

## 2022 UN OCEAN CONFERENCE

"Climate is a common good, an asset of all and for all. At the global level, it is a complex system, which has to do with many conditions essential for human life."

Pope Francis

# FROM SDG 14 TO SDG 13, THROUGH SDG 16 OCEAN GOVERNANCE AS AN EXAMPLE FOR CLIMATE GOVERNANCE – CLIMATE AS A COMMON HERITAGE OF HUMANKIND

Graça Enes, PhD, Professor/Researcher

"Sooner or later a situation will arise in which so much is at stake that our common concern leads us to call for direct action to preserve the common heritage of humanity."

Stephen Stec

No SDG is an island, they are all part of a common network. Events in each of them have an effect on the others. The achievements and solutions of some are examples for others.

Sustainable oceans are critical for sustainable development - SDG 14.  
Sustainable development requires effective, accountable and transparent institutions - SDG 16.  
The response to the climate emergency - SDG 13 - needs a new legal framework.

The Framework Convention on Climate Change (1992) considered climate a "common concern of humankind". This qualification was reiterated in the Paris Agreement (2016). It was a significant step: "common concern of humankind" reveals a conviction and a commitment about a transterritorial reality that is a common problem.

However, this approach is insufficient and conceptually inadequate. As the International Law Commission pointed out, "a problem requires cooperation by the entire international community, but does not, as such, create rights and obligations and, in particular, does not imply obligations *erga omnes*".

There is no doubt that climate is a trans-territorial reality. There is no doubt that it has become an problem, but this says nothing about its essential character and it must be this character that determines its legal status. Is its character ambiguous? Is it or is it not a legal object?

### Fundamental Principles of the Climate System as a Common Heritage of Humankind:

- Non appropriation, public or private;
- Common governance;
- Benefit sharing;
- Intergenerational solidarity.

Science has already given us the answer and proved that the "**Earth's climate system**", the one that allowed human life to develop, is an **intangible functional asset that articulates biogeophysical, tangible and intangible elements, integrated in an indivisible, stable but dynamic and depletable pattern**. Its existence is based on a necessary ontological, spatial and temporal interdependence of these elements.

Besides being fundamental to the very human existence, it provides services because it enables, provides or promotes the development of human activities (the cycle of agricultural crops, for example, is still dependent on the climate system).

The climate system needs and can have a new legal qualification and this should lead to a common multi-level governance.

The "**Earth's climate system**" should be more than a "concern", it can and should be recognised as a common legal asset and qualified by International Law as "**the common heritage of humankind**". Malta made this proposal in 1988. Intangibility is not an obstacle and does not prevent the definition of the object, as proven by intangible assets, functional organisational assets (v.g. business assets such as clientele) and intellectual assets (the most obvious being the copyright works).

Nor is transterritoriality an obstacle, as international law has long recognised transterritorial resources, such as watercourses (v.g. the Convention on the Protection and Use of Transboundary Watercourses and International Lakes). In 2021, the International Law Commission recognised the atmosphere as a "natural resource", defining it as an "envelope of gases, invisible, indivisible, dynamic, fluctuating and transterritorial" and distinct from airspace, which is subject to the sovereignty of states.

### The model for Climate Governance should be UNCLOS and the Area.

According to Article 136 "[t]he Area [seabed, seabed and subsoil beyond the limits of state jurisdiction] and its resources are the common heritage of mankind."

If the IPCC was the institutional response to climate change as a "common concern", governance of a common heritage of humanity, as the climate system should be, requires not only assessment and monitoring, but guidance and coordination. Again, the **International Seabed Authority established for the organisation, monitoring and management of the Area's resources may be the inspiration.**