

## 2016 Virtual Dialogue on Harmony with Nature – Theme Earth Jurisprudence

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1. What would the practice of Earth-centered Law look like from an Earth Jurisprudence perspective? How is that different from the way that Earth-centered Law is generally practiced now? And, what are the benefits of practicing Earth-centered Law from an Earth Jurisprudence perspective?

The Preamble of the Earth Charter invites us to put into perspective our existence by recalling that « The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples » Our health is intimately linked to the one of the biosphere, our survival as a species is also linked to the biosphere's ability to regenerate. Our right to a healthy environment presupposes to protect the environment but hundreds of legal instruments have been developed for this and yet we fail in our task. The environmental law and our right to a healthy environment are built on a fragmented vision of nature without highlighting the reality of ecological cycles of the Earth. This is due to the fact that we perceive ourselves regardless of our environment. There are us humans , there are that's not us: plants, animals, nature, what we call our "environment" ... Here lies our first error, we need to recognize ourselves as part of the Earth system and give rights to the ecological systems to exist in order to protect our fundamental rights as human beings. Another mistake of the existing legal framework is not to have recognized fundamental rights to future generations which would give a duty to present ones to preserve the sustainability of life on Earth as a legacy.

We are not asked to blindly adhere to a sacred vision of Earth, it is proposed that we trust science to remind us of the limits to our ambitions on Earth. It is time that science and conscience come together to offer us a desirable future, it is time that justice is based on scientific facts to ensure fairness and dignity within humanity. It is by building the ecosystem Earth pivot value of our legal system that we can build up the body of a clear universalist doctrine for the true benefit of present and future generations. The first step towards a Earth centered new binding legal framework is to recognize universally the planetary boundaries (ie. Stockölm Resilience center) and the fact that overstepping those limits lead us all to threaten the safety of the planet and human security. We need to integrate in our governance system the means to respect these limits. For this, the legal way is the most effective and we should consider those limits as binding. International law should be extended by standards setting limits for our impact on the Earth at a global scale. Standards that can not be negotiated by the States and which would not be subject to the principle of national sovereignty. These standards are to be defined and redefined over time by science according to its advances but they must have the power to enforce all states obligations in the name of preserving the safety of the planet. To protect the safety of the planet, we need to build a true Universal Competence over states sovereignty. An independent international Court with a coercitive power should be dealing with crimes against future generations and Earth ecosystem. As The International Criminal Court is already in place, we should consider amending the Rome Statute to include 2 major legal developments: one concerning present and future generations rights threatened by environmental degradations within the definition of crimes against humanity, one concerning the Earth itself to protect its main ecosystems - what we call the Global commons - and its ecological processes and cycles. This crime is the crime of Ecocide.

2. What promising approaches do you recommend for achieving implementation of an Earth-centered worldview for Earth-centered Law? (Note: depending on the discipline, approaches could also be theoretical, although practical approaches should be prioritized).

The normative framework based on the "planetary boundaries" should be used to define a comprehensive policy to the satisfaction of the most immediate human needs, such as clean energy supply, affordable, accessible and adequate food supplies. It must also be understood as a brake on any innovation which does not respect the Earth ecological systems even if this leads, as its detractors point, a more radical dimension of global governance. That is precisely the issue. The study of planetary boundaries does not hide its purpose: keeping the Earth in the state of the Holocene and the avoidance of entering a new era shaped by man, that of the Anthropocene. The theory of planetary boundaries clearly supports the idea that we need to adopt a precautionary approach to the use of technology we invent and how we use land resources, and this principle must be implemented without delay nor pass right to avoid driving us towards disaster foretold. To assess the action plan decided in 2015 to reach 17 goals for sustainable development, the United Nations had to choose indicators to measure progress in its implementation. The UN did not group these indicators according to planetary boundaries' theory explicitly but these limits were used as criteria to formulate the most goals. This foreshadows a general movement towards the adoption of such a legal binding framework guiding the reform of governance structures. But as long as these limits will not be elevated to standards, they will not be effective against many destructive industrial practices that continue to prevail across the world. The first step towards a new international law whose pivot is the protection of the ecosystem Earth would therefore recognize and elevate these planetary boundaries scientifically determined as universal binding legal norms, ie as not to exceed limits which would be imposed on States. The challenge is global, these limits should be the heart of a doctrine that is resolutely universalist. In addition, it would implement article 15 of the Rio Declaration to enact an environmental and health duty of care on a global scale. Article 15 stipulates that "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation » The precautionary principle would give the international justice a valuable tool for implementing preventive justice that would be able to halt industrial activities threatening the global balance by doing through precautionary measures. A protective measure would aim in this context to keep an existing resource or ecological function when designing a development project, which would prove crucial to ensure respect for the planetary boundaries. Thus citizens could refer a case to the Prosecutor on the basis of the results of an environmental and social impact study if they suspect an industrial project to contribute to emit too many greenhouse gases, to disrupt the carbon or methane cycle, or the one of nitrogen and phosphorus, to acidify the water, to reduce access to safe drinking water, threaten biodiversity, reject toxic waste ... the normative framework of planetary boundaries would also have the advantage to implement another principle: the recognition of "common but differentiated responsibilities" within the international community.

Conducts leading to « significant and durable damage to any part or system of the global commons, or which threatens Earth ecological systems », which all are essential to the safety of humankind, while discouraged under many international treaties and laws, currently lacks an effective criminal deterrent. The time has arrived to recognise this sort of conduct as an international crime. This crime has a name: Ecocide.

### 3. What key problems or obstacles do you see as impeding the implementation of an Earth-centered worldview in Earth-centered Law?

Historically, a number of thorny obstacles have tended to prevent the adoption of binding international criminal laws for the environment: 1) scientific complexity and uncertainty, 2) time horizon disagreements, 3) economic development and justice versus environmental protection, and 4) varying core, religious, cultural, or political values. Each of these could merit prolonged discussion. Here is a brief summary of the conflicts in terms of a homicide metaphor:

**Scientific complexity and uncertainty:** Most criminal law observers are familiar with the concept of the *corpus delicto*: without a body there is no murder. Environmental injuries, moreover on non born generations are less demonstrable than homicides; rarely is there a corpse evident. We should change of perspective by adopting a preventive legal system instead of a law on reparation. The safety of the planet is at stake and no one anymore is arguing about climate change or loss of biodiversity. We should request a legal international system which prevents from more damages, for this we need International Law to be Earth centered and binding. That's the only way to guarantee our fundamental rights and elevate humankind rights over the rights of the states which are mainly motivated by economical and military power regardless of the long terms consequences. As it is difficult to obtain a binding agreement within the UN, as the Paris agreement on climate change showed, the strategy to use International criminal law to implement binding standards could be an alternative solution. ICC states parties are largely States who are victims of resources' predation or climate change impacts and might vote in favor of such a law.

**Economic development versus environmental protection:** Any observer of international environmental politics cannot have missed the fact that there always appears to be a trade-off between environmental protection and economic development. The distinction between economics and environment is analogous to the recognized human needs for food and water. We need both, clearly, and it could be argued that we need water more dearly than food since we can only last a few days without water. However, even if we have water, without food we also perish. The problem is elsewhere as economics now is based on finance which leads to give more to few and very few to the majority. This is unfair and this system is also leading to destroying the Earth ecological systems mortgaging our common future. So, again we have to request a global governance recognizing Earth and Humankind fundamental rights above individual interests.

**Varying core religious, cultural, or political values:** As so aptly stated by Chasek, Downie, and Brown (in *Global Environmental Politics*, 4th Ed., 2006, p. 207): "...some groups in Iceland and Norway have strong cultural links to whaling. Some individuals in Asia believe products from endangered animal species, such as rhino horn, have important medicinal, physical, or sexual properties...Many Catholics [and many non-Catholic Christians as well] and Muslims oppose policies designed to control human population growth. Some political ideologies treat economic development and freedom from government regulations as higher priorities than environmental protection." How can we expect to reconcile these opposing beliefs? The answer is we can't, and shouldn't. But we should agree on a common objective, which is to guarantee Earth health as a legacy to future generations. This implies that when one group damages a portion of the natural world to such an extent that the well-being and even the ability to survive of another group of people is impaired, these types of threats are what bring environmental crimes into the realm of crimes against peace and security, worthy of a place in the ICC Statute.

4. What are the top recommendations for priority, near-term action to move Earth-centered Law toward an Earth Jurisprudence approach? What are the specific, longer-term priorities for action? (Note: give 3 to 10 priorities for action).

Proposals are already existing. We need to lobby more and more in favor of adopting them universally by showing how to build an efficient legal architecture to enforce Earth rights from public international law to criminal international law.

**Let's adopt two new universal declarations in order to get an appropriate frame for a Earth centered international law. :**

1. To enlarge the recognition of human fundamental rights to future generations, we could propose a Universal Declaration of Humankind rights (and duties) as stated in this document :

<http://droitshumanite.fr/DU/?lang=en>

2. To recognize Earth rights, we should propose to the UN general assembly to recognize the Universal declaration of the rights of Mother Earth :

<http://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf>

**Let's make those rights binding :**

3. The Earth Charter should be proposed as the basis of a third International Covenant on environmental rights to consolidate the Charter of the United Nations which will clearly states both future generations rights and Earth's ecosystem rights regardless of its worth to human beings. <http://earthcharter.org/discover/the-earth-charter/>

4. Such as an International Covenant on Environmental Rights would allow individuals who have had their environmental rights violated by member states to petition the international Human Rights Committee.

5. To enforce those rights and extend them to the Earth 's ecosystem, we have to enrich the Rome statute with new definitions regarding crimes against future generations (within section Crime against humanity-Art 7bis) and crimes against Earth's ecosystem (as new section on Crime of ecocide - article 8ter) taking into account recommendations listed below:

- International Criminal Court should be freed from states sovereignty and ruled according to a common best interest placed above the states with possible jurisdiction over any country when vital ecosystems for humanity are threatened.
- It means that the safety of the planet should become an imperative higher standard in the international penal system whose framework would bind to respect planetary boundaries, natural global commons and ecological systems of the Earth.
- Future generations and Earth's ecosystem interests should be represented and defended into court by any individual, group of action or organisation.
- We need to create a duty of care for those threatening the safety of the planet. As long as heads of legal entities, such as states or multinational corporates, cannot be liable for criminal prosecution for violations of the right of humanity to a healthy environment and / or the right of the ecosystem Earth to maintain its vital cycles and processes, then it is very unlikely that we will achieve radical shift in our political, economic and energy models.

Here is a proposal on Ecocide amendments to the ICC statute [http://valericabanes.eu/wp-content/uploads/2016/06/ICC-Amendements-Ecocide-ENG\\_June21-2016.pdf](http://valericabanes.eu/wp-content/uploads/2016/06/ICC-Amendements-Ecocide-ENG_June21-2016.pdf)