



Condomínio da Terra

A CAMINHO DO RIO+20

# WHAT UNITES US ALL

A Common Heritage for a Green Economy



# proponents



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# abstract

The proposal to think of the Earth as a giant condominium takes advantage of an already widely tested legal tool to conciliate individual and collective interests. It supplies a global legal basis for instruments and structures that can sustain a new framework, which reconciles the individual interests of each state with the superior interests of all of humanity.

In order to achieve a green economy that exists within limits that are biophysically possible and socially desirable, the proposal consists of attributing a status of a global common heritage to our natural life-support systems. This heritage would be managed by an entity capable of accounting for each state's contributions to the maintenance of the global natural systems. This requires the evaluation of these contributions by a common metric, which can be translated in a common monetary value.

As a start we consider the climatic system as the best candidate to receive the status of Common Heritage of Mankind. This will allow to set forth rights and duties that will guide the construction of a green economy, capable of securing the availability of environmental services.

The delineation of this heritage aims to solve several complex structural and operational problems. These include the global dispersion of unaccounted costs and benefits that originate from human activity, and which therefore currently constitutes a market failure. In order to settle accounts and institutionalize the management of the common interest, an agreement must be reached regarding the appropriate metric that describes the consumption and supply of collective benefits and the value attributed to each unit.

# 01

## Global Juridic Support

### 01.1 The need to evolve from the concept of *Common Concern of Mankind*

The UN General Assembly Resolution 43/53 of 6/12/1988, “recognizes that climate change is a common concern of mankind, since climate is an essential condition which sustains life on Earth.” It is in fact an answer to the impossibility to apply in this case the classic solution of the “tragedy of the commons”, generally obtained through the division of commonly used goods and privatization. Upon introducing the concept ‘Common Concern of Mankind’, this resolution implicitly suggests reshaping the concept ‘Common Heritage of Mankind’<sup>1</sup>, which has a common origin in other terminologies such as ‘common interest’, ‘global commons’, or ‘intergenerational equity, responsibility or rights’. The option of juridical consecration of a problem, such as the ‘Common Concern of Mankind’, not only identifies the problem, but also appeals to its resolution. But still, it is not an instrument that describes solutions. This will require something more tangible than a the description of a shared concern. The need to truly address this concern, demands a definition of the generic and undetermined concept of Common Concern of Mankind.

The intended evolutionary transformation from a simple proclamation of concern or interest towards the construction of juridic objects capable of managing the rights and duties related to the pursuit of the common interests of mankind has become a pressing need. Without this transformation, the law cannot fulfill its primary duty of organization.

### 01.2 A Common Heritage to overcome ‘market failure’

The dispersion of the majority of environmental benefits and costs throughout humanity is constitutes a market failure, since “there is no trade institution where one affecting positively another (or others) receive(s) compensation or one affecting negatively another (or others) pay(s) the respective cost”.<sup>2</sup>

The property rights associated to common assets, and specially the global ones, are under-defined. The existence of many agents using one resource in these conditions, leads to a market failure, to an inefficient use of a resource and propels its excessive use.

<sup>1</sup> Pureza, J., 1998. O património comum da humanidade rumo a um direito internacional da solidariedade? Porto: Edições Afrontamento.

<sup>2</sup> Cit. por Soares, C.A Dias – O imposto ecológico. Contributo para o estudo dos instrumentos económicos de defesa do ambiente. Coimbra: Universidade de Coimbra/Coimbra Editora, 2001.



Carbon or biodiversity green markets are interesting conceptual and experimental labs for the construction of a green economy, but they do not respond to the full dimension of benefits and costs diffused throughout the global natural systems. Citing Constanza et. al. (2011), “A global solution to the sustainability challenge is thus a prerequisite for living sustainably at local and regional scales”.<sup>3</sup> But since the UN General Assembly’s Resolution 43/53, recognizes climate change as a “common interest”, from that it may be derived the climatic system, can no longer be consider ‘res nullius’. I.e., there is no longer an absence of interest over it and, therefore, it can no longer be freely used.

The notion of common interest results in the creation of a legal system whose rules impose duties on society as a whole and on each individual member of the community.<sup>4</sup> In this context, the concept Common Heritage of Mankind is unique in its capacity to supply an international legal framework suitable to the regulation of goods that extends to less tangible conditions of human well-being. It cannot be confined only to the strictly material sphere, as it concerns humanity’s well-being in a qualitative sense.

José Manuel Sobrino advances a concrete proposal: “A formal legal approach to the notion of Common Heritage of Mankind would certainly exclude the vital resources as well as the climatic system itself. However, in my opinion, the evolution of the international community, the patrimonial dimension of these goods, the need for transmission, would allow the application of the fundamental principles of Common Heritage of Mankind, and thus, make them free from any private or state appropriation, accessible to all and managed by an international institution, particularly taking into account the unequal development of the States. In this sense, it can be argued that the climatic system has the dimension of a heritage of Mankind, which involves the idea of transmission of a climate appropriate to sustain life, for our present and future generations.”<sup>5</sup>

This option of configuring a global natural system as a *res communis omnium*, i.e., as a common property extended to all humanity, may become the ground work that will allow the resolution of a series of complex problems, such as the space-time inadequacy of the Law to the new global phenomena and the inevitable ‘market failures’ that result from the undefined property regime associated to these global environmental goods. It may also allow for the quantification of this common interest, opening doors to the creation of an accounting system of the rights and duties related to this common heritage.

Many attempts have been made to use market tools to promote the organization of a function of ‘exchange and alienation,’ aiming to reach optimum ecological and social levels, integrating the economy and the environment. But “environmental goods are not suitable to a function of exchange and alienation, as they are rather suit to a function of collective fruition.”<sup>6</sup> The fact that no one can

<sup>3</sup> Costanza, R. et al. 2011. How Defining Planetary Boundaries Can Transform Our Approach to Growth, The Solutions Journal. Available at: <http://www.thesolutionsjournal.com/node/935> (consultado em 06/06/2011).

<sup>4</sup> Shelton, Dinah, Common Concern of Humanity, *Iustum Aequum Salutare*, V2009/1,33-40

<sup>5</sup> Sobrino, J. M., “Hácia um património ecológico comum de la humanidad”, 4 fev.2011, 21ª Jornal Estado de Direito.

<sup>6</sup> Citado por, Amado Gomes, Carla, *Textos Dispersos de Direito do Ambiente*, Associação Académica da Faculdade Direito de Lisboa, Lisboa 2005, p 22

be excluded from this ‘global collective fruition,’ means that all will have access to the improvements introduced in the global common system without paying. In the same way, all are faced with the possibility of bearing with the usage costs of the global natural systems incurred by others. This fact precludes the ‘function of exchange and alienation’ of a traditional market. Therefore, the solution must be sought elsewhere. What is then the part played by the law in this context? One of its main functions ought to be organizing the collective fruition of goods or global natural systems, which several agents are entitled to use, without any right of excluding other agents.

### 01.3 Intangible Natural Heritage?

The difficulty of delineating a juridical object related to the interest or concern of mankind, is not inherent to the natural asset intended to be preserved, but rather relate to possible clashes with the physical and geographical spaces of the different sovereignties. On one hand, it is known that the ‘laws of nature’ exist, that the natural cycles and the global natural systems work, but the discoveries that revealed their global functioning are recent and the mental shift needed to separate these systems from the sovereign spaces has not yet been achieved. On the other hand, there is no juridical object, that responds to the characteristics of environmental goods of a diffuse and intangible character, that can go beyond an expression of concern without interfering with sovereignty.

As a result of alterations in the chemical composition of the atmosphere, changes occur in the oceans. From the interaction between these two systems, changes occur in the dynamics of temperature and energy transmission and distribution as well as in the whole complex network of interactions that ensure the environmental conditions needed for human well-being. But this notion of functional processes of the atmosphere or the oceans, should not be confused with the geographical notions of national territory, airspace, exclusive economical zone or even the geographical space of an ecosystem.

Therefore, we do not consider the spatial dimension of State territories, but rather ‘functional systems’ whose dimension is always global. The maintenance of the balance of these systems, which are essential to human welfare, is therefore a Common Interest of Mankind, while their imbalance is regarded as a common concern. Simone Borg attributes to this common interest a legal status of an intangible common resource encompassing all the global common goods.<sup>7</sup> So there seems to exist an intangible dimension of nature, which does exist within a geographical space of the planet, but outside the physical space of sovereignties and does not share the characteristics physically appropriable material goods.

Considering the climate system as a heritage, as proposed by Sobrino, not only allows the deterritorialisation of nature, but also the individualisation of the natural function, which isolates it from the concept of sovereignty.<sup>8</sup> The functional dimension of the climate system goes beyond the notion of aerial, maritime or terrestrial space and enters the intangible realm of nature, which, for all effects and purposes, is where we find the Common Concern of Mankind. This ‘intangible’ nature, because it unites us all, is the essence and the true Common Heritage of Mankind.

<sup>7</sup> Borg, Simone, Climate Change as a Common Concern of Humankind, Twenty Years Later... From UNGA to UNSC <http://www.diplomacy.edu/conferences/climatechange/papers/borg.pdf>

<sup>8</sup> Sobrino, José Manuel, “Hácia um património ecológico comum de la humanidad”, 4 fev.2011, 21ª Jornal Estado de Direito.

# 02

## Common metric

### 02.1 The need for a common metric

The first step towards an integrated management is to find a measure, acceptable to all, that can translate consumption and availability of collective welfare achieved through the several global natural systems into units. For that purpose, it is fundamental to first solve the problems of using various methodologies, of the conceptual and spatial differences between distinct geographical units, and of the differences between the several ecological services provided by the different ecosystems. A system is also needed that can solve the problems associated to the impossibility to appropriate environmental systems and of the free access and non-exclusion with regard to the whole human community.

### 02.2 The global hectare, the ecological footprint and biocapacity

The Global Hectare, developed by the Global Footprint Network, has not only the merit of including, in the same metric, the different impacts on the ecological system through the ecological footprint (debit), but also incorporates the benefits of the ecological services through biocapacity (credit). This tool is already recognized and being used on an international level to inform public policies, such as those of the European Union. It is a metric applicable on the local, regional or global scale, allowing the interchange of information. The global hectare, as a measurable concept, has not only the advantage to be compatible with the Intangible Natural Heritage of Mankind, but it can also obtain balances that enables the settlement of accounts.

### 02.3 A green economy that produces biocapacity

As societies globalize, a consensus is emerging on the need to develop an economy that can operate in harmony with the ‘common home,’ and which serves human beings. From the Rio+20 Summit is expected that it initiates an accelerated process of profound global transition towards an economy that generates growth, generates employment and eradicates poverty, by investing in and preserving the natural capital upon which our long-term survival is based.

But as Aragão (1997) points out: “Considering, however, the current degraded state of the environment, intergenerational responsibility should go further: it is no longer sufficient to leave the environment to future generations as it was received, it is necessary to recover the quality of the environment, approaching to optimal levels.”<sup>9</sup>

<sup>9</sup> Aragão, Maria Alexandra de Sousa, O princípio do poluidor pagador, pedra angular da política comunitária do ambiente, Boletim da Faculdade de Direito, Universidade de Coimbra, Coimbra Editora, Coimbra 1997, p-31

Building a green economy is definitely more than reducing pollution, developing green technologies, improving ecoefficiency and attempting to organise the ‘function of exchange and alienation’ of the rights of pollution, with all its perverse effects. Building a green economy is also maintaining and recovering the natural capital, introducing in the international relations accounting and in the GDPs, the positive contributions of each intervener in the global system, allowing, in this way, the existence of incentives to the recovery of the planet’s biodiversity to sustain human life.

We know that, at this point, we would need 1.5 planets to ensure the replenishment of consumed resources. This means that the demand for these environmental services is 0.5 times higher than the supply. If the environmental services are vital for Humanity’s welfare, why is the economy currently incapable of producing and distributing those services in both a fair and sustainable way?

# 03

## Common value

### 03.1 The need for a common value

The option of using the same metric for demand and supply, which allows a reading of the local contributions to the planet, makes it possible to declare that each biocapacity unit (global hectare) made available by the common natural systems, provides equal benefits to all Humanity. Therefore, the economic compensation awarded to cover the provision costs of each global hectare must be identical all over the planet. This is also key for building up trust and reciprocity.

If we seek a value for the vital services, despite its incalculable value, it is also true that “the perception of the lack of correspondence between the derisory market value and the supreme real value, must be seen as an incentive to obtain a value closer to reality, rather than a hindrance towards valuation, fearing that the calculated value will fall short of the real one. (...) In short, the restraint for assigning a monetary value to the elements of nature as a consequence supports the continued exploitation of resources at zero or close to zero cost, which, from a resource preservation point of view, is certainly worst than the assignment of a price, no matter how low or lenient it may be.”<sup>10</sup>

But how can we define a value that compensates those who provide ecological services of common interest? On the supply side of environmental services, the quantification of the provision costs for the indirect benefits performed by the common natural systems is proposed. We wish to know how

<sup>10</sup> Aragão, Alexandra, A natureza não tem preço... mas devia. O dever de valorar e pagar os serviços de ecossistemas. Estudos de Homenagem ao Professor Jorge Miranda. Outubro 2011.



much it costs to offer a biocapacity unit, which is a benefit used by all at a global level, and that is directly related with the maintenance/recovery of the ecosystem's good condition.

As a starting point, this value should be obtained from several ecosystems in different countries, and that should be the key data that informs the political process of attributing a price. Since we understand from the start that the payment of the ecosystem's services will never cover their real value, what must be aimed at, is finding the most adequate value to perform a compensation for the services of common interest.

Moreover, given the economic and exchange differences between countries, the common value may also be an appropriate tool to respond to the historical differences between countries with regard to the consumption and use of the global natural systems. It may also provide a more balanced distribution of the financial resources between the rural and the urban world.

### 03.2 The Ecological Fiscal Reform

The compensation for the benefits performed in the common natural systems, implies a broader view on economy and on the tax system itself, since this new financial compensation cannot be achieved by adding new taxes to the existing ones. The transition to a green economy entails the construction of a fiscal system that ensures a redistribution of profits based on each one's positive and negative contributions towards the common interest. So on one hand, it penalises the impacts on the environment, on the other, it encourages the performance of collective benefits. These proposals are based on the conviction that there must be a decrease of taxes on labour and an increase of taxes on the impacts on the environment, i.e., on the consumption which translates into the ecological footprint.

# 04

## Governance of a Common Heritage

When spoken about the attribution of an economic value to ecological services, often it is assumed that it will therefore be necessary to transform them into tradable products and that a conventional market will have to be created. This is not the correct approach because we are speaking of free-access goods and a conventional market cannot be used to manage goods that are not excludable. Since all countries consume and provide ecological services that are reflected on the global natural systems, only by obtaining the balance between the total supply and consumption, can an agreement be reached where everyone's interests are safeguarded. A permanent supply and demand management will be necessary, and should be carried out by an institution within the United Nations. Because ultimately, the environment is not a tradable product, but rather an asset to be maintained.



#### 04.1 Settlement of accounts of a common heritage with limits

Nowadays it is already possible to define the limits in which the conditions for human life are maintained and the safe boundaries which should be crossed. This limit of the Earth's natural system itself must be understood as "a specific point related to a global-scale environmental process beyond which humanity should not go."<sup>11</sup> This notion of boundary will be a normative judgment, informed by science, but largely based on the human perception of risk. If the value of this heritage is measured by the capacity of the Earth's natural system to ensure human living conditions for the future generations, in this case the climatic system, the safe and proper value of the inherited heritage could correspond to the CO<sub>2</sub> concentration in the atmosphere. Sources indicate that the appropriate value for this Heritage would be 350ppm.

The Earth Condominium, by juridically separating the sovereignty of each state from the common natural systems, proposes a global juridic support that will allow the creation of an accounting of each one's contributions towards the regular functioning of these systems and the creation of a management system. This arguably offers the best structural conditions to overcome this 'social trap.'

With this theoretical/conceptual scenario as a starting point, we propose the structured combination of the various existing solutions, to which some improvements and adaptations would be made, giving them the integrated dimension of a necessary path of structural reform in order to build a human green economy.

<sup>11</sup> Constanza, R. et al. 2011. How Defining Planetary Boundaries Can Transform Our Approach to Growth, The Solutions Journal. Available at: <http://www.thesolutionsjournal.com/node/935> (Accessed on 06/06/2011)

