rather an evolutionary transformation – may have to be considered within a time frame that reflects long-term historic perspectives.

Like most global citizens I am of course deeply shocked by the malicious and cruel Russian invasion of Ukraine and, in parallel, the expansion of NATO. Southeast Asian countries largely condemned the aggression, but fundamentally maintain their *neutrality*. We need “deep innovation” to overcome the dangerous and far-reaching crisis of the international rules-based order. On the one hand, the defense of sovereignty and territorial integrity are essential - yes. On the other hand, this integrity is exactly

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<sup>57</sup> From 2000 to 2015 the predecessors of the Sustainable Development Goals and Agenda 2030.

<sup>58</sup> See the article of Maja Groff in this volume where she refers to Art. 109 (3) of the UN Charter.

<sup>59</sup> Joel Bakan *The Corporation: The Pathological Pursuit of Profit and Power*, 2005

violated by conflicting interpretations of the same sovereignty rights, rooted in contradictory and disputable historic claims and visions rooted in nationalism. Contradictory nation-state driven claims are also the cause of fresh disputes around the South China Sea, risking to spill over to the vastest global commons spanning nearly half of the globe: *the Pacific Ocean*. Disputes between countries and economies not only concern “classic” territorial claims and commercial interest-driven negotiations of trade barriers but involve, disputable, protection of complicated intellectual property rights as well as materialization, manipulation and commodification of Nature. Thus, increasingly occupying and destroying the commons.

The “Indo-Pacific” area<sup>60</sup> has been subject to devastating nuclear tests in the past. The area undergoes accelerated strategic diplomatic and military power build-up in recent years. At the same time, remarkably, Pacific students “fight” for climate justice.<sup>61</sup> I can understand voices who argue that a discussion on property rights and sovereignty should not be staged “now”. One can also argue that this discussion is needed “now more than ever”.

If issues like governance of the global commons, sovereignty of nation-states, and the boundaries of corporate property are too sensitive to include in the scope of recommendations of the HLAB on Effective Multilateralism and other inter-governmental bodies and mechanisms, it may be the role of *academia-civil society* discourse to raise these issues for dialogue and public debate, and address issues otherwise immunized from the innovation they need. However, this “deep innovation” is an enormous challenge.

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<sup>60</sup> A region subject to recent strategic conceptualization.

<sup>61</sup> Campaign for an Advisory Opinion of the International Court of Justice (ICJAO) <https://www.pisfcc.org/>

## History

The following historic sequence of 20th century development may reveal some logic toward future steps in the design of governance and law innovation in a long-term perspective.

In 1893 the World Parliament of Religions was held in Chicago, USA. It can be seen as a start of global dialogue and collaboration among world religions, philosophies and world views. The conference in Chicago preceded the arguably first multilateral political collaboration at full global level in 1899 in the Hague, titled the First Hague Peace Conference<sup>62</sup>. Representatives of Siam (Thailand) formed one of the few non-colonised, non-western delegations to the gathering. The months-long conference resulted in the Permanent Court of Arbitration, still in function today, and, ultimately, after World War II, the International Court of Justice, located at the Peace Palace. In 2000 the International Criminal Court followed. And, also in 2000 the Earth Charter was launched.

Around the First World War, the city of The Hague – residence of neutral Netherlands – offered a platform both for unprecedented women's Peace activism, including Jane Addams, USA, Aletta Jacobs, the Netherlands, and Eva Mayreder, Austria<sup>63</sup>. The Hague, as well, offered a public stage for a diversity of educators and spiritual leaders who all, in their own terms, desperately promoted global citizenship. They included Kees Boeke, the Netherlands, 'Abdu'l Bahá, Persia, Rudolf Steiner, Austria, and Hazrat Inayat Khan<sup>64</sup>, India/UK. Rigidity of global governance frameworks may have been one of the causes of World War II. The supremacy of nation-states was confirmed by means of the Ligue of Nations, majestically located in Geneva.

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<sup>62</sup> An initiative of Czar Nicholas II of Russia, supported by the young Queen Wilhelmina of the Netherlands who made her palace available as the conference venue.

<sup>63</sup> Pioneered by Bertha von Suttner, the first woman who received the Nobel Peace Prize.

<sup>64</sup> See a poem in the chapter INVOKING THE SPIRIT OF TRUSTEESHIP/

“Although the League of Nations did enjoy some remarkable political success in the 1920s, the increasing economic strife and militant nationalism which characterized the 1930s led not only to the breakup of cooperation between States but also to several conflicts which could not be easily resolved. Powerful States such as Germany, Italy, and Japan left the organization, and by the time the Second World War broke out in 1939, many had abandoned the League of Nations and its unfulfilled promise of collective security, and had instead returned to the traditional system of defensive alliances and power blocs.”<sup>65</sup>

World War II broke out in 1939.

An essential rectification to the pre-WW II state- and corporate-driven global governance framework – gradually emancipating from feudalism, colonialism, labour exploitation and women’s suppression – manifested in the Universal Declaration of Human Rights, 1948. “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

However, this “new citizenship” could only exclusively be granted by sovereign states.

U Thant, the third UN Secretary-General, openly questioned absolute sovereignty<sup>66</sup>. He instigated the Stockholm conference on the Human Environment in 1972, a theme obviously transcending national governance<sup>67</sup>. It was succeeded by the UN Conference on Environment and

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<sup>65</sup> <https://www.ungeneva.org/en/history/united-nations>

<sup>66</sup> See note 22.

<sup>67</sup> The conference occurred due to his deteriorating health during the reign of his successor Kurt Waldheim. The Stockholm+50 commemorative conference in 2022 avoided the subject of Peacebuilding and possible nation-state sovereignty reform almost completely, even in the face of the Russia-Ukraine war. The host country Sweden decided to join NATO. One of the reasons the Stockholm conference in 1972 made remarkable impact on civil society was

Development (UNCED) in 1992.

Two years later, in 1994, the UN Trusteeship Council ushered the last territory from colonial governance into independent sovereignty. This marked a historic, albeit formal, end to colonialism.<sup>68</sup> At various moments, most recently in *Our Common Agenda*, proposals are made to *re-purpose* the UN Trusteeship Council.

What may be required toward full emancipation of humanity on its path to co-creating a global governance architecture fit to match 21st century challenges, is a final step releasing humanity from the existing state monopoly on granting citizenship. As well as from limited accountability and privileged benefits implied in corporate ownership of natural resources. This combined *next step* in human evolution would imply a re-definition of humanity's relationship with Nature. This would evoke complementary governance dimensions in addition to national citizenship. Formal local as well as global (or: Earth, world) citizenship would be added. While Earth Trusteeship responsibilities and rights could be equally attributed to these three dimensions of citizenship, not undermining but enriching existing national citizenship status.

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the participation of Vietnamese Buddhist monk and Peace activist Thich Nhat Hanh in a side activity.

<sup>68</sup> The Trusteeship Council suspended its operations on 1 November 1994, a month after the independence of Palau, the last remaining United Nations trust territory. By a resolution adopted on 25 May 1994, the Council amended its rules of procedure to drop the obligation to meet annually and agreed to meet as occasion required – by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council <https://www.un.org/en/about-us/trusteeship-council>

## 21st century “healing” trends

Some important trends are emerging in our era.

### Legal personhood of Nature

At the dawn of the 21st century – as a “healing” counterforce to multiple crises – legal personhood of Nature increasingly became part of modern cultural and political awareness. “Existence beyond matter”; and personhood of Nature, deserving care of the Earth as a “sacred trust”<sup>69</sup> had been



Jan Pronk, Mikhail Gorbachev, Ruud Lubbers, Maurice Strong and Mohammed Sahnoun. First Earth Charter Workshop meeting, Peace Palace, The Hague, Netherlands, May 1995.

implicit in indigenous world views and rightly understood world religions from ancient times. But could this understanding of reality penetrate science?<sup>70</sup>

<sup>69</sup> Wording initially from the UN Charter earned new meaning in the Earth Charter.

<sup>70</sup> The Gaia hypothesis, also known as the Gaia theory or Gaia principle, proposes that all organisms and their inorganic surroundings on Earth are closely integrated to form a

- **Earth Charter (2000)**

Various examples from this stream of “healing trends” are: the adoption at UNESCO in Paris of *the Earth Charter, publicly launched at the Peace Palace in The Hague, 2000*. The Earth Charter was instigated by, among others<sup>71</sup>, Mikhail Gorbachev following UNCED 1992 and with the support of the government of the Netherlands. Already preceding UNCED the book of Vandana Shiva *Staying Alive: Women, Ecology and Survival in India*, 1988, was an eye opener, later resulting in the establishment in India of Navdanya.

In the new millennium, the writing of Thomas Berry *Evening Thoughts: Reflecting on Earth as a Sacred Community* (2006) was an inspiring landmark for many. At another level, the United Nations Declaration on the Rights of Indigenous Peoples (2007) and the amendment of the constitution of Ecuador (2008) were breakthrough steps, as well as the Universal Declaration of the Rights of Mother Earth, Cochabamba, Bolivia (2010) and the establishment of the Global Alliance for the Rights of Nature (GARN) in the same year. Earlier, in 2009, publication of the book *Tread Lightly on The Earth. Religion, the Environment and the Human Future* by C.G. Weeramantry manifested a less-known milestone.

Ultimately, in 2012, a highly symbolic agreement was signed between the indigenous Maori and the government of New Zealand on the recognition of the Whanganui River as a legal entity. In 2013 the Health of Mother Earth Foundation (HOMEF) was founded by Right Livelihood Laureate Nnimmo Bassey in Nigeria.

The development of Earth Trusteeship and adoption of the Hague Principles in 2018 build on this complexity of a steadily growing awareness on humanity-Earth relationship and the consequent urge for legal articulation. We need an Earth-based culture and world order. And civil society collabo-

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single and self-regulating complex system, maintaining the conditions for life on the planet. Wikipedia / <https://courses.seas.harvard.edu/climate/eli/Courses/EPS281r/Sources/Gaia/Gaia-hypothesis-wikipedia.pdf>

<sup>71</sup> Prof. Klaus Bosselmann was one of the early expert pioneers.

ration based on resonating responsibilities, supported by appropriate legal agreements providing essential enabling rights. The Earth Charter's conceptualisation of "*community of life*" constitutes an intimate unity of humanity with Nature which deserves centrality.

In a parallel process<sup>72</sup>, the climate summits had started. They initiated negotiations in terms of physical substances, among others in the atmosphere, and related indicators for a regulatory framework, with consequent financial allocations and – finally recognised during COP27 – a framework of *loss and damages* to be compensated for. Jaap Spier, an international expert in tort law, characterises this approach as follows<sup>73</sup>:

*Most global crises (climate change, unsustainable development, environmental degradation and financial downturn) have quite a lot in common. They have the same causes: short-term views, giving priority to personal interests, and greed. So far, the debate largely focuses on ex post remedies. This is a rather unsatisfactory approach. It means that people accept massive and unnecessary human suffering and try to compensate for the losses after the event. Realistically states and enterprises will not give enough funds to compensate for the global losses that will accrue over time. Instead, a change of mindset is needed: how can global evil – to an extent unheard before – be avoided?*

Earth Trusteeship stands for efforts to prevent loss and damage and the suffering implied. Grounded in the fundamental recognition that global citizens are equal trustees of the Earth.

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<sup>72</sup> Essential was also the emergence of the UN Global Compact in 2000, and other business coalitions.

<sup>73</sup> 3 Legal Strategies to Come to Grips with Climate Change Jaap Spier in: Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility, Oliver C. Ruppel et. al., 2013, pp. 121-152. Prof. Jaap Spier is (co-) author or editor of 29 books and hundreds of articles and case notes on tort law and legal aspects of climate change. Between September 1997 - September 2016, he served as Advocate-General in the Supreme Court of the Netherlands (Supreme Court of Justice). Since 2019 he is senior associate of the University of Cambridge Institute for Sustainability Leadership. He kindly shared his views with a group of lawyers and Justice Suntariya Muanpawong when in Bangkok.



- **Paris Agreement 2015 and Club des Juristes**

Secretary-General Guterres, in *Our Common Agenda*, 2021, refers repeatedly to the Paris Agreement of 2015, considered a much-needed achievement in the series of climate negotiations. However, in the margin of the Paris Agreement, the *Club des Juristes* (French lawyers' association) warned that "Paris 2015" was not enough. **A binding, global, agreement between nation-states – and stakeholders – would be needed for truly effective climate governance.** Movements for the recognition of Rights of Nature and ecocide as a crime against humanity pointed at the far-from-finished process toward climate governance. France proposed a binding *Global Pact for the Environment* and this was prioritized on the agenda of the UN General Assembly. Subsequently, at the occasion of "70 Years Universal Declaration of Human Rights" in 2018, the Hague Principles on Earth Trusteeship were adopted, as a bold, but only initial, step in this direction.<sup>74</sup>

- **"Stockholm+50"**

As a result of the *Global Pact for the Environment* campaign initiated by France leading to a series of negotiations, a "political statement" was planned to be concluded at the occasion of "Stockholm+50" in June 2022. No statement will be able to hide that the *Global Pact for the Environment* negotiations, organized by UNEP in Nairobi, remained almost fruitless. The efforts to transfer the "soft law" of the Earth Charter into "hard law" of a binding agreement remained unsuccessful at this stage. **Earth trusteeship was proposed as an overarching principle for the Global Pact for the Environment.**<sup>75</sup> A major obstacle in achieving consensus on a Global Pact was the position of a number of countries who insisted they are held to a strict interpretation of sovereignty. Consensus, in its regular faulty, reductionist, manifestation, is ruled by veto and/or unanimity. This (mis-)understanding has been one of the major "spoilers" of the innovation needed.

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<sup>74</sup> The full text is provided in the article of Klaus Bosselmann in this book.

<sup>75</sup> Innovation for Life. A New Light on Right Livelihood. Hans (Ed.) and Wallapa van Willenswaard, 2020, Pages 305-326. Free publication at the occasion of 10 years School for Well-being Studies and Research. Also: [https://wedocs.unep.org/bitstream/handle/20.500.11822/27976/ETI\\_proposal.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/27976/ETI_proposal.pdf?sequence=1&isAllowed=y)

However, from an optimistic point of view, as promoted by civil society organization *Common Home of Humanity*, Portugal, and its partners, an unavoidable learning process is underway. “Stockholm+50” in June 2022 can be seen as momentum in this learning curve.<sup>76</sup> The HLAB on Effective Multilateralism is another common effort toward what is hoped to become a genuine turning point to be manifested in the *Summit of the Future*, September 2024.

In particular, reflections and innovations addressing *good governance challenges induced by the Global Commons and Global Public Goods* may open new avenues to forging a necessary breakthrough. An important step in this direction is, as mentioned, the recent recognition by the Human Right Commission of the right to a healthy environment. But more is needed.

- **Indo-Pacific ICJ Advisory Opinion initiative**

The Indo-Pacific Ocean area, connected with the South China Sea – part of the world to which Bangkok, capital of Thailand, is central (for that reason a good entrance point for a contribution to future policy development) – as a whole, constitutes a near *legal vacuum*. Nation-states and corporations tend to “map” the area in terms of ‘national economic interests’ to be protected, ‘privatization’<sup>77</sup>, ‘military power to guarantee the safety of national citizens’ and thus ‘security’ rather than ‘Peace’. Actors justify this by evoking the principle of freedom, i.e., the neoliberal freedom to navigate, trade, extract and exploit. This leads to critical tensions and considerable instability.

Earlier, as mentioned, nuclear states claimed the privilege of executing nuclear weapon tests by appropriating “nobody’s land”<sup>78</sup> for their destructive purposes, ignoring the rights of people who for generations lived and live in the area. Small Island communities, at this stage, have little other

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<sup>76</sup> <https://www.stockholmdeclaration.org/full-declaration/>

<sup>77</sup> Taking back the oceans, before it’s too late by Alexander Kozul-Wright, researcher for the Third World Network. Project Syndicate, Aug 15, 2022. Also published in the Bangkok Post.

<sup>78</sup> The ‘global commons’ in conventional perception.

legal means than positioning themselves as nation-states. Prompted by critical students, they incited a highly significant campaign to request the UN General Assembly to urge the International Court of Justice to deliver an “Advisory Opinion” on climate justice<sup>79</sup>. From this perspective, the foresight of high-level Australian scholars Rayfuse and Warner<sup>80</sup>, already in 2008, considered international public trusteeship as a new governance principle.

*The legal regime for the high seas is fragmented both sectorally and geographically and is incomplete. Governance, regulatory, substantive and implementational gaps in the legal framework serve to limit the effectiveness of the high seas regime in securing a sustainable future for the conservation and use of the high seas environment and its resources. A global approach to further developing the high seas regime based on **the concept of international public trusteeship for the oceans** beyond national jurisdiction could foster environmentally responsible use of the high seas and its resources and ensure the application of modern conservation principles and management tools to human activities on the high seas. (emphasis added)*

Thailand, in the framework of ASEAN, could take up a special mission demonstrating “proactive neutrality”<sup>81</sup>. An initiative to review the Convention of the Law of the Sea in light of the recent tensions concerning the Indo-Pacific strategy, and with reference to Rayfuse and Warner’s advice to consider international public trusteeship, would be a creative contribution to the HLAB on Effective Multilateralism’s mission and the Summit of the Future<sup>82</sup>. EU Ambassador in Bangkok David Daly wrote, in a recent article

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<sup>79</sup> By the time of publication the result of the campaign will be known.

<sup>80</sup> Rayfuse, Rosemary and Warner, Robin M.: Securing a sustainable future for the oceans beyond national jurisdiction: the legal basis for an integrated cross-sectoral regime for high seas governance for the 21st century 2008, 399-421. <https://ro.uow.edu.au/lawpapers/337>

<sup>81</sup> International Seminar on Whither ASEAN, In A Deeply Troubled World, 15 – 17 August 2022, Chulalongkorn University, ASEAN Studies Centre. Hans van Willenswaard spoke on behalf of Right Livelihood College, Bangkok.

<sup>82</sup> See also the Ocean Conferences initiated by the UN.

in the Bangkok Post.<sup>83</sup>

*“Thailand, and indeed other countries in the region, have played an important role in this process” (toward strengthening multilateralism); “let us recall that the negotiation of the UN Convention of the Law of the Sea started under the presidency of Thailand’s Foreign Minister H.R.H. Prince Wan Waithayakon who also became President of the UN General Assembly in 1956.”*

Can the ASEAN region contribute a substantive vision, with reference to the outcomes of the Biodiversity COP15, its 30x30 frame and the recent “oceans treaty”, to the *Summit of the Future* in 2024?

## **Next steps in 21st century development: three new issues of global governance innovation**

From the evolutionary perspective of “healing” trends as counterforces to the triple planetary crisis of climate emergency, loss of biodiversity and mounting pollution – as well as underlying threats to the rules-based world order – Right Livelihood College Bangkok in summary identified three core issues for global governance innovation: *trusteeship, global citizenship and Eco-Peace*.

### **1. Trusteeship**

Trusteeship – tentatively defined as *executing ownership responsibilities and rights for the benefit of others* – is a legal principle in both public and private law. Trusteeship in private law was codified to a satisfactory level by the Hague Conference of Private International Law (HCCH)<sup>84</sup>. In this context priority is attributed to responsibilities while rights are granted to enable trustees to execute these responsibilities.

<sup>83</sup> BP 17 June 2022,

<sup>84</sup> The Hague Trust Convention (1985; in 2017 ratified by 14 countries).

*“Concepts such as ownership are often taught and conceived in Western jurisprudence as being of absolute nature, which is the very antithesis of the Buddhist approach to these concepts. Their stress on rights overshadows the accompanying concept of duties, and the latter is what Buddhist teachings tend to emphasize. This elevated concept of duties lies at the heart of the notion of trusteeship.”<sup>85</sup>*

Moreover, trusteeship is a principle of public international law enshrined in the UN Charter. It is related to one of the core UN institutes: the UN Trusteeship Council. A related hypothesis could be that there are defining similarities between the status of pre-independent nation-states, handed into the care of the post-World War II UN Trusteeship Council on their way to full independence, and the status ‘*beyond national jurisdiction*’ of the high oceans and global commons. It could be argued that the conventional global commons wait to be ushered into an appropriate 21st-century governance regime that creates an “autonomous” but interdependent governance sphere “beyond – but inclusive – states and the markets”. Would that also apply to the contemporary rise of the awareness of the Earth as global commons? Governance over this realm would be in the jurisdiction of global citizens.

Transforming the agency of trusteeship from its 20th-century rather paternalistic connotations, including Mahatma Gandhi’s original perception<sup>86</sup>, to a 21st-century re-calibration, would be undertaken – seen from this perspective – as an act of completing de-colonisation. Evolving into an essentially new phase in the mission of the UN Trusteeship Council. Now in the complementary framework of an anticipated 21st-century constitution of global citizenship. It would emancipate humanity from modernity-induced tragic segregation to a future unity with Nature.

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<sup>85</sup> *Tread Lightly On the Earth*. Judge Weeramantry, himself a devout Christian, studied world religions and indigenous worldviews to determine the origins and scope of trusteeship.

<sup>86</sup> See for example *Trusteeship. A Path Less Travelled*. Siby K. Joseph, Bharat Mahadaya and Ram Chandra Pradhan Eds.

## **Earth Trusteeship Dialogue: platform for negotiating a “new deal”**

Dialogue-igniting awareness of the magnitude of the Global Commons, including “climate”, or: “the *Earth eco-system*”; as well as essential Global Public Goods like *healthy food for all*, and *basic needs security*, would **innovate effective multilateralism**, profoundly rooted in a redefinition of Earth-humanity relationships.

**Moreover, this multi-layered dialogue might be the key to (long term) solutions for geo-political conflict.** It would be in essence a dialogic process among diverse stakeholders – governments, the corporate sector and civil society, moderated and backed-up with scientific evidence by academia – over time.

### **Discussion: sovereign people or sovereign nation-states? Or both?**

As one of the contributing drafters of the Hague Principles on Earth Trusteeship, I would like to emphasize that, given the history of trusteeship as a rather paternalistic connotation, *Earth trusteeship*, to be fruitful for innovation of effective multilateralism, should be promoted not only completely in accordance with the UDHR – as the Hague Principles explicitly affirm – but also as a building block of ‘basic democracy’ which *recognizes the sovereignty of the people*, rather than the power of sovereign states. even if these nation-states are legitimized by representative democracies. People’s power would manifest by means of global citizenship. In addition to national and local citizenship.

Thitinan Pongsudhirak, Professor of Political Science at Chulalongkorn University, Bangkok, describes democracy in Thailand by comparing it with that of Taiwan and with reference to the Thai Constitution of 1997. In the “peoples’ constitution” of 1997 the sovereignty of the people supersedes sovereignty of the state.

## UN Trusteeship Council until 1994 Toward re-purposing the UN Trusteeship Council in the 21st century?

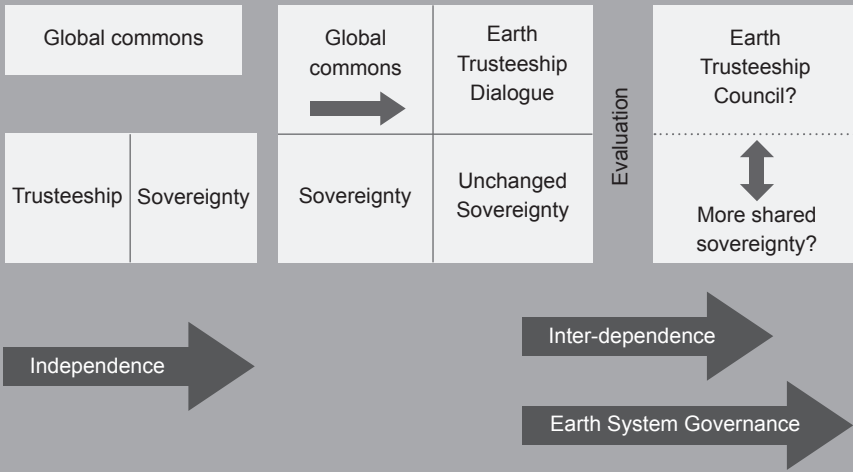


Fig 1. Re-purposing the UN Trusteeship Council? A step-by-step process. Until 1994 the process was characterized by a sharp transition from a temporarily, total, UN trusteeship regime to the status of irreversibly *independent* sovereign states, and no clear connection with the global commons. Trusteeship can now be researched and debated as a governance dimension mediating sovereignty with the global commons, initially through *Earth Trusteeship Dialogue*. The possible transition to be researched can – within a framework of *inter-dependence* – develop toward various options for shared state sovereignty, trusteeship of the Global Commons (in various interpretations) and Global Public Goods, global citizenship as well as Earth System Governance. Initially, as one possible option, an *Earth Trusteeship Council* could be developed as an independent, experimental, *academia-civil society* initiative until a possible momentum where UN reform opens up the **UN Trusteeship Council** to merge with the global citizenship and civil society-initiated *Earth Trusteeship Council*.

After coup d'etats were staged and the constitution of 1997 was overruled the people-state balance moved in favor of the state

*“For democracy to take root in the long term, Thai people should feel and act like they own the country in equal share, no one more than others. Previous constitutions, after all, stipulated that ‘sovereignty belongs to the people’, implying that each and every Thai person owns Thai sovereignty, covering everything from territory and resources to the government.”*<sup>87</sup>

<sup>87</sup> Taiwan, a democracy in Asia that works, Thitinan Pongsudhirak, in Bangkok Post, Friday, December 30, 2019.

Citizens own the government and not the other way around.

While the first and forward-looking Constitution of Bhutan adopted in 2008, stipulates in its Article 5:

*“Every Bhutanese is a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations (...)”*

Earth trusteeship, this is my strong opinion, like all attempts to “innovate governance to protect, (care for and cultivate) our planet”, should be grounded in global citizenship. Global governance can only address the challenges of the 21st century adequately if we recognize “**global citizenship**” as an important dimension of citizenship. In this line of consideration “Earth Trusteeship” thus could be articulated by this statement:

**“All global citizens are equal trustees of the Earth, for the benefit<sup>88</sup> of the community of life and the wellbeing of future generations.”**

Although acceptance and active promotion of legal “global citizenship” may be a challenge for all nation-states, irrespective their systems or ideologies, it is in particular hard to accept for authoritarian governments and governments dominated by corporate interests, whether under economic, political or religious ideologies. Global citizenship – including its attribute Earth trusteeship – is not the privilege to be granted by nation-states, and so neither by the United Nations, it is a natural “birthright”.

Self-determination by means of global citizenship, including Earth trusteeship responsibilities, will primarily emerge within the context of civil society. However, ultimately, recognition of this birth *right-and-responsibility* by states and the UN will be decisive.

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<sup>88</sup> This does not exclude benefits for present generations. According to the Hague Trust Convention “(...) the fact that the trustee may himself have rights as a beneficiary (is) not necessarily inconsistent with the existence of the trust.” Hague Conference on Private International Law (HCCH) in Wikipedia.



## Multi-dimensional citizenship

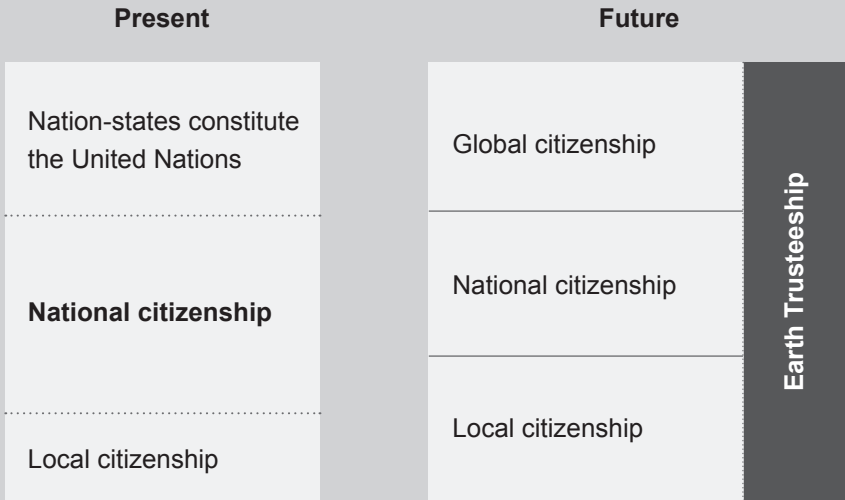


Fig. 2. At present citizenship is defined by nation-states, with a (small) margin of local citizenship depending on the degree of de-centralization. Nation-states are represented in the UN by appointed diplomats, not by parliamentarians; nor by citizens directly. In the future citizenship could be characterized by three (“equal”) dimensions: local, national and global citizenship, with their own appropriate institutions. Earth Trusteeship would be an integrating and co-defining element of all three dimensions of citizenship. Nation-states maintain the important position of mediating between local and global citizenship.

## 2. Global citizenship. “We Are The Soil.”

Careful dialogue on sovereignty and property will inform legal and governance innovation both targeting “conventional global commons” *outside* national jurisdiction, as well as “public goods” and the systemic impact of the “commons movement” *within* current national jurisdictions. Considering law and governance innovations in both domains as complementary dimensions of matching the same challenges, may break open a pathway to realising new common ground indispensable for innovation.

From this perspective, citizenship of the future can be perceived as multi-dimensional and primarily defined by Earth trusteeship responsibilities.

The down-to-earth context of agriculture – the Sri Lankan inspiration for Judge Weeramantry when he pointed at the importance of trusteeship for future global governance – provided the foundation for Indian pioneer Vandana Shiva when she expressed how to understand global citizenship in the light of *cultivation* of the Earth. She expressed her insight through the Firenze Manifesto *TERRA VIVA. Our Soil, Our Commons, Our Future*. The Firenze Manifesto was a contribution to the UN Year of the Soil in 2015.<sup>89</sup>

*“Global citizenship comes from being rooted in the local – in the soil, in the land. The future will be cultivated from the soil and grow out of the land, and not from the global market of a fictitious finance, corporate personhood and consumerism. We have stopped seeing ourselves as part of the soil – eco-centrism has given way to anthropocentrism which is now giving way to corporate-centrism. We need to move from a corporate centered world view to one centered on the Earth Family. The future will grow from living soil. We are the soil. Soil must once again be at the heart of, and central to the shaping of our future, from which can emerge a new circular economy and a new living democracy.”*  
(Shiva, 2015).

Vandana Shiva and the Firenze Manifesto elaborate that global citizenship is rooted in local citizenship and thus in the Soil. “We Are The Soil”. This refers to the unity of Nature and humanity as expressed in the Earth Charter’s concept of “community of life”.

### 3. ECO-Peace

Often new modes of good governance aiming at addressing climate emergency, are described as *guardianship* or *stewardship*. Or, the role of humanity is characterized as being *custodians*. This resonates with the title of the notion central in the UNU-CPR Roundtable ‘protection of our Planet’. However, protection implicates a rather *defensive* positioning, especially true for guardianship. Right Livelihood College Bangkok opts for the,

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<sup>89</sup> [https://kipdf.com/our-soil-our-commons-our-future-a-new-vision-for-planetary-citizenship\\_5ac8361e1723dd7ed5a25d70.html](https://kipdf.com/our-soil-our-commons-our-future-a-new-vision-for-planetary-citizenship_5ac8361e1723dd7ed5a25d70.html)

albeit near synonymous and partially overlapping, concept – with arguably some more legal strength than stewardship – *trusteeship*, defined by self-governance of the community of life of which humanity is part, including ownership responsibilities for the benefit of others characterised by care and sustainable or regenerative cultivation.

In the framework of ECO-Peace, humanity positions itself as part of Nature. Not dominating it, nor dissolving into it but protecting, caring, and cultivating Nature for the common good. Manifesting Love. In Eco-Peace humanity is fully aware of its unity with Nature, but at the same time of its unique responsibility to provide care and to cultivate Right Livelihood. With respect for the dignity of all living beings and the integrity of ecosystems.

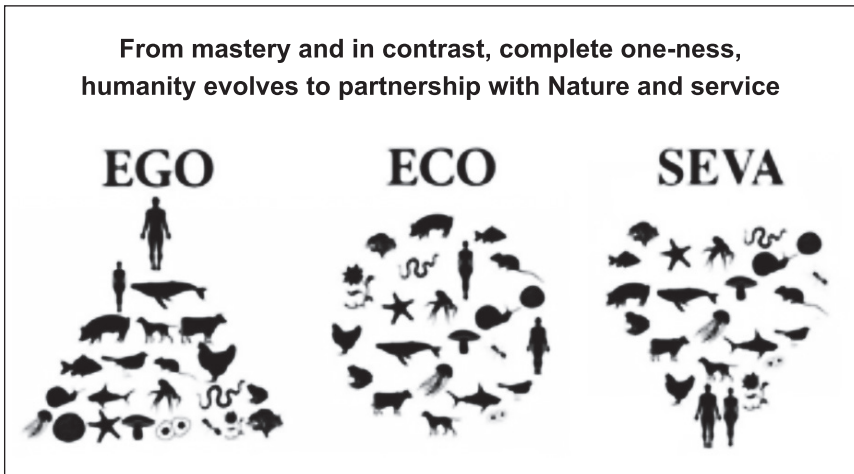


Fig. 3. Sevā (Hindi) = service, dedication. “Sevā is a role that can only be performed with a relationship of love and humility to all entities in the environment. Not an attempt to be the master of matter and biology but as a servant of beauty, kindness, love and charm. Sevā means giving more than you take. This is the attitude needed to create a sustainable culture, that nourishes and cares for the earth we live on.”<sup>90</sup>

The notion of Sevā deeply resonates with the plea of Matthieu Ricard in his seminal book *Altruism. The Power of Compassion to Change Yourself and the World*. (English edition 2013). Matthieu Ricard, French scholar and

<sup>90</sup> Earliest visual representation in 2021 glance sideways blog <https://glancesideways.com/2012/10/progression-and-conceptual-adjustment/?fbclid=IwAR1mVtYUaLOJeulo8bkOOKAHUudc1AusoXnsv7njSIFQwQ7ChQRKrPeViM>

Buddhist monk, concludes:

*For things truly to change, however, we must dare to embrace altruism. Dare to say that real altruism exists, that it can be cultivated by everyone of us, and that the evolution of cultures can favor its expansion. Dare, too, to teach it in schools as a precious tool allowing children to realize their natural potential for kindness and cooperation. Dare to assert that the economy cannot content itself with the voice of rationality and strict personal interest, but that it must also listen to the voice of caring and make it heard. Dare to take the fate of future generations seriously, and dare to change the way we are exploiting the planet today that will be their home tomorrow. Dare, finally, to proclaim that altruism is not a luxury, but a necessity.*

Eco-Peace is a security concept placing protection, care and sustainable cultivation of ecosystems at the centre of human efforts, in ways even conflicting partners can perceive as common ground. Collaboration in the frame of recognition of this common ground guarantees security better than competition and conflict of interest as major driving forces, even though we admit that they are part of reality.

## From Human Security to Eco-Peace

In Thailand the concept of **Human Security** drew interest as a binding issue and common goal. Passionate involvement of the late Surin Pitsuwan, former Minister of Foreign Affairs and ASEAN Secretary General in the then UN Commission on Human Security, co-chaired by Madame Ogata, Japan, and Amartya Sen, India, placed Human Security at the heart of efforts toward *new Millennium development* in ASEAN and globally. The recent report *New Threats to Human Security in the Anthropocene*, presented by UNDP Administrator Achim Steiner, February 2022, is recommended to be taken into account in preparations for the *Summit of the Future*. The UNDP report shows “growing sense of insecurity among people despite years of (...) growth, prompt (...) calls for solidarity and refocusing development efforts”. Asako Okai, UN Assistant Secretary-General and Director, UNDP Crisis Bureau, said:

*A key element for practical action highlighted in the report is building a greater sense of global solidarity based on the idea of common security. Common security recognises that a community can only be secure if adjacent communities are too. This is something we see all too clearly with the current pandemic: nations are largely powerless to prevent new mutations of this coronavirus from crossing borders.<sup>91</sup>*

In a far-reaching future scenario, all stakeholders can join in a collaborative mode of good governance based on mutual care and a non-exploitative relation with Nature. This would evoke a state of “*Eco-Peace*” in which human actors and Nature co-exist by reciprocating support. This implies taking and giving, and contributing to climate stability in the benefit of humanity – including future generations – and the Earth.

This is what an Earth trusteeship regime would aim to enable.

The greatest challenge for “effective multilateralism” inspired by governance of the global commons and public goods is to re-discover common ground in a segregated world. Within a long-term perspective! Thus paving ways to co-creating consensus<sup>92</sup>. We appeal to all colleagues and friends to take into consideration *Eco-Peace* as common ground for global and local governance innovation.

*Eco-Peace* can develop when it rests on Earth Trusteeship as a foundation.

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<sup>91</sup> <https://www.undp.org/lebanon/press-releases/6-7-people-worldwide-plagued-feelings-insecurity-reports-un-development-programme>

<sup>92</sup> This, as mentioned earlier, does not mean unanimity, nor veto. Consensus building involves informal, face-to-face interaction among representatives of stakeholder groups; “informal” but embedded in cultural institutions. It aims for “mutual gain” solutions, rather than win-lose or lowest common denominator outcomes. Consensus-building approaches (in Indonesia: *Mushawara*) are broadly applicable to all parts of the world and to the full range of international issues.

## Architecture of a new socio-environmental contract

A basic constituting principle of a future architecture of effective multilateralism is envisaged as the equal representation in policy development and global governance of three “sectors”: governments, the corporate sector and civil society. At present the “social contract” is dominated by the business sector<sup>93</sup>, supported by the state or by the state *per se*.

The civic sector, or *civil society*, the primary bearer of *culture*, should be given equal governance agency, firmly embedded in self-regulated freedom, independent from *private* or *business interests* as well as from *political, public, power*. ‘Private’ and ‘public’ mandates should be clearly defined within regulatory boundaries guided by sustainability indicators. Central would be tripartite consensus-building in a “threefold” context of *inter-dependent* dynamics of **culture** (civil society / freedom), **law** (governments / justice / equality) and **economy** (business sector / livelihoods) towards a common goal: *protection, care, sustainable cultivation of Earth; health and prosperity for all* (= the “community of life”) (Fig. 4).

The tripartite dynamics would be embedded in a foundation of Earth trusteeship, governing the global commons and public goods, within an overall framework of inter-dependence. This would constitute and “grow” global Eco- Peace.

The tri-sector architecture resonates with *Our Common Agenda* where it says:

*“This vision recognizes that States remain central to our collective ability to meet global challenges and have unique responsibilities in the multilateral system, while also acknowledging that solutions increasingly depend on the private sector and non-state actors, who should therefore be part of the deliberations and accountable for their commitments.” (par. 106)*

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<sup>93</sup> The earlier mentioned Global Commons Alliance is clearly an extension of the power of the business sector through a philanthropy arm.

## Tri-sector architecture balancing human needs with natural carrying capacity

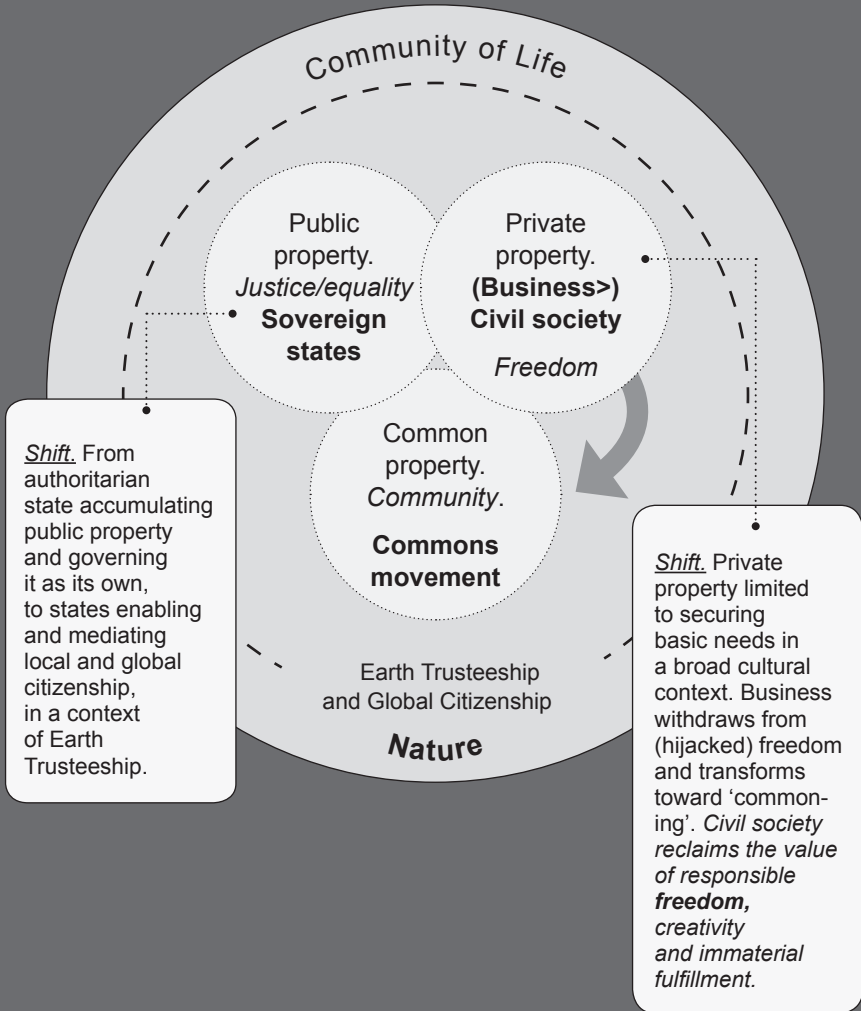


Fig. 4. Tri-sector collaboration. The three overlapping modes of property and corresponding core values freedom, equality and community (re: French Revolution) are bound together by Earth Trusteeship as overarching principle. Embedded in a framework of community of life and global citizenship. A tentative “diagnosis” indicates that the value of freedom has been “occupied” by the corporate sector, while the economic sector should be governed by brother- and sisterhood (or community) values = “commoning”. Freedom should be – in this analysis – civil society’s area of competence. The tri-sector perspective is useful as a diagnostic tool, as well as a principle of regenerative architecture toward a new eco-social contract.

Protection and care, and cultivation of our Planet as our common goals, can be realized by means of decent jobs and basic income for all. This would include a dynamic balance of protectors, *caregivers* including *change makers*, as well as people who *cultivate* the Earth. This “task division” results in a productive state of *Right Livelihood*.

The transformational shifts (from suppressing authority to service; from freedom to extract and exploit inevitable to collaboration for *Right Livelihood*; from resistance against authority and exploitation, to cultivation of creative forces resulting in “meaning” and confirmation of common ground) synthesize in a more **feminine scenario** of care and compassionate cultivation.

*Right Livelihood*, in the specific context of Southeast Asian culture, can be seen as an equivalent of *Buen Vivir* in Latin America and *Ubuntu* in Africa. They are culturally deep-rooted movements that can provide strength and integrity to governance innovations for the benefit of future generations.

## The “commons” movement

The model of *tripartite or tri-sector governance innovation*, with a leading transformative role of civil society<sup>94</sup> interacting with the government sector and the business complexity as equal partners, is arguably what Elinor Ostrom articulated as **polycentric governance**. Ostrom, and others, identified a – until today growing – social innovation movement centred on “reclaiming the commons”. In contrast with the *global commons “beyond sovereignty”*, perceived as “nobody’s land”, commons *within the jurisdiction of states* are “community” intensive, independent social organisms. Hence, governance innovation emerging from the “commons movement” is not based on governance “out-there”, but on **self-organisation**. The inter-dependent “commons”, and the “commons movement” co-create the realm “**beyond Markets and States**”, as Elinor Ostrom captured it<sup>95</sup>.

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<sup>94</sup> In contrast with the Global Commons Alliance mentioned in footnote 5 which is clearly business sector driven with the help of powerful philanthropy arms.

<sup>95</sup> Ostrom, Elinor *Beyond Markets and States*. Polycentric governance of complex economic systems. *American Economic Review*, 100(3): 641-672, 2010.



The recent **Routledge Handbook of Food as a Commons**, with among its editors Olivier de Schutter, former UN Special Rapporteur on the Right to Food, and Ugo Mattei, well-known Italian philosopher who emphasizes the systemic impact of the commons movement, illustrates how important the “commons movement” is for governance innovation related to *Public Goods of which food is a vital one*.

If at a conceptual level the challenges of the “conventional commons beyond national jurisdiction”, could be synthesized with the growing civil-society-driven “reclaiming the commons movement” – pioneering a new economy – if these two dimensions of global (and local) governance can be synthesized, a new 21st century global governance regime may appear at the horizon.

In addition to national and global levels of governance (in the “Common Agenda” refined by governance at city-, regional, inter-governmental levels) we have to recognize **ecosystems**, including *Earth as an ecosystem*, as relatively new governance coordinates demanding appropriate governance agency. A new term to articulate this is bio-regional governance. A “federation of bioregional micro governance bodies” is proposed<sup>96</sup>. The slight technology- and urban- bias of *Our Common Agenda* demands to be balanced out with inclusion of **villages and rural communities**.

In this realm climate-neutral and regenerative agriculture, agroecology, and **eco-system restoration** is recommended to merge to one bio-diversity-based system (inclusive: cultural diversity and a decisive role for indigenous peoples!), not only adapting to climate change, but re-establishing climate balance. Cities, industry, technology and infra-structure can become partners in the co-creation of “*Eco-Peace governance*”.

Climate governance is conventionally defined by ‘hard science’ mechanisms and modelling, while humanity’s relation to Earth as the carrying system of ‘the community of life’, with humanity its integral part, should be primarily defined by (cultural) *worldviews, future vision and collaborative ethics*.

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<sup>96</sup> Wahl, Daniel Christian *Designing Regenerative Cultures*, 2016.

It is thought to be essential that the results of the UNFSS Food Summit (2021), the **UN Decade on Ecosystem Restoration** (2021-2030), Stockholm+50, COP27 and Biodiversity COP15, the high seas treaty, as well as the recommendations of the HLAB on Effective Multilateralism will be integrated in a collaborative process toward the *Summit of the Future* in 2024. This requires a new governance approach to land and natural resources engaging “alternative” human-scale networks – like our own – emphasizing rural reconstruction<sup>97</sup> and *food as a commons* rather than food as a commodity. The appropriate governance innovation may be defined as Earth Trusteeship, to be explored and critically empowered in multi-stakeholder **Earth Trusteeship Dialogue**.

## Conclusion

### **A new Vision for Global Cooperation: a Global Envoy for Civil Society**

Opinion leaders María Fernanda Espinosa and Danilo Türk together wrote an article titled *A New Vision for Global Cooperation*<sup>98</sup>:

*“A new global social contract to address poverty, growing inequality, and the worsening climate crisis will require the involvement of civil society, and Guterres is right to emphasize its role in achieving greater international solidarity. He also notes the need to support the growing contribution of citizens to collective action within and across borders. It is encouraging that Our Common Agenda proposes dedicated civil-society focal points within all UN entities.*

*But more is needed. Two recent civil-society initiatives – We The Peoples Call for Inclusive Global Governance and Together First – proposed a senior-level UN Civil Society Envoy, reporting directly*

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<sup>97</sup> [https://en.wikipedia.org/wiki/New\\_Rural\\_Reconstruction\\_Movement](https://en.wikipedia.org/wiki/New_Rural_Reconstruction_Movement)

<sup>98</sup> Project Syndicate, October 22, 2021; re-published in the Bangkok Post, 28 October 2021. María Fernanda Espinosa, is a former President of the UN General Assembly and member of the World Future Council; Danilo Türk is President of Club de Madrid and a former President of Slovenia (2007-12). He is a member of the HLAB on Effective Multilateralism.

*to Guterres. Such a position would ensure harmonization, high-level reporting, and even greater system-wide access for civil-society organizations in UN decision-making and programming.”*

Shaping a transformative network of civil society focal points, within and outside the UN system could be guided by Earth Trusteeship as an “implicate order”<sup>99</sup> of global citizenship.

Given the complexity and sensitivity of the subject, it would be naïve to expect quick results. A long-term development path requires in-depth investment in exploratory action-research, career path design and knowledge platforms.

Considering, that “**innovation**” is generated by the interplay of disruptive as well as constructive considerations and actions, it is recommended to intimate – as a creative impulse among existing and already emerging “open coalition networks” a combination of two complementary streams by means of “dual action”:

*A platform for inter-disciplinary academic research applied to professional change agents’ strategy, translating emerging innovations into systemic experimentation, with supporting evidence collection. Resulting in a do-able program of actions in which a diversity of actors can participate.*

*A critical but creative, civil society and social enterprise-driven mobilization of grassroots initiatives, including the input of indigenous peoples, nurturing **civil society leadership and social activism** towards genuine transformation and co-creation of Eco-Peace*

## In Summary

- An impulse for institutional, cultural and economic change and re-constitution of our world order is needed comparable with the

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<sup>99</sup> David Bohm: Wholeness and the Implicate Order, 1980, Routledge. Reprint 2005.

post-World War II birth of the United Nations.

- The present situation resembles rather the beginning stages of deterioration of the League of Nations pre-World War II.
- If we want to make a concerted effort to avoid such a deep crisis as another world war, and incite the changes in the world order needed along an evolutionary pathway, we will have to overcome both the divisions as well as unhealthy entanglements between nation states, business sector and (largely suppressed) civil society organizations. Allocate independent productive space toward new modes of collaboration.
- Vital through all changes needed, including reparation and restoration campaigns in fields like biodiversity, climate balance, circular, just and responsible business structures, empowering education, global and local citizenship, *are the governance and legal regulation of land and Earth resources*. Earth Trusteeship points, – in a framework of Earth System Governance – at recognition of Rights of Nature and ecocide as a crime against humanity (to be met in a spirit of Restorative Justice). They are opportunities for promising law and governance innovations.
- From the perspective of law and governance innovation, reflections in a timeframe beyond World War II can be helpful, including evaluation of the Treaty of Westphalen, and the attribution of legal personhood to corporations in the USA, but also the World Parliament of Religions in Chicago preceding the First Hague Conference in 1899, which can be seen as the *seed form* for global governance guided by international law. While emphasizing the importance of transcendence of short-termism and the potential for elevated collaboration thanks to the celebration of diversity.
- The Summit of the Future in September 2024 offers an opportunity to agree on a new “eco-social contract” as an improvement and follow-up to the SDGs and to Agenda 2030.
- A core element of a new “eco-social contract” can be the collective agreement that **all global citizens are equal trustees of the Earth, protecting, caring for and cultivating the “community of life” for the wellbeing of future generations.**

- Investment in “open coalition networking” and the constitution of networks-of-networks overcoming non-productive contradictions and conflict will be needed to bring humanity together for “a new start”.
- In one word our common goal can be expressed as the dedication to co-create Eco-Peace.

## A do-able step: Earth Trusteeship *Dialogue*

A concrete, do-able step, to be supported by Earth Trusteeship *Dialogue*, in collaboration with Right Livelihood and the World Future Council, would be to encourage the *World Federalist Movement / Institute for Global Policy* and the *We The Peoples Campaign* partner, Democracy Without Borders, Democracy International and CIVICUS (with networks), to organise as a creative social innovation experiment a first ever meeting of the *UN Parliamentary Assembly*. This has been envisioned over decades.

Beyond standards of perfectionism, this symbolic meeting to be held in parallel with the *UN Summit of the Future* could bring together a critical mass of devoted signatories of the Parliamentary Assembly from all continents.

In the first meeting of the Assembly a motion could be moved inviting parliamentarians to represent the citizens who voted them in, at various parliaments all over the world, in their *a priori* capacity of **global citizens**, grounded in local citizenship. This would create an, albeit initially symbolic, genuine Global Peoples’ Parliament. National citizenship would remain an important, secondary, intermediary status.

An Earth Trusteeship Council could become a major advisory organisation of the Global Peoples’ Parliament - or: *Earth Parliament*.

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# ***Earth Trusteeship in an Era of Global Environmental Governance: Differentiated Responsibility under Intersecting Challenges of Climate Change and Biodiversity Loss***

Kelly Dorkenoo, Joel Persson

**Kelly Dorkenoo**, PhD Candidate at Lund University Centre for Sustainability Studies. Kelly's doctoral research focuses on experiences of loss and damage emerging from climate change impacts in contexts of agrarian change, and specifically how extreme weather events interact with struggles around land and the implications for agrarian climate justice.

**Joel Persson**, Postdoctoral researcher at Copenhagen University. Joel's research centres on applying interdisciplinary methodological approaches to disentangling the causal relationship behind economic and political globalisation and their effects on human-environment relationships in tropical forest landscapes, including producing actionable pathways for improved collective action on forest governance.

## **Introduction**

A stable climate and biodiverse and ecologically healthy forests can be considered as two of the most important public goods. These provide essential foundations for all forms of life, including food systems and humans' and non-humans' sense of material and nonmaterial security. As well as the diverse values and environmental services that these public goods provide. Despite being regulated in international environmental law for over three decades and an abundance of private sector and state commitments to protecting them, these public goods are increasingly threatened, as carbon emissions and loss of biodiversity and life forms continue to unfold, largely unabated. Significant critiques of the current state-based and private-sector forms of governing these domains call for transformative change in the multi-level institutions and principles underlying global environmental governance (Büscher & Fletcher, 2020; Ramcilovic-Suominen, 2022; Visseren-Hamakers et al., 2021)

The Earth Trusteeship paradigm could provide the basis for envisioning transformative pathways that go beyond some of the arguably defunct

institutional processes embedded in traditional state- and private-centric frameworks. However, the historical expansion of global capitalism, rooted in European colonisation, and consequent power inequalities between the countries and societal groups who have contributed least to creating these global challenges, and those most affected by them, puts in question the principle of equal responsibilities embodied in the Earth Trusteeship.

In this chapter, we discuss the notion of differentiated responsibilities in the context of historical and ongoing injustices embedded in efforts to address climate change and biodiversity loss. We focus on the challenges of operationalising the principle of common but differentiated responsibilities<sup>1</sup> in institutionalising Earth Trusteeship; in terms of introducing, modifying, or enhancing forms of social contracts that span geographic, institutional, and cultural distances. A social contract underpins the legitimacy granted by citizen-subjects in the authority of political systems and actors in governance, a concept dating back to the 1762 book *The Social Contract* by French Enlightenment philosopher Jean-Jacques Rousseau that focused on state-citizen relationships (Rousseau Jean-Jacques, 1981). Contemporary global environmental governance, however, encompasses a new range of social contracts that involve a diversity of actors operating across multiple scales.

## Intersecting Global Sustainability Challenges of Climate Change and Biodiversity Loss

Climate change and biodiversity loss constitute two of the most critical global sustainability challenges of our time. They are often referred to as “wicked problems” (Jerneck et al., 2011). Wicked problems typically involve characteristics such as limited and quickly diminishing time to act, problem formulations and ideas for solutions coming from the same socio-economic systems that caused the problem, a lack of clear central authority, and continuously disputed values (Levin et al., 2012).

The latest assessment report of the IPCC, *Climate Change 2022: Impacts,*

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<sup>1</sup> Common but differentiated responsibilities became a formal principle in the 1992 United Nations Conference on Environment and Development.

*Adaptation and Vulnerability* contains stark warnings: faced with a “[...] brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all”, humanity is at a crossroad for climate action. Frequent extreme weather events, sea-level rise and more irregular seasons are all manifestations of a changing climate. The harmful effects that these changes have on people, societies, and the environment are already being felt all over the world. But the impacts and harms are not equally distributed; certain groups and places are already experiencing a greater burden from losses and damages. These burdens encompass the loss of objects and phenomena of value that are impossible to quantify and often exacerbate social and economic inequalities, sometimes to the extreme. They threaten potential sustainability pathways.

Climate change and biodiversity loss are intimately interlinked. Climate change compounds issues of biodiversity loss by accelerating changes in ecosystems beyond the adaptive capacity of species. Meanwhile, a primary driver of biodiversity loss is forestland conversion and land-use change, especially by agricultural expansion and intensification, and overharvesting of natural resources. These have a particular impact on tropical forests, and the carbon storage and sequestration services that these provide (Arneth et al., 2020). While biodiversity loss is often localised as occurring in a specific context through the direct actions of individuals, it is a consequence of global value chains that supply consumers with various agricultural and wildlife commodities that stretch across national boundaries and implicate actors from all sectors. From multinational corporations, financed by investment companies and supported by national development programmes led by multilateral institutions like the World Bank, to wealthy consumers in middle- and high-income countries, to smallholder farmers. Systemwide and transformative solutions are needed. But these do not appear to be forthcoming under the current global environmental governance architecture.

## **Current Dominant Approaches: What Room for the Third Way?**

The urgency of the ongoing climate and biodiversity crises has bolstered multilateral environmental agreements such as the Convention on Biological Diversity (CBD) and ramped up pressures on states to increase their

commitments under the United Nations Framework Convention on Climate Change (UNFCCC). Despite being on the agenda for decades, only in the recent UNFCCC Conference of the Parties was *Loss and Damage* as a form of compensation for unequal contributions to climate change and disproportionate impacts finally put on the agenda. The post-2020 CBD framework is likely to increase commitments on states to expand their protected area networks to 30% of the global surface. Protected areas are viewed as a key measure for biodiversity conservation, but their management, effectiveness, and social and environmental outcomes vary tremendously. Meanwhile, civil society groups propose paradigmatic solutions that are increasingly viewed as radical business-as-usual approaches. These more radical solutions encompass macro-spatial programmes such as *Half Earth* and *Nature Needs Half* that propose covering half the globe in protected areas (Wilson, 2017), to degrowth and social movements calling for the immediate halting of the expansion of fossil fuel-based economic growth. In contrast, private sector actors engage in questionable market practices to achieve “net-zero” production (Fankhauser et al., 2022), often by offsetting their emissions through reforestation and forest conservation projects. These has fostered a large sector of technocrats and businesses specialising in verifying emission reductions.

Related governance processes tend to be rather silent on the multidimensional forms of social exclusion that quick-fix solutions to these intersecting global sustainability challenges often create. In nature conservation, protected areas and strict legal enforcements tend to disproportionately harm certain societal groups, especially Indigenous peoples, ethnic minorities, shifting cultivating smallholder farmers, pastoralists, and women, through their exclusion from land and other critical natural resources (Fairhead et al., 2012). Meanwhile, powerful actors can assert their claims with institutional backing from defunct legal frameworks and dangerous corporate practices, reflecting the deeply embedded corporate and profit-driven interests in global value chains (Borras Jr & Franco, 2012). This is common practice in many countries, especially in the Global South where economies are often both highly reliant on emission-producing agricultural and forestry sectors and highly vulnerable to the impacts of climate change. Powerful actors play a direct role in influencing capacities for collective action by citizens, often intentionally undermining related efforts for improving conditions of sustainable, equitable and just governance.

Unless systems of accountability are fundamentally transformed to recognise the differentiated responsibilities associated with Earth Trusteeship, there is a risk that current decision-making and actions for climate and biodiversity exacerbate the precarity of people's livelihoods while failing to solve the underlying causes, as mainstream systems of production and consumption are left unchanged. This is fundamentally a matter of justice and rights, and it requires redressing historical injustices and power imbalances that have led us to this point. This is echoed in growing calls for greater social and climate justice for human and "the more-than-human" world by scholars, civil society groups and some governments around the world. At the core lies the question of responsibility: those who have contributed the least are also the ones that will experience the worst effects of these sustainability challenges. Industrialised nations, global corporations in the Global North, and an increasing number of societal actors in middle- and high-income countries such as China and Brazil, are disproportionately benefitting from unequal global development at the expense of nature. Through activities that are contributing to increased greenhouse gases emissions, climate change, and biodiversity loss. The recent era of hyper-globalization has witnessed a tendency to absolve powerful actors – multinational corporations, international investors, state bodies, government agencies – of their differentiated responsibilities.

Not only does this imply that states and multinational corporations, as entities representing institutional continuity, are implicated in historical injustices that require reparations, but it also calls for substantial and significant rehaul of existing fiscal systems (taxation and subsidies), in the context of redressing these injustices. There is an urgent need for redistributive mechanisms that ensure that actors and individuals who have profited from environmental destruction and degradation assume a greater share of responsibility. The lacklustre commitments at the recent UNFCCC Conference of the Parties in 2022 on phasing out fossil fuels and the oscillating political turns towards politics that downplay the urgency of climate and biodiversity crises are in some ways hostile towards the environment (such as recently in Sweden and Italy). However, this demonstrates the barriers embedded in the current international order for addressing the structural causes of climate change and biodiversity loss. This underpins calls for concerted multilevel efforts to institutionalise Earth Trusteeship as an alternative framing of global commons. Such a shift would help move beyond traditional Westphalian sovereign nation-states

and profit-oriented private sector mechanisms, seen as the appropriate solution-space for global sustainability challenges by many, despite being plagued by enduring techno-managerial discourses that prevent meaningful action. This necessitates transcending classic geographical North-South and local-global divides to foster fruitful avenues for action that more genuinely advance principles of differentiated responsibility for Earth Trusteeship.

## **Breaking Down the Implications of Earth Trusteeship for Differentiated Responsibilities in Addressing Global Public Ills, and Enhancing Global Public Goods**

### **1. Differentiated Responsibilities in the Context of Climate Governance**

Climate change interacts with marginalisation and inequality negatively, aggravating the deeply unequal distribution of benefits and harms associated with its effects. Too often, discussions on these issues have focused on the level of nations and on responsibility for causing the problem, involving nations who are least responsible for climate change (currently and historically) but disproportionately impacted by it. Responsibility is intrinsically connected to notions of justice and often interpreted through the lenses of burden sharing and harm avoidance (Caney, 2014). It is crucial to explicate notions of responsibility as differentiated, multi-scaled, and multi-faceted.

Assigning responsibility in the context of climate governance is a complex and contentious task for which numerous guiding principles exist. For instance, causal responsibility for harm and ethical responsibility to redress harms are two distinct but interconnected forms of responsibility (Cuomo, 2011). As Cuomo (2011) explains, climate change is a “geographically and historically diffuse ecological harm”, which renders “causal links [...] elusive or indeterminate” (p. 697). The question of *who* is responsible for the harm is not as straightforward as it seems. Causal responsibility at the individual level, is for example, linked to actions undertaken by subjects decades ago (who are now deceased), whereas responsibility to redress harm is attributed to individuals living today.



This temporal dimension plays a significant role, as it distinguishes between the duty to prevent future harm caused by climate change and duty to address harms that have already occurred. García-Portela (2019) outlines a necessary distinction by advancing a collective duty to pay or bear compensatory burdens that would be allocated to states to replace individual duties, which she deems as unfit for the realm of compensatory justice. The fact that individuals enjoy the benefits of belonging to that state justifies them paying for this compensatory burden through state mechanisms. While for some, states are broadly perceived as “best” placed to act upon responsibility for harm related to climate change for others this creates a risk of painting “a picture of world politics centred around a system of states” leaving out a large body of non-state organisations at other levels (Boran, 2018, p. 398).

These, however, are liability-centred interpretations of responsibility. Navigating the complexity of differentiation in responsibility, beyond this dualistic view, requires a more diversified and nuanced lens. Juhola (2019) provides a useful typology in the context of climate change adaptation by identifying three types of responsibility beyond liability: care, accountability, and responsiveness. Responsibility as a form of care has an ex-ante focus, it emphasizes anticipatory action, and mainly originates in the role of the state framed as the main incumbent of responsibility that lays out rules and norms for adaptation aiming to prevent harm. Responsibility understood as accountability (ex-post) and responsiveness (ex-ante), are both more attuned to the notion of polycentric and multi-level governance. Accountability in this context refers to a form of reactive action to the problem that can be undertaken and triggered with or without state action at the level of individuals, communities, cities, voluntary networks, and partnerships between public and private actors. Responsibility as responsiveness refers to “ex-ante allocation of responsibility” and in doing so, widens the spectrum of actors engaged in this form of responsibility. As Juhola (2019) explains, responsibility “then becomes shared by those who are in positions to develop knowledge of potential impacts and adaptation to them through different types of flexible instruments” (p. 6).

Attributing responsibility to various societal actors is, however, no mundane task and requires a critical understanding of capacities and abilities to assume responsibilities embedded in the notion of trusteeship. For instance, the importance of a functioning state is paramount to the possibility

of attributing responsibility to it. Moreover, there is a range of multi-scale formal and informal institutions that shape responsibilities of state- and non-state actors. In the context of biodiversity and land-use change, an important principle underlying such institutional responsibilities is stewardship.

## **2. Stewardship: What Does it Mean for Differentiated Responsibility for Earth Trusteeship?**

The concept of stewardship can guide the institutionalisation of differentiated responsibilities embedded in Earth Trusteeship. Environmental stewardship is defined as “the actions taken by individuals, groups or networks of actors, with various motivations and levels of capacity, to protect, care for or responsibly use the environment in pursuit of environmental and/or social outcomes in diverse social–ecological contexts” (Bennett et al., 2018). Common in discussions on community-based natural resource governance, stewardship is often deployed in the promotion of indigenous groups and local communities as caretakers of nature. The idea is that while all citizens, and collective entities representing citizens, assume trusteeship responsibilities over Earth’s nature, not all of us possess stewardship responsibilities.

Environmental stewardship is largely a product of responsibilities associated with specific parcels of land or other forms of nature, which is derived from individuals’ or collective entities’ property rights with sustainability considerations, at least partly factoring into the decision-making. Such rights may be customary, arising from a broad recognition of specific use and alienation rights not necessarily inscribed in law, or they may be formalised by the state. In the context of decentralisation and deconcentration movements since the 1990s, for instance, many countries have undertaken legal reforms to devolve powers over natural resources to smaller-scale jurisdictional units (local community organisations or district agencies), with varying success and often partly formalising customary use and management rights, on the recognition that direct resource users are often better stewards (Ribot, 2002). However, it is critical to distinguish *de jure* and *de facto* stewardship, as although a state entity (for instance a protected area management unit) may have jurisdictional authority over a particular territory, customary use by residents, or commercial use by companies

and external actors may reflect actual practices. Moreover, decentralisation initiatives have often undermined community entities' claims over land and nature and enabled extension of instruments of sovereign rule over remote areas. Related stewardship functions imply differentiated responsibilities that can be difficult to disentangle depending on the complexity of the specific context.

Whether derived from customary, state, or private law, however, it is crucial to capture the differentiated sets of responsibilities and potential relationships between trustees and stewards. Although we do not all have stewardship responsibilities, we are all partly responsible for the economic and political systems through which stewardship manifests, and the incentives and actions that enable or inhibit change within these systems. As citizens, through our engagement in various social groups and movements; as voters, through our voting behaviours; as farmers, through our agricultural practices; and as consumers, through our choices in the supermarket. Moreover, we can all become responsible stewards or support responsible stewardship in diverse ways via collective action to engage with nature directly or indirectly: farmers adopting agroforestry practices with support from non-governmental organisations; people collectively purchasing land parcels and allocating them for nature reserves; conscious investors investing in collectives that apply socially and environmentally responsible practices. Actions to promote responsible use should be proportional to one's capacities and should imply a greater set of responsibilities for those with the requisite means.

Other collective entities, with greater financial, discursive, and legal powers, however, must share a greater set of responsibilities for Earth Trusteeship. States and multinational corporations, representing institutional continuity, are able to shape the political economies that can foster agency in environmental matters. These include not only classic redistributive mechanisms like taxes and subsidies, but also financial incentives for more responsible action and through the allocation of budgets, as well as by creating and fostering spaces for civil society engagements. Recognition of such differentiated responsibilities and capacities for action are a core component in the process of garnering support for the institutionalisation of Earth Trusteeship.

## Exemplifying the Dynamic Nature of Differentiated Responsibilities: Climate Change and Biodiversity Loss in Ratanakiri Province, Cambodia

As the consequences of climate change and biodiversity loss accelerate, the fate of populations in rural and agrarian contexts is increasingly central to questions of social and environmental justice, globally. Smallholder farmers, often belonging to indigenous groups and ethnic minority groups, face a multitude of pressures. They experience climate-related impacts and are targets of measures for climate change mitigation and adaptation. At the same time, such rural contexts are spaces where intense land-use change and competition for resources co-occur and accelerate.

Ratanakiri province in the north-eastern part of Cambodia epitomizes these dynamics and challenges. Once mostly inhabited by indigenous people and ethnic minorities, whose livelihoods were dependent upon low-emission rotational agriculture for subsistence and access to forest resources, the province has become the locus of both significant land-use change and impacts of climate change. Recent agrarian transformations have seen the inflow of financial capital, in-migration from lowland provinces inhabited by the dominant ethnicity, and private sector and state-based interests in land and natural resources that, over a short temporal span from around 2005 to 2015, led to forestland conversions and dispossession of customary lands from indigenous people and ethnic minorities. State actors played a significant role in these processes through the allocation of large-scale Economic Land Concessions (ELCs), often through extra-legal processes. Simultaneously, forestland conversion and species loss have ramped up conservation interests dramatically as state and non-governmental actors collaborate to safeguard dwindling wildlife habitats, for instance through the strengthening of a national park established in 2004 that borders Vietnam and Lao PDR. This has led to further infringements on local livelihoods as valuable agricultural land, forest products and food sources became inaccessible to smallholders.

Previously settled farmers in turn scrambled to ascertain some rights over agricultural land, and while many have been able to claim small plots, these remain far below the levels needed for sustainable rotational agriculture, a practice that is gradually disappearing. As a result, the agricultural

expansion and intensification of agriculture that occurred in the area, increasingly dependent on private sector financing, is unable to provide sustainable means of living under conditions of climate change. Having contributed minimally to the problem of climate change, smallholder farmers in Ratanakiri are experiencing significant impacts that threaten the material basis for their living. More intense and frequent extreme weather events and changes in seasonality are causing crop failures and further exacerbating the risk of debt failure and ultimately land sales.

The challenges described above exemplify the dynamic nature of differentiated responsibilities implied by Earth Trusteeship. In Ratanakiri, the stewardship responsibilities of biodiversity have shifted from indigenous people and local communities mainly under customary governance institutions, to state actors, in less than two decades. This shift has been intertwined with expanding efforts to formalise and expand government capacities to enact governance instruments, formulated on sovereign principles and bureaucratic state functions. With regards to climate-related impacts, responsibility for the harms created can mainly be placed upon global actors and industrialised countries distant from Ratanakiri, but responsibility for adaptation, understood as care, accountability, and responsiveness, relies heavily on a multi-actor perspective involving action by the same state that facilitated their dispossession. However, the state is a diverse and dynamic entity and its functions and relationships have also evolved in Ratanakiri. Moreover, while smallholder farmers possess crucial knowledge to support climate change adaptation, their capacities to act upon this knowledge remains severely constrained by conditions of a globalised market economy, largely determined by external distant actors and institutions whose diverse interests might conflict with their own priorities and aims.

## **Ways Forward: (Re)crafting Social Contracts under Earth Trusteeship**

Earth Trusteeship helps to envision potential transformative changes through mechanisms modelled on a logic of multilevel commons and global public goods. Crucial work in identifying, crafting, and fostering interlinkages across these domains is needed. As an eco-centric paradigm, Earth Trusteeship spans the areas of theory, legislation, and practice, and at its

core lies questions of rights, responsibility, duty, and capacity. In this commentary piece, we have attempted to delineate some of the challenges and possibilities associated with the notions of differentiated responsibility under Earth Trusteeship in the context of intersecting global sustainability challenges of climate change and biodiversity loss. Business-as-usual approaches centred on states and markets will continue to expand as a result of institutional inertia and vested interests behind related processes and practices.

However, there is now broad agreement that holistic and transformative approaches are needed for addressing climate change and biodiversity loss. Within the action-domains of the intersecting global sustainability challenges of climate change and biodiversity loss sit a diversity of loosely connected grassroots movements, civil society mobilisations, and multi-sector approaches that embody principles of Earth Trusteeship, and these should be nurtured in global fora. Examples in nature conservation include community forestry and community protected areas (Pagdee et al., 2006). Convivial conservation (Büscher & Fletcher, 2019) to be sure, has never been an easy proposition. But the arrival of the Anthropocene - the alleged new phase of world history in which humans dominate the earth-system seems to have upped the ante dramatically. The choices facing the conservation community have now become particularly stark. Several proposals for revolutionising conservation have been proposed, including 'new' conservation, 'half Earth' and more. These have triggered heated debates, and potential for contemplating, and promotion of multi-functional landscapes and local value chains (Zimmerer, 2014). These provide space for alternative framings around and distribution of rights and responsibilities in local-global commons. Specifically, future oriented approaches that engage with questions of inter-generational justice and politics of sustainable futures are increasingly recognized as key (Clark & Harley, 2020; Knappe et al., 2019; Leach et al., 2018).

Differentiated responsibilities, grounded in the multi-level understanding of responsibilities for climate change and the difference between trusteeship and stewardship, could guide the institutionalisation of Earth Trusteeship. This could underpin formulations of constructive actions by different sets of actors, if developed into guidelines. And ultimately potential legal and social mechanisms to obligate entities to uphold and act on their differentiated responsibilities. One avenue is connecting Earth Trusteeship to ongoing

transnational social movements around universal human rights and capabilities. For example, formalising land tenure regimes for indigenous people and local communities. Across the globe, people who depend on and care for nature are connected in their common aspirations for tenure rights, from Sami groups in northern Scandinavia to ethnic minorities in Cambodia to Indigenous people in the Brazilian Amazon. Moreover, legal mechanisms developed via international and national law, such as state obligations under the Paris Agreement or the Convention on Biological Diversity, provide channels for collective entities to uphold their differentiated responsibilities. An example is representatives of *Fridays for the Future* suing governments for failing to uphold their obligations under national law. Such actions would not have been possible without transnational collective action guided by principles of differentiated responsibilities, and have important consequences for future non-state and non-private forms of institutionalisation.

Principles around multi-level responsibilities for climate change can guide the institutionalisation of Earth Trusteeship. States are not homogenous or static. They are rather dynamic amalgamations of heterogeneous entities with evolving responsibilities, relationships, and institutions. This is particularly the case in key landscapes where state presence is rapidly expanding and intensifying. Private sector actors are also highly diverse: the institutional logic of multinational corporations differs markedly from informal micro-business entities. It is important to pay attention to the fractal nature of these actors and their operations across scales and in different contexts. Reparations for historical injustices related to climate change are one component of differentiated responsibility, but the forms and means by which these may be achieved need to be carefully crafted to prevent entrenching existing patterns of inequity. Responsibilities for climate change mitigation and adaptation should be understood as fluid and multi-levelled. While financing may emerge from the global sphere of negotiations through UNFCCC processes, responsibility to support and enhance action on the ground will mostly fall upon subnational, regional, and local institutions and civil society actors. In the absence of democratic space to express claims for justice, efforts to support the implementation of differentiated responsibility under Earth Trusteeship need to take a holistic and intersecting lens.

Instruments to develop new social contracts and associated institutions

under Earth Trusteeship must be adapted to particular national and sub-national political economy contexts, while embedded in transnational epistemic and social movements that seek to garner support for transformative change. Specific transnational movements for such mobilisation in the context of climate change and biodiversity conservation include for instance, tenure reform and call for reparations under the *Loss and Damage* policy framework. Finally, Earth Trusteeship implies transformative changes that are only possible with deeper engagement and recognition of legal pluralism, diverse cosmologies and the pluralistic notions of justice that underpin such movements.

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## APPENDICES



# Appendix 1

(Re: INVOKING THE SPIRIT OF TRUSTEESHIP by Anwar Fazal)

## The Chinook's Blessing

"We call upon the earth, our planet home, with its beautiful depths and soaring heights, its vitality and abundance of life, and together we ask that it

Teach us, and show us the Way.

We call upon the mountains, the Cascades and the Olympics, the high green valleys and meadows filled with wild flowers, the snows that never melt, the summits of intense silence, and we ask that they

Teach us, and show us the Way.

We call upon the waters that rim the earth, horizon to horizon, that flow in our rivers and streams, that fall upon our gardens and fields and we ask that they,

Teach us, and show us the Way

We call upon the land which grows our food, the nurturing soil, the fertile fields, the abundant gardens and orchards, and we ask that they

Teach us, and show us the Way

We call upon the forest, the great trees reaching strongly to the sky with earth in their roots and the heavens in their branches, the fir and the pine and the cedar, and we ask them to

Teach us, and show us the Way

We call upon the creatures of the fields and forests and the seas, our brothers and sisters the wolf and deer, the eagle and dove, the great whales and the dolphin, the beautiful Orca and salmon who share our Northwest home, and ask them to

Teach us, and show us the Way

We call upon all those who have lived on this earth, our ancestors and our friends, who dreamed the best for future generations, and upon whose lives our lives are built, and with thanksgiving, we call upon them to

Teach us, and show us the Way

And lastly, we call upon all that we hold most sacred, the presence and power of the Great Spirit of love and truth which flows through all the universe to be with us to

Teach us, and show us the Way”.

*The Chinook is a tribal nation from Southwest Washington, whose ancestral lands sit at the mouth of the Columbia River. They have been fighting for federal recognition since 1899.*



## Appendix 2

### AUTHORS' BIOGRAPHIES



**Nnimmo Bassey**, Nigeria. Right Livelihood Laureate 2010. “For revealing the full ecological and human horrors of oil production and for his inspired work to strengthen the environmental movement in Nigeria and globally.” Nnimmo is an architect, environmental activist, author and poet. He chaired Friends of the Earth International from 2008 through 2012. He is Founder / Director of the Health of Mother Earth Foundation (HOMEF), an environmental think tank and advocacy organization.



**Michel Bauwens**, Thailand / Belgium. is theorist in the emerging field of peer-to-peer (P2P) collaboration, writer, and conference speaker on the subjects of the commons movement, technology, culture and business innovation. Bauwens founded the P2P Foundation, a global organization of researchers working in open collaboration on the exploration of peer production, governance, and property.



**Klaus Bosselmann**, New Zealand / Germany. Klaus Bosselmann has been teaching in the areas of public international law, international environmental law, comparative law and environmental constitutionalism. Klaus is currently Chair of the Ecological Law and Governance Association (ELGA), Chair of the Earth Trusteeship Initiative (ETI), and partner in the New Zealand Centre of Global Studies (NZCGS). Klaus has authored or edited over 30 books on environmental law and political ecology. He received the 2021 Carlowitz Sustainability Award.



**CURLS2019 Summer School** brought Young people from the Southeast and South Asia regions, as well as from Europe and USA together in an action-research exercise bringing them to remote villages in the North of Thailand. Back in Bangkok they co-created the Earth Trusteeship Forum with experts

from all over the globe. The co-learning experience included theatre improvisation as well as interreligious exchanges.



**Mayssam Daaboul**, Lebanon. Mayssam is a social entrepreneur, university lecturer and researcher. He received his Doctorate in Business Administration (DBA) at the Grenoble Ecole de Management, France. He is the Founder of Carpe Verum, an open source consultancy empowering businesses, NGOs and public organizations to build a more resilient, transparent and efficient work environment.



**Kelly Dorkenoo**, Sweden / France. PhD Candidate at Lund University Centre for Sustainability Studies (LUC-SUS) / Right Livelihood College Lund. Kelly's doctoral research focuses on experiences of loss and damage emerging from climate change impacts in contexts of agrarian change, and specifically how extreme weather events interact with struggles around land and the implications for agrarian climate justice.



**Anwar Fazal**, Malaysia, is an activist campaigning for consumers and citizens' rights. Having started advocating in his native country, he soon rose to work on the issue internationally, amplifying the magnitude of consumers' concerns. He also ensured that poor consumers from the developing world had a voice at the international fora. He received the Right Livelihood Award as early as 1982 for "fighting for the rights of consumers and helping them to do the same." He is the Founder of the Right Livelihood College.



**Maja Groff**, the Netherlands / Canada. Maja Groff is an international lawyer based in The Hague, who has assisted in the development and servicing of multilateral treaties, also working at various international criminal tribunals and teaching regularly at the Hague Academy of International Law. She has worked on existing and potential global treaties addressing, inter alia, areas of child law, issues disproportionately affecting women, persons with disabilities, access to legal information and a range of other topics, as well as on the pioneering International

Hague Network of Judges. She is the Convener of the Climate Governance Commission.



**Neshan Gunasekera**, Sweden / Sr Lanka, is a World Future Councilor and international lawyer, educationist, leadership coach, facilitator and environmentalist from Sri Lanka. He is committed to bringing communities together for environmental protection, healing. He has supported, advised and worked with several international organizations including UN Agencies and IUCN over the last 17 years. He received the H.E. Judge C.G. Weeramantry International Justice Award for the cause of justice and inclusion of all peoples. Since recently Neshan is a Research Fellow based at the Wallenberg Institute in Lund, Sweden.



**Paulo Magalhães**, Portugal, is a jurist and researcher at CIJE - Center for Legal and Economic Research at the University of Porto where he finished a Post-Doc in Law about the legal structural roots of the climate emergency. He is the founder and President of the Common Home of Humanity. He holds a Degree in Law by the Catholic University of Porto, a post-degree in Environmental Law by the University of Coimbra, Ph.D. in Human Ecology from the Faculty of Social and Human Sciences, Nova University of Lisbon. In 2020 he finished a Pos-Doc about the legal status of climate and the structural roots of climate emergency.



**Henry Mentink**, the Netherlands, is a social entrepreneur and legacy holder of artist Pieter Kooista, who founded the Veerhuis in the delta of the Rhine River. Henry connects not only with a growing network of people in transition, but as well with animals and plants, in particular a magic tree near the Veerhuis.





**Raúl Montenegro**, Argentina, received the Right Livelihood Award in 2004 “for his outstanding work with local communities and indigenous people to protect the environment and natural resources.” He has been a familiar figure on Argentine TV and radio for 20 years. Raúl created the Environment Defence Foundation (FUNAM). In 1985, he became a professor on Evolutionary Biology. He keeps both positions until today. In 2003, Montenegro joined indigenous groups in their struggle against logging and mining companies. After years of legal battle, more than 10,000 hectares were recognised as indigenous lands.



**Jessica den Outer**, the Netherlands. “I have aligned my career with my biggest passion in life. Rights of Nature brings together my love for Nature and interest in law. I want to inspire people to see law as a transformative tool. I believe ecosystems such as rivers, mountains and forests should have legal rights. My expertise on the Rights of Nature has been recognised by the United Nations Harmony with Nature programme in 2019. I am currently working as an independent consultant/speaker/author on various projects and in collaboration with organisations striving toward similar goals.”



**Joel Gustav Persson**, Sweden. Postdoctoral researcher at Copenhagen University. Joel’s research centres on applying interdisciplinary methodological approaches to disentangling the causal relationship behind economic and political globalisation and their effects on human-environment relationships in tropical forest landscapes, including producing actionable pathways for improved collective action on forest governance.



**José Ramos**, Australia / Mexico. José Ramos is originally from California from Mexican American and Indigenous ancestry, now residing in Melbourne Australia. A vision quest led him to the idea of studying the futures. He recently completed an action research doctoral study focused on how citizen groups can respond to global challenges and create alternative globalizations. He currently works as a research analyst for the Smart Services CRC, edits the Journal of Futures Studies, and is Senior Visiting

Research Fellow at the Lee Kuan Yew School of Public Policy at the National University of Singapore.



**Vandana Shiva**, India. Vandana Shiva, a world-renowned environmental thinker, activist, feminist, philosopher of science, writer and science policy advocate, is the founder of Navdanya, and the “Earth University” Bija Vidyapeeth in Uttarakhand, India. Vandana received the Right Livelihood Award in 1993 “for placing women and ecology at the heart of modern development discourse.” She is also a councilor of the World Future Council. The Seeds of Vandana Shiva, a feature-length documentary, presents the life story of this remarkable Gandhian eco-activist and agro-ecologist.



**Justin Sobion**, New Zealand / Trinidad and Tobago. “I am an Attorney at Law specialising in International Law (LL.M.) (Hons.) (2008) from the University of Cape Town, South Africa. I was admitted to the Bar to practise law as an Attorney at Law in the Republic of Trinidad and Tobago (2002) and later as a Barrister at Law and Solicitor in the Commonwealth of Dominica (2008). My experiences in International Law include - Environmental Law, Human Rights, Constitutional law and International Law of the Sea. Presently I am a Teaching Assistant and also working on my PhD thesis on Earth Trusteeship and the Rights of Nature at the University of Auckland in New Zealand.



**Prue Taylor**, New Zealand, teaches environmental and planning law at the School of Architecture and Planning, University of Auckland. Her book, *An Ecological Approach to International Law: Responding to the Challenges of Climate Change* (Routledge), won a NZ Legal Research Foundation Prize. Her current research projects involve: local government and climate change; climate change ethics; common heritage of mankind and legal strategies for the commons; as well as the ocean-climate nexus, with a particular focus on ocean acidification; and inter-generational equity.

**Dasho Karma Ura**, Bhutan, has been the President of The Centre for Bhutan and GNH Studies since 2008. From 1989 to 1998, he worked in the Planning Commis-



sion of Bhutan. His education includes a BA in Politics, Philosophy and Economics, Magdalen College, University of Oxford, UK., MPhil in Economics, University of Edinburgh, UK. and a PhD from Nagoya University, Japan. He is a member of several international boards: the Advisory Board of the Wellbeing Research Centre at the University of Oxford, the Earth Trusteeship Working Group (ETWG), the Global Happiness Council, and the World Happiness Report.



**Ole von Ulexkull**, Sweden. “As Executive Director at Right Livelihood, I am leading the work of the Foundation which honours and supports courageous people solving global problems. By recognising the actions of brave visionaries and building impactful connections around the world, we are a courage-powered community for social change committed to peace, justice and sustainability for all. The Foundation has developed from a secretariat of two employees to today’s team of around 20 employees across several offices. With my colleagues, I have been able to build up the support and protection work for Laureates and the Foundation’s international education network.”



**Alyn Ware**, Czechia / New Zealand. “I am an educator, organiser and campaigner in the areas of peace, non-violence, nuclear abolition, international law, human rights (including gender and children’s rights) and the environment. I was born in Aotearoa-New Zealand (Aotearoa is the indigenous name for the country) and I currently live in Prague. My main work roles are: Coordinator of Parliamentarians for Nuclear Non-proliferation and Disarmament; Director of the Basel Peace Office; Coordinator of the World Future Council Peace & Disarmament Program; and International Representative for the NZ Peace Foundation (Te Tuapapa Rongomau o Aotearoa).



**Femke Wijdekop**, the Netherlands, Femke received her LL.M. in International Law from the Free University (Amsterdam) in 2003. After graduating she did research at the University of Amsterdam in the fields of International Law and Constitutional Law. From January 2013 onwards Femke started volunteering with the End Ecocide in



Europe campaign and Polly Higgins' global campaign to Eradicate Ecocide. She organised an Earth Guardian workshop with Polly Higgins in Amsterdam in the Summer of 2013 and joined the 'Integrative Law Movement'. She is currently a Legal Counsel and Content Manager of Stop Ecocide NL.



**Hans van Willenswaard**, Thailand / the Netherlands. "I was born in the Netherlands and was educated as a cultural worker in the sixties at Amsterdam University of Applied Sciences. I was active in Youth culture and community development. After I was trained in rural development and community farming at Emerson College, U.K., I initiated a Development Studies programme at Zeeland University for Applied Sciences and did freelance work for IFOAM and other NGOs. Later I met Sulak Sivaraksa in the Netherlands and moved to Thailand to join his work, where I met Wallapa. We started a publishing house and bookshop in the old part of Bangkok."



**Wallapa van Willenswaard**, Thailand. Although Wallapa did not contribute an article to this book, she became the driving force behind the effort to get it published. With more than fifteen years of experience in publishing books in Thai language, we decided to explore global publishing. The extraordinary collaboration we received from a great diversity of authors gave us the feeling that we had to respond to the call of the Earth Trusteeship Working Group (ETWG) to bring its message to the world. Wallapa graduated from the Faculty of Arts of Chulalongkorn University, Bangkok, but pursued initially an independent business career. In 1998 she made a U-turn and became a pioneering Director of the Spirit in Education Movement (SEM) founded by Right Livelihood Laureate Sulak Sivaraksa. Currently she is the Managing Director of Innovation Network International (INI).

# Appendix 3

## Membership EARTH TRUSTEESHIP Working Group

### Right Livelihood Award (RLA) Laureates who support the ETWG:

- **Sulak Sivaraksa**, Thailand (RLA 1995) – Patron, RLC campus Bangkok
- **Vandana Shiva**, India (RLA 1993)
- **Anwar Fazal**, Malaysia (RLA 1982)
- **Nnimmo Bassey**, Nigeria (RLA 2010)
- **Raúl Montenegro**, Argentina (RLA 2004)

**Alyn Ware, New Zealand / Czechia**, (RLA 2009), *Coordinating Right Livelihood Laureate*; World Future Council; The Peace Foundation; Parliamentarians for Nuclear Non-proliferation and Disarmament. Basel Peace Bureau. World Federalist Movement / Institute for Global Policy.

**Neshan Gunasekera, Sri Lanka / Sweden**, *Co-Chair*; World Future Council; Research Fellow, Wallenberg Institute, Lund University, Lund, Sweden; Member, Board, International Association Of Lawyers Against Nuclear Arms (IALANA); Right Livelihood legacy holder for **Judge C.G. Weeramantry** (1926-2017), Sri Lanka, (RLA 2007, and former Vice President, International Court of Justice).

**Dasho Karma Ura, Bhutan**, *Co-Chair*, President, Centre for Bhutan & GNH Studies, Thimphu, Bhutan; Member, Advisory Board, Wellbeing Research Centre, University of Oxford; former Member, Constitution Drafting Committee.

**Klaus Bosselmann, New Zealand / Germany**, *Academic Supervisor of the Working Group*, Professor in Law; University of Auckland, New Zealand Centre for Environmental Law (NZCEL); New Zealand Centre of Global Studies Programme (NZCGS).

**Justin Sobion, Trinidad & Tobago / New Zealand**, Doctoral Candidate, Faculty of Law, University of Auckland, New Zealand, *Earth Trusteeship Working Group Coordinator* [jsobion@gmail.com](mailto:jsobion@gmail.com)

**Prue Taylor, New Zealand**, Senior Lecturer, Environmental and Planning Law at the School of Architecture and Planning, University of Auckland.



**Paulo Magalhães, Portugal**, Founder and General Director, Common Home of Humanity; Center for Legal and Economic Research (CIJE-UP) of the University of Porto.

**Emilie Gaillard, France**, Associate Professor in Private Law (Sciences Po Rennes) and co-head of the Risk Division of the MRSH (Caen France); author *Future Generations and Private Law. Towards a law for Future Generations*. General Coordinator Normandy Chair for Peace.

**Vongthep Arthakaivalvatee, Thailand**, Visiting Fellow, ISEAS - Yusof Ishak Institute (ISEAS), Singapore; Former Special Advisor, Thailand Institute of Justice (TIJ), Bangkok; former Deputy Secretary-General of ASEAN, Socio-Cultural Community, Jakarta, Indonesia.

**Mike Hayes, Thailand / Australia**, Program Director, Institute of Human Rights and Peace Studies / *Global Campus of Human Rights Asia-Pacific*, Mahidol University, Bangkok, Thailand.

**Narumon Arunotai, Thailand**, Director, CU Social Research Institute (CUSRI), Chulalongkorn University (CU), Bangkok, Thailand. Assoc. Professor in Anthropology.

Education Manager, Right Livelihood Foundation, Geneva Office, Switzerland (*Observer*).

**Hans & Wallapa van Willenswaard, Thailand / the Netherlands**, *Founders/Advisors*, School for Wellbeing Studies and Research; Right Livelihood College, campus Bangkok (RLC Bangkok); Innovation Network International (INI). Connecting the Commons (CTC)

**Kittipon Phummisuttikul, Thailand**, International Masters Degree student, Faculty of Architecture, Chulalongkorn University; *Coordinator RLC Bangkok* [sun.kittipon@gmail.com](mailto:sun.kittipon@gmail.com)

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