



# **STABLE CLIMATE AS COMMON HERITAGE**

## and the role of registry information



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## General Assembly

Distr.  
GENERAL

A/43/241  
12 September 1988

ORIGINAL: ENGLISH

Forty-third session

REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM  
IN THE AGENDA OF THE FORTY-THIRD SESSION

DECLARATION PROCLAIMING CLIMATE AS PART  
OF THE COMMON HERITAGE OF MANKIND

Letter dated 9 September 1988 from the Permanent Representative of  
Malta to the United Nations addressed to the Secretary-General

I have the honour to request, on behalf of the Government of Malta, in accordance with rule 15 of the rules of procedure of the General Assembly, the inclusion of an additional item entitled "Declaration proclaiming climate as part of the common heritage of mankind" in the agenda of the forty-third session of the General Assembly.

In accordance with rule 20 of the Assembly's rules of procedure, an explanatory memorandum concerning my Government's request is attached hereto.

(Signed) Alexander BORG OLIVIER  
Ambassador  
Permanent Representative

Climate as a  
Common  
Heritage of  
Humankind

12/09/1988 Maltese Proposal

A World View  
with an  
Intangible  
Global Common  
without Borders



# The Current Legal Status - Including Paris Agreement

## Climate Change as a Common Concern of Humankind

06/12/1988 70th plenary  
UNGA meeting

to address  
the problem,  
Causes and  
Consequencies.

tlement needs of displaced persons;

9. *Requests* the Secretary-General to apprise the Economic and Social Council at its first regular session of 1989 of his efforts and to report thereon to the General Assembly at its forty-fourth session.

70th plenary meeting  
6 December 1988

### 43/53. Protection of global climate for present and future generations of mankind

*The General Assembly,*

*Welcoming with appreciation* the initiative taken by the Government of Malta in proposing for consideration by the Assembly the item entitled "Conservation of climate as part of the common heritage of mankind",

*Concerned* that certain human activities could change global climate patterns, threatening present and future generations with potentially severe economic and social consequences,

*Noting with concern* that the emerging evidence indicates that continued growth in atmospheric concentrations of "greenhouse" gases could produce global warming with an eventual rise in sea levels, the effects of which could be disastrous for mankind if timely steps are not taken at all levels,

<sup>5</sup> A/43/755.

whole and should be confronted within a global framework so as to take into account the vital interests of all mankind,

1. *Recognizes* that climate change is a common concern of mankind, since climate is an essential condition which sustains life on earth;

2. *Determines* that necessary and timely action should be taken to deal with climate change within a global framework;

3. *Reaffirms* its resolution 42/184 of 11 December 1987, in which, *inter alia*, it agreed with the Governing Council of the United Nations Environment Programme that the Programme should attach importance to the problem of global climate change and that the Executive Director of the United Nations Environment Programme should ensure that the Programme co-operates closely with the World Meteorological Organization and the International Council of Scientific Unions and maintains an active, influential role in the World Climate Programme;

4. *Considers* that activities in support of the World Climate Programme, approved by the Congress and Executive Council of the World Meteorological Organization and elaborated in the system-wide medium-term environment programme for the period 1990-1995, which was approved by the Governing Council of the United Nations

<sup>6</sup> See United Nations Environment Programme, *Annual Report of the Executive Director, 1985* (UNEP/GC.14/2), chap. IV, paras. 138-140.



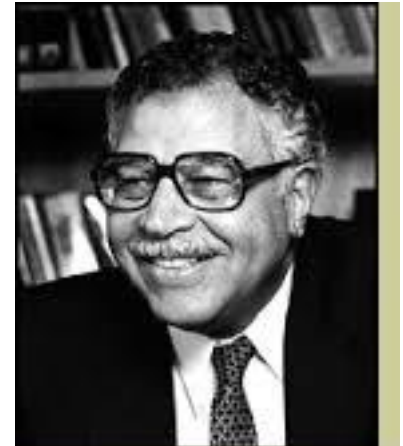
*"It is very important that the concept of Common Concern of Mankind is **further elaborated to make its contents and scope understandable and clear** ;"*

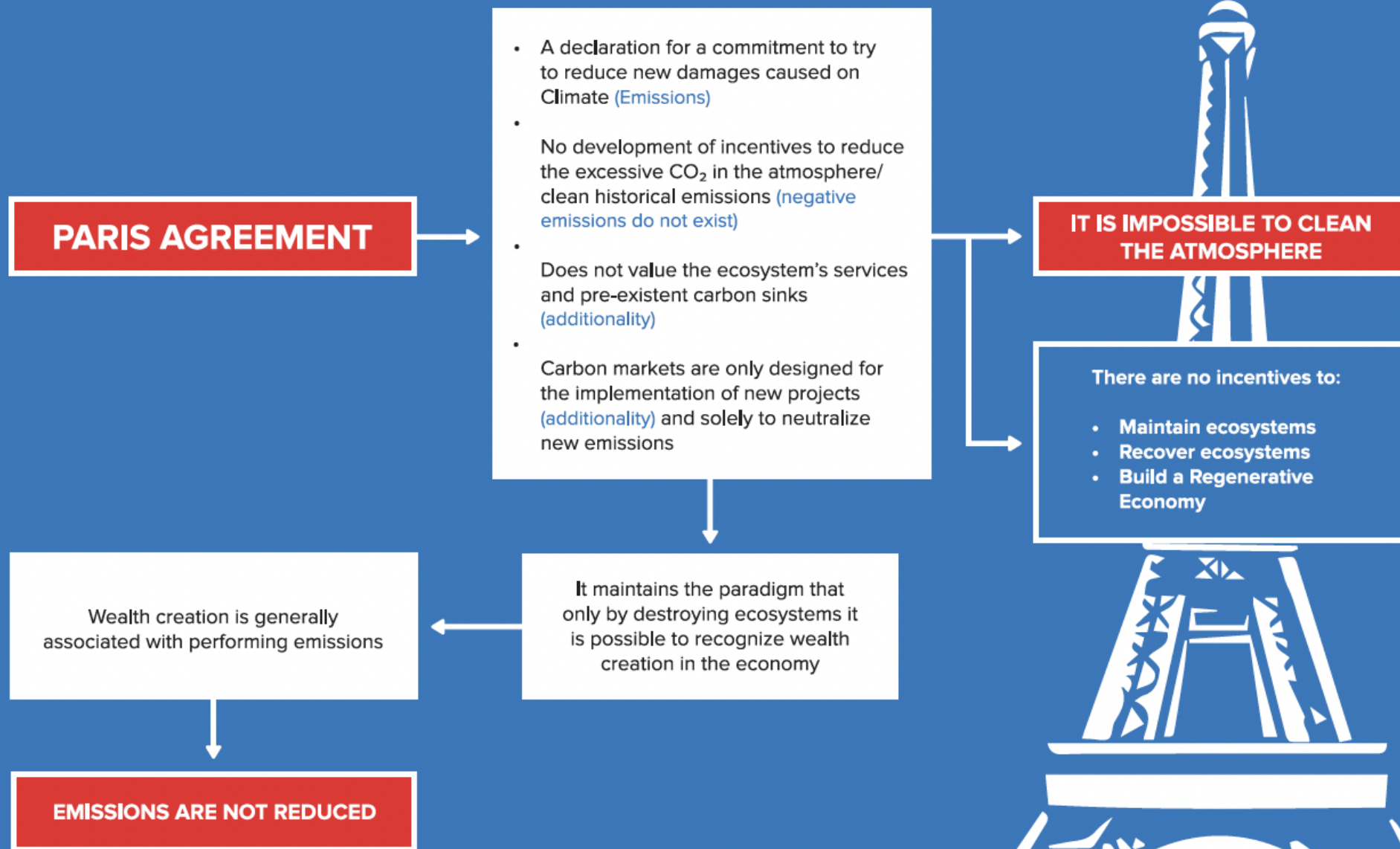
*"(...) it is also important to make sure how this concept **can be interpreted in the terms of rights and obligations of States** in the process of its implementation."*

*"A Common Concern of Humanity **remains a vague political formula**, which could be used to legitimize the lack of concrete actions **simply by declaring an environmental concern**".*

**MUSTAFA TOLBA (1991)** The Implications of the "Common Concern of Mankind Concept in Global Environmental Issues", IIDH, 1991, 13, pp. 237–246 .

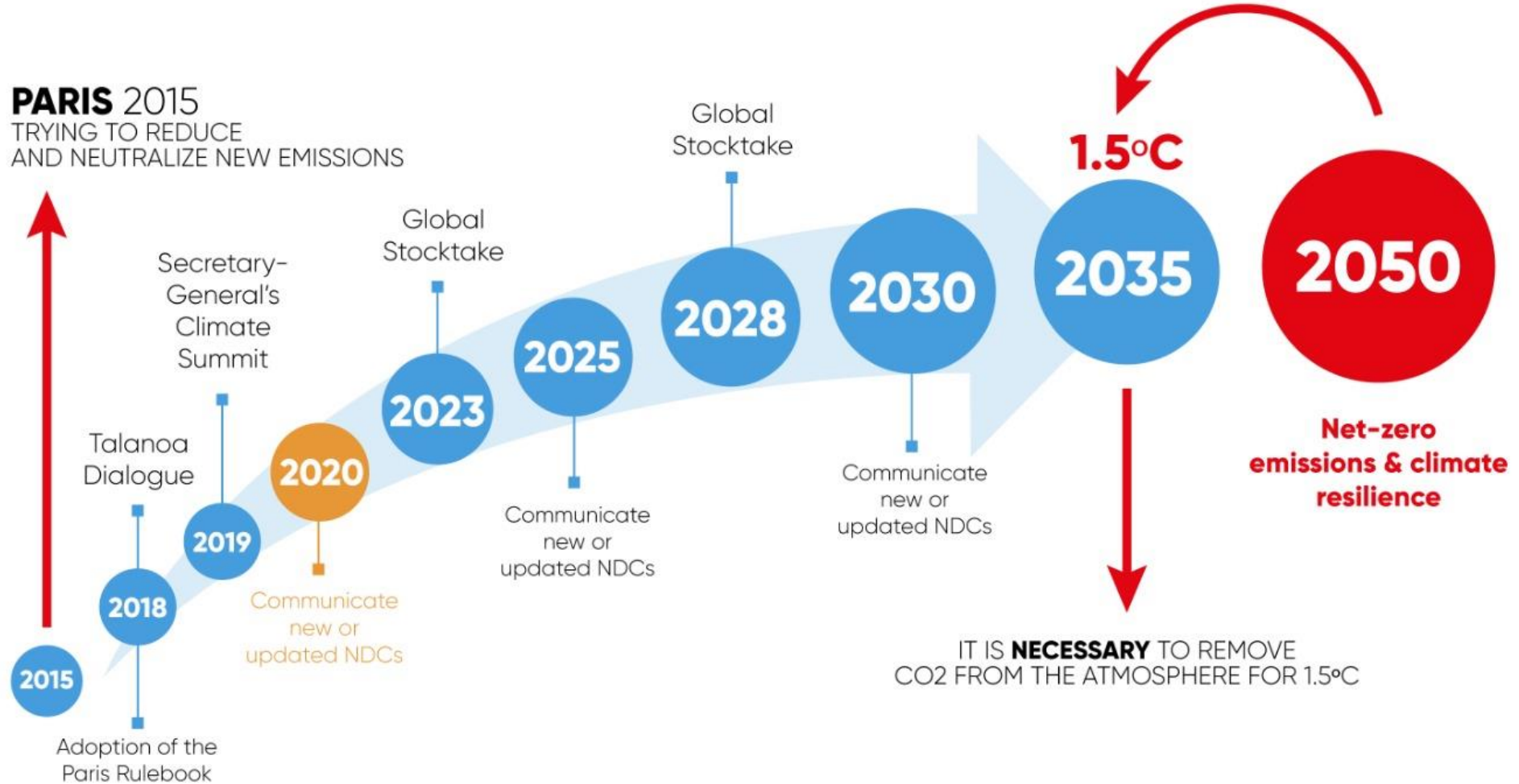
**As the only object from which these rights and obligations could emerge - the Stable Climate – does not exist from a legal standpoint.**

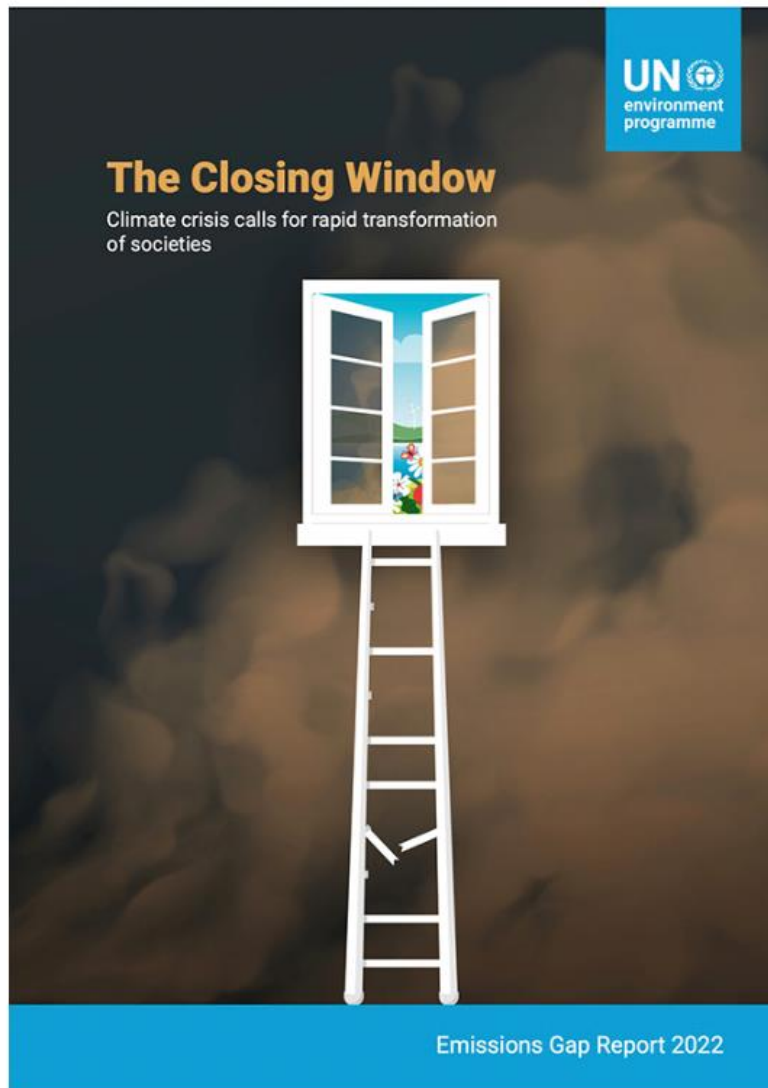




**Figure 5** - The Paris Agreement as an attempt to promote voluntary commitments to reduce new emissions

## CURRENT AMBITION MECHANISM IN THE PARIS AGREEMENT





As growing climate change impacts are experienced across the globe, the message that greenhouse gas emissions must fall is unambiguous. Yet the *Emissions Gap Report 2022: The Closing Window – Climate crisis calls for rapid transformation of societies* finds that the international community is falling far short of the Paris goals, with no credible pathway to 1.5°C in place. Only an urgent system-wide transformation can avoid climate disaster.





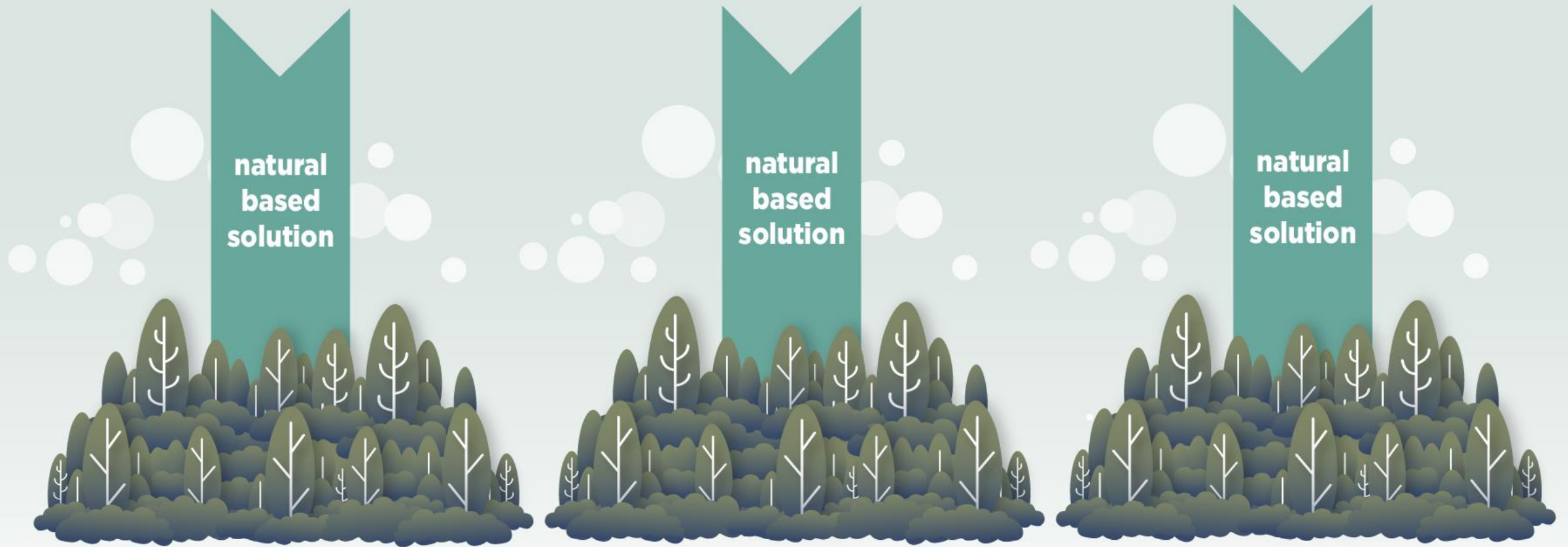
***NEGATIVE SUM GAME***





***ZERO SUM GAME***

It is like **CLEANING**  
in a **LEGAL VOID**



## A/76/10 International Law Commission Report 2021

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definition.

In the words of the Commission:

The atmosphere and airspace are two entirely different concepts, which should be distinguished. Airspace is a static and spatial-based institution over which the State, within its territory, has “complete and exclusive sovereignty”. (...)

The airspace beyond the boundaries of territorial waters is regarded as being outside the sovereignty of any State and is open for use by all States, like the high seas. On the other hand, 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 non-separable.<sup>43</sup>

This may be the case, but what is the legal status of the atmosphere? Is it



## 2 Different Concepts

### Athmosphere vs Airspace



**The Functional Aspect**



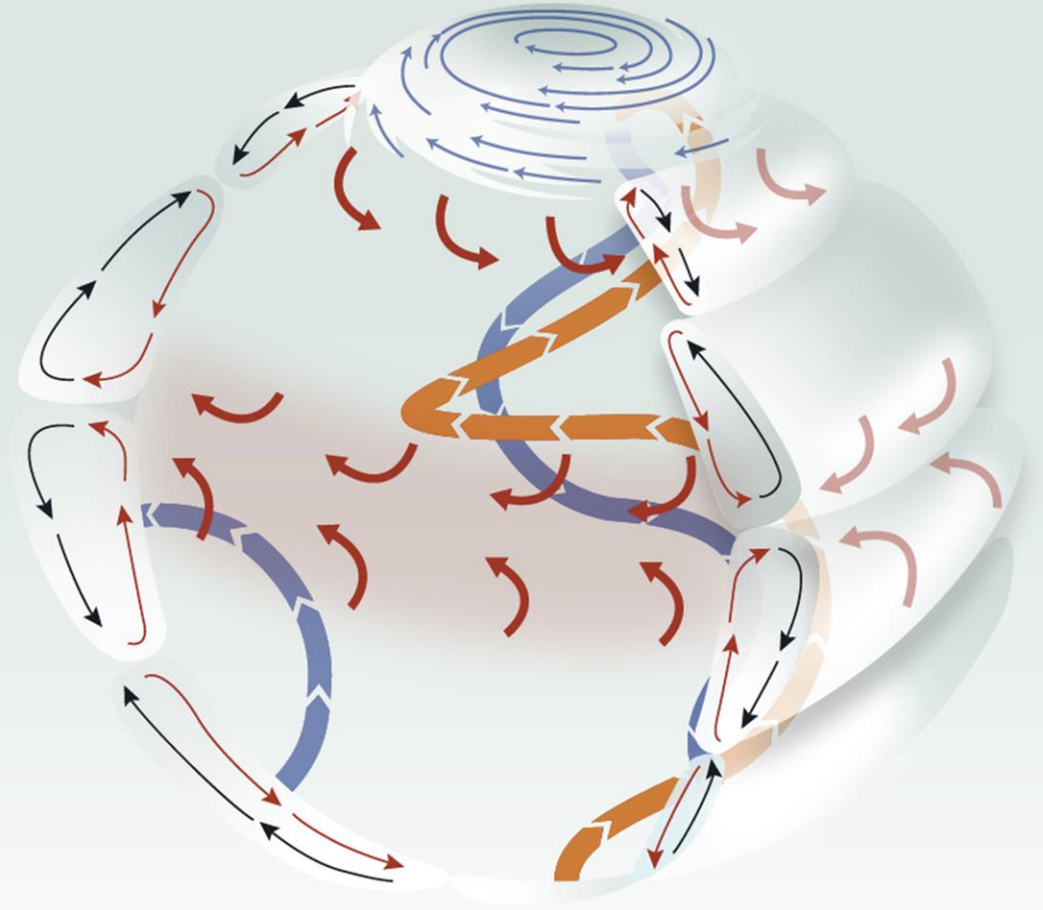
**The Static Spatial- Based Institution**



# ***HARDWARE***



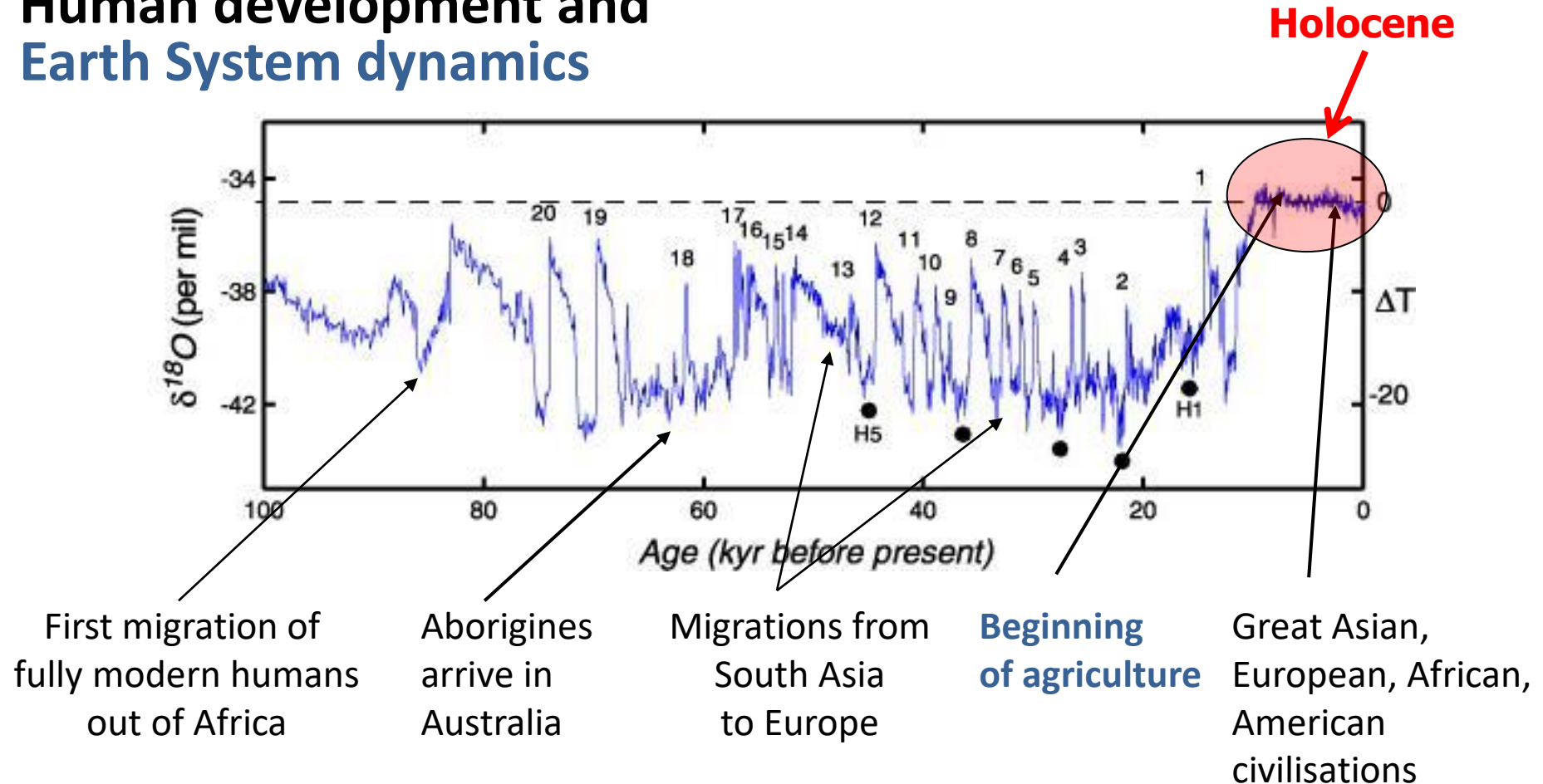
# ***SOFTWARE***



**What unites us all - The Earth System**



## Human development and Earth System dynamics



**Source:** GRIP ice core data (Greenland) and S. Oppenheimer, "Out of Eden", 2004

# ***STABLE PATTERN***

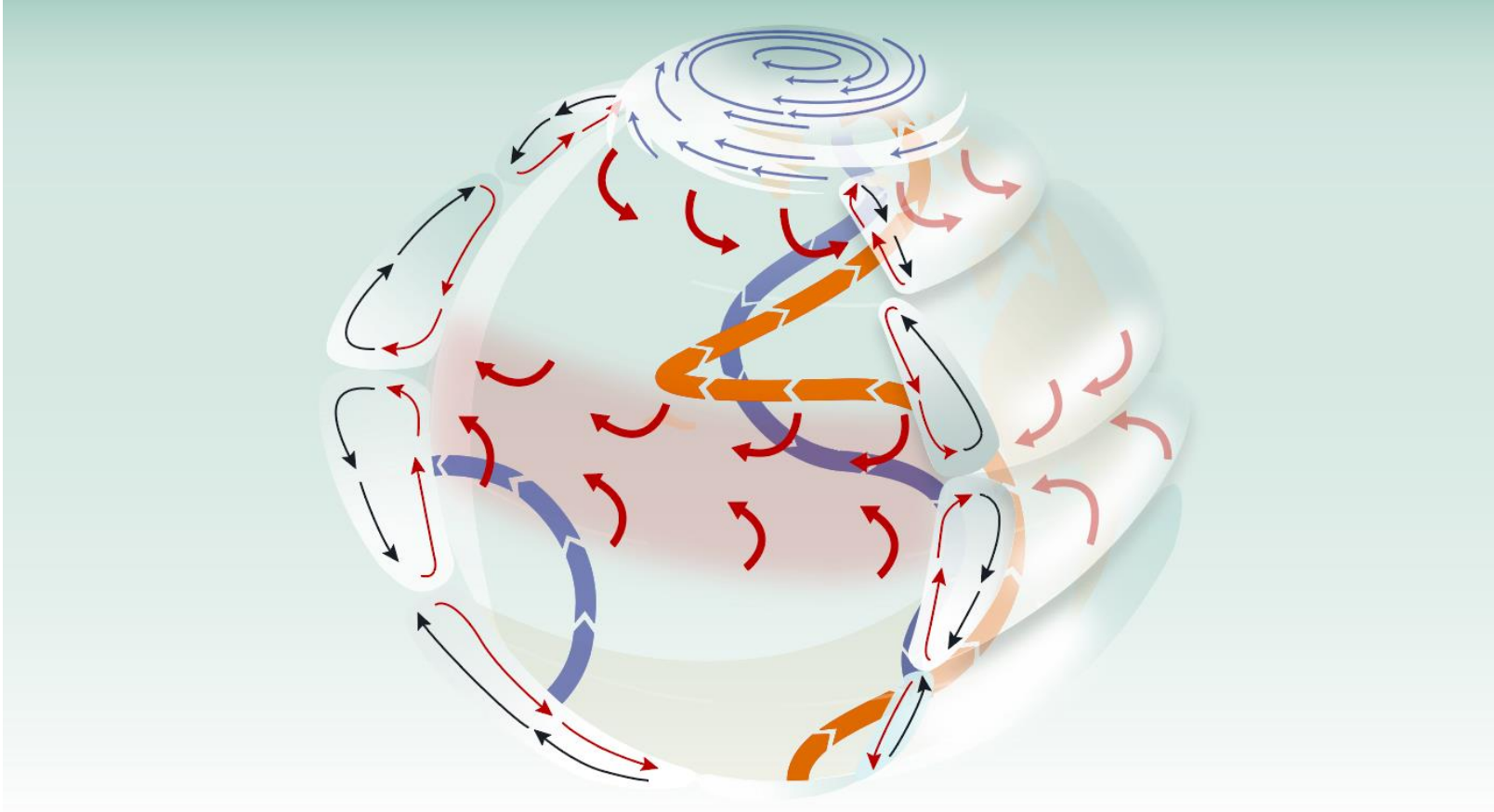


# ***TRAGEDY OF COMMONS***



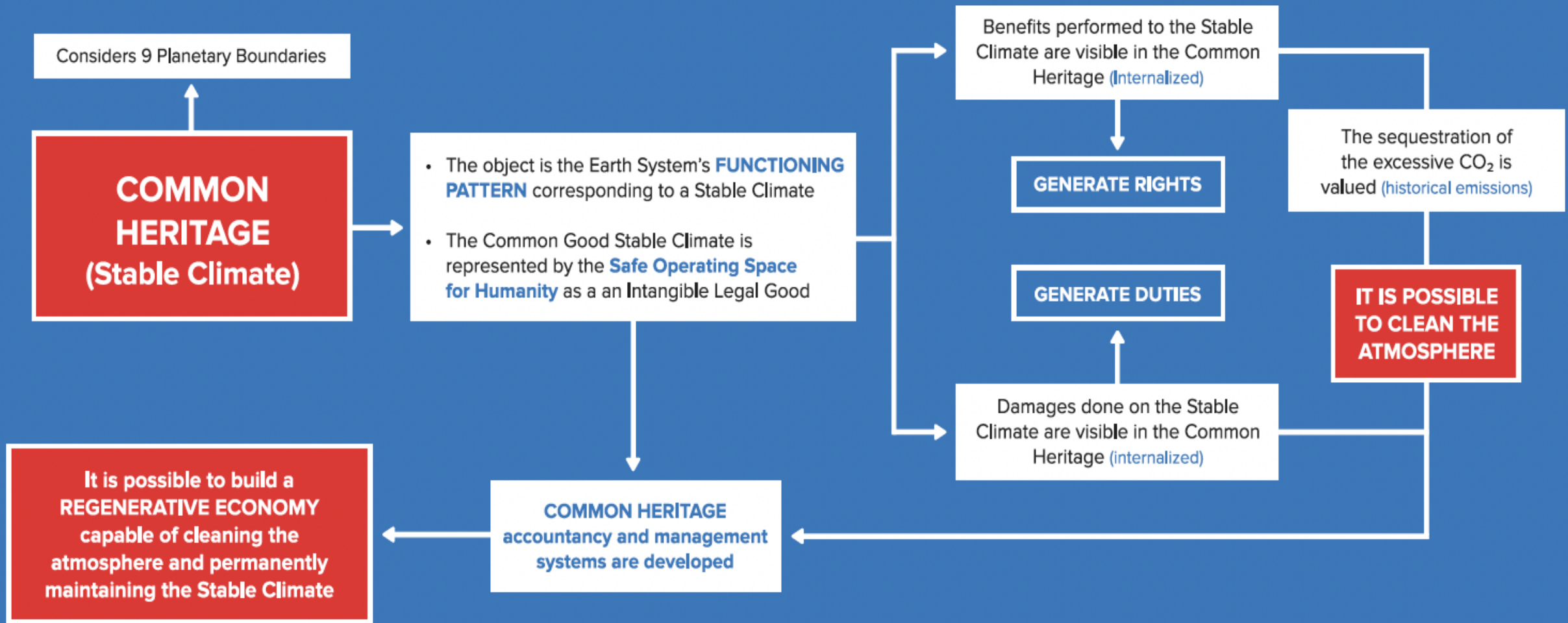


# The Intangible Common Heritage



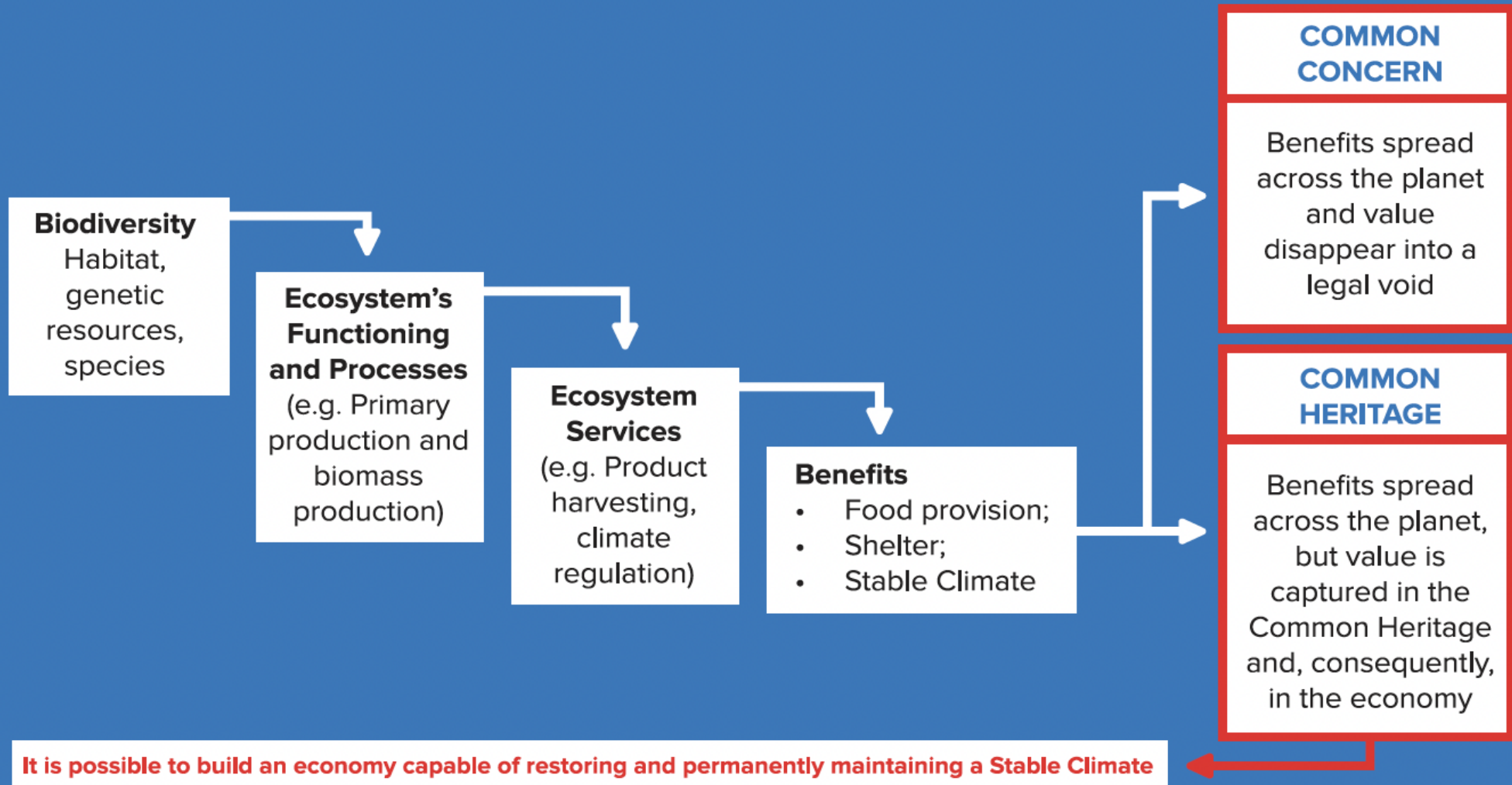
**The Critical Legal Innovation- Intangible Funtional Global Common**





**Figure 10** - The Common Heritage of Humankind concept, applied to the Stable Climate, provides a structural base for cleaning the atmosphere

# Interactions among Biodiversity, Ecosystem Services, and Law



**Figure 3** - The fundamental difference between considering “Climate Change” as a “Common Concern of Humankind”, and the “Stable Climate” as a “Common Heritage of Humankind”

# WE NEED TO CLEAN THE ATMOSPHERE

How we can remove CO<sub>2</sub> from the atmosphere, if it belongs to no one and corresponds to a legal hole?

How we internalize benefits carried out in the Earth System, (that is to all Humanity)?



# What is a Common Concern?

- Common concerns do **not define to specific rules or obligations** but rather establish **a general basis for cooperation** so that the concerned community can act to address the concern.
- "The concern" element presupposes **nothing more than that the States are objectively invited towards joint and concerted actions**". Dina SHELTON, *"Common Concern of Humanity"*, Environmental Policy and Law, 39/2.p. 3, 2009.

**Stable Climate = Well-function Pattern =**

**Software with indefinite ownership = Impossible to apply the rules for a successful management of the common good**



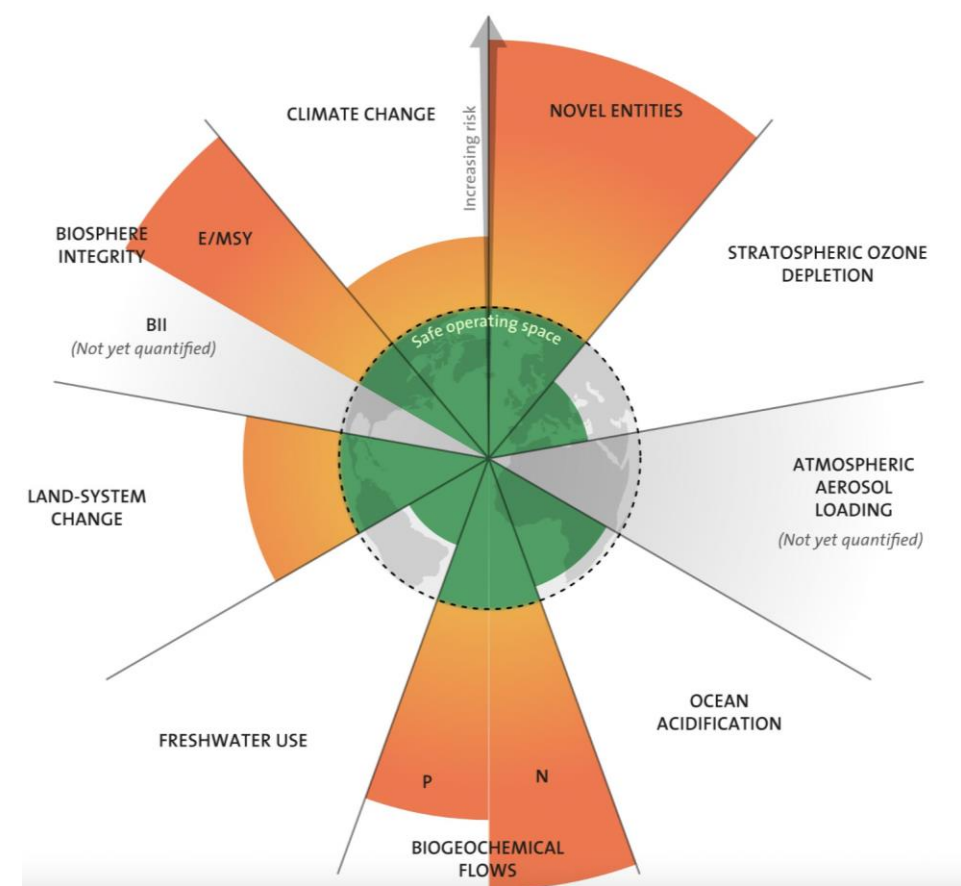
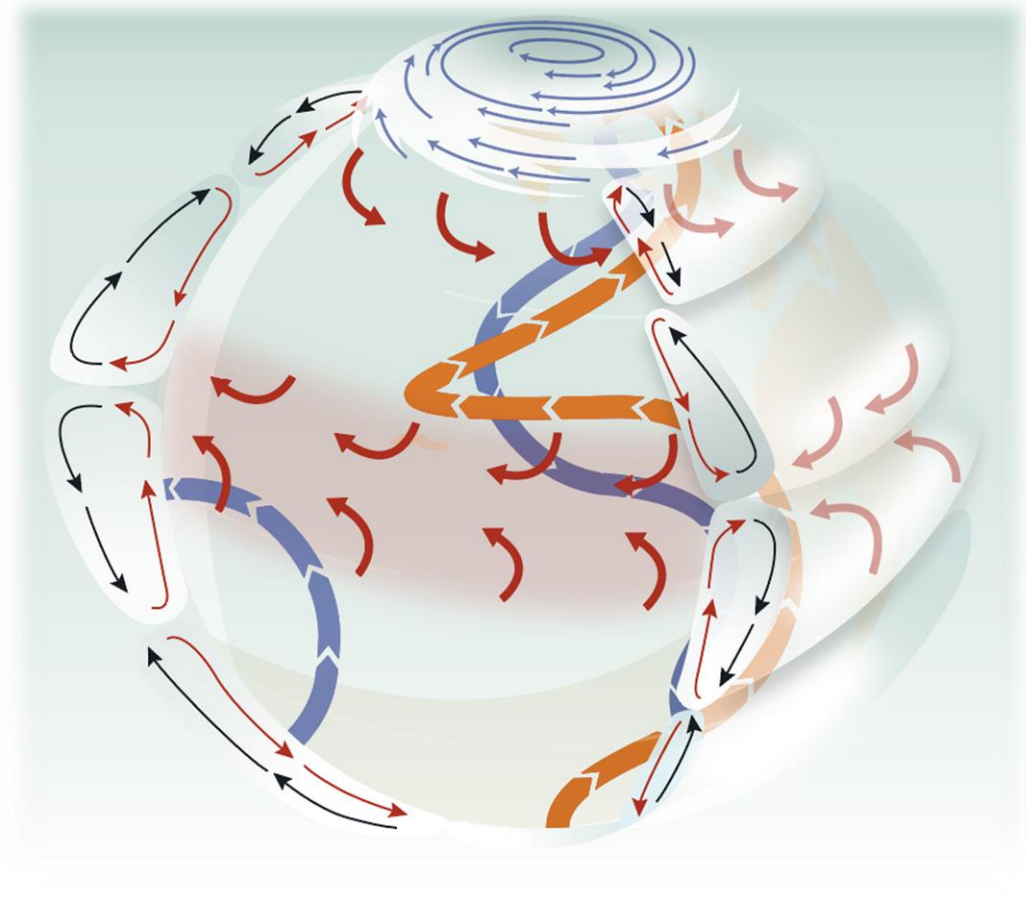
# Stable Climate – Well-defined circulation pattern of matter and energy around the planet

- Indivisible
- Intangible
- No sovereignty can be claimed
- Subject to depreciation
- Non-excludable
- Global sharing of positive and negative acts (externalities)



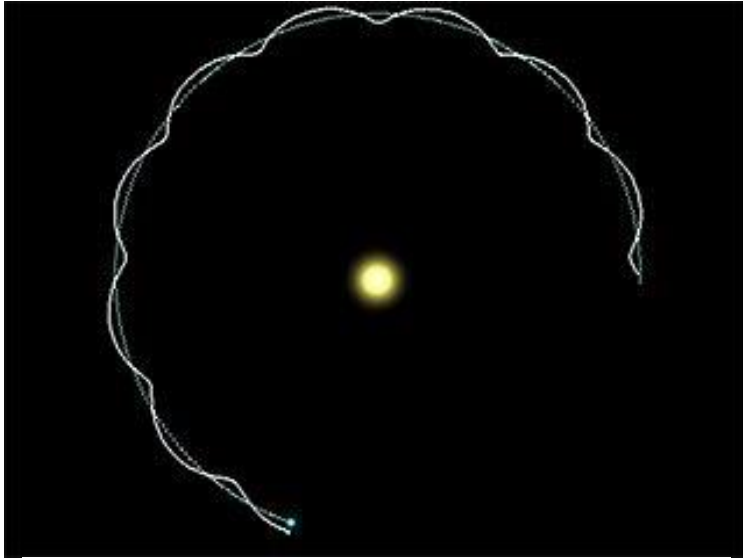
Climate is a *proxy* of the  
Operating Mode of the Earth System

## Point 2 – Planetary Boundaries – The Safe Operating Space



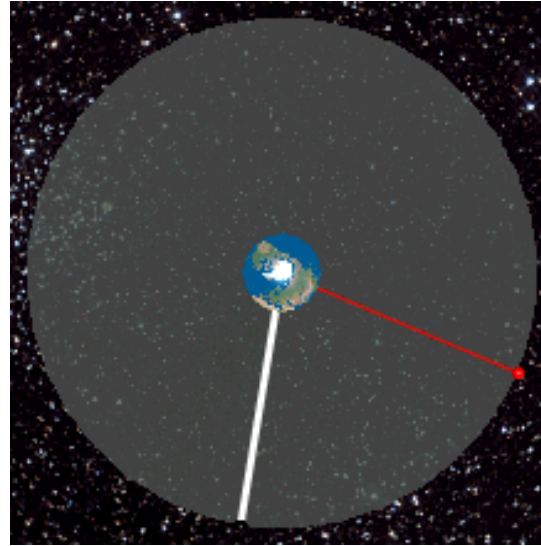
A tool to describe and define the non-territorial legal object

9 Boundaries = Well-functioning Earth System = Stable Climate

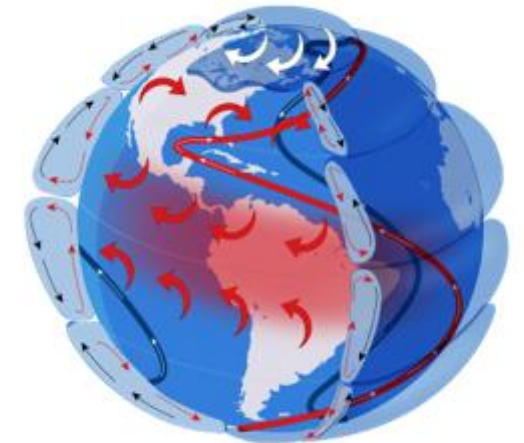


"Moon shall include Orbits around or other trajectories to or around it"

Moon Treaty



If the existence of natural intangible objects, such as the radio spectrum or the privileged orbits, have already been recognized by Outer-Space Law, why can't it be possible to recognize the existence of *an operating mode of the Earth System* as *a certain pattern of functioning that is favorable for humankind* as natural intangible object of law?

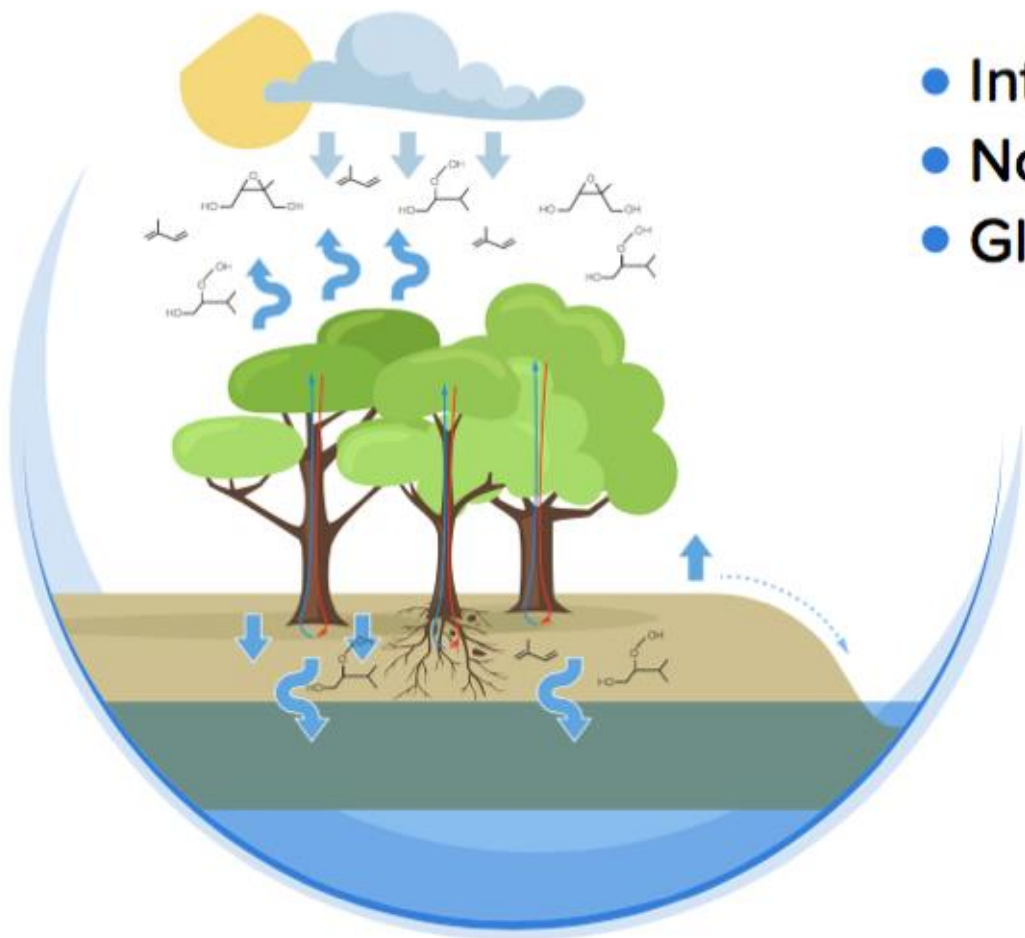




# Why are we unable to shift this rule of the game?

The Earth System services are:

- Intangible, (mainly chemical changes)
- Non-territorial (spans over all sovereignties)
- Global and for so they are seen as **+ externalities**



External  
to law

+

External  
for economy

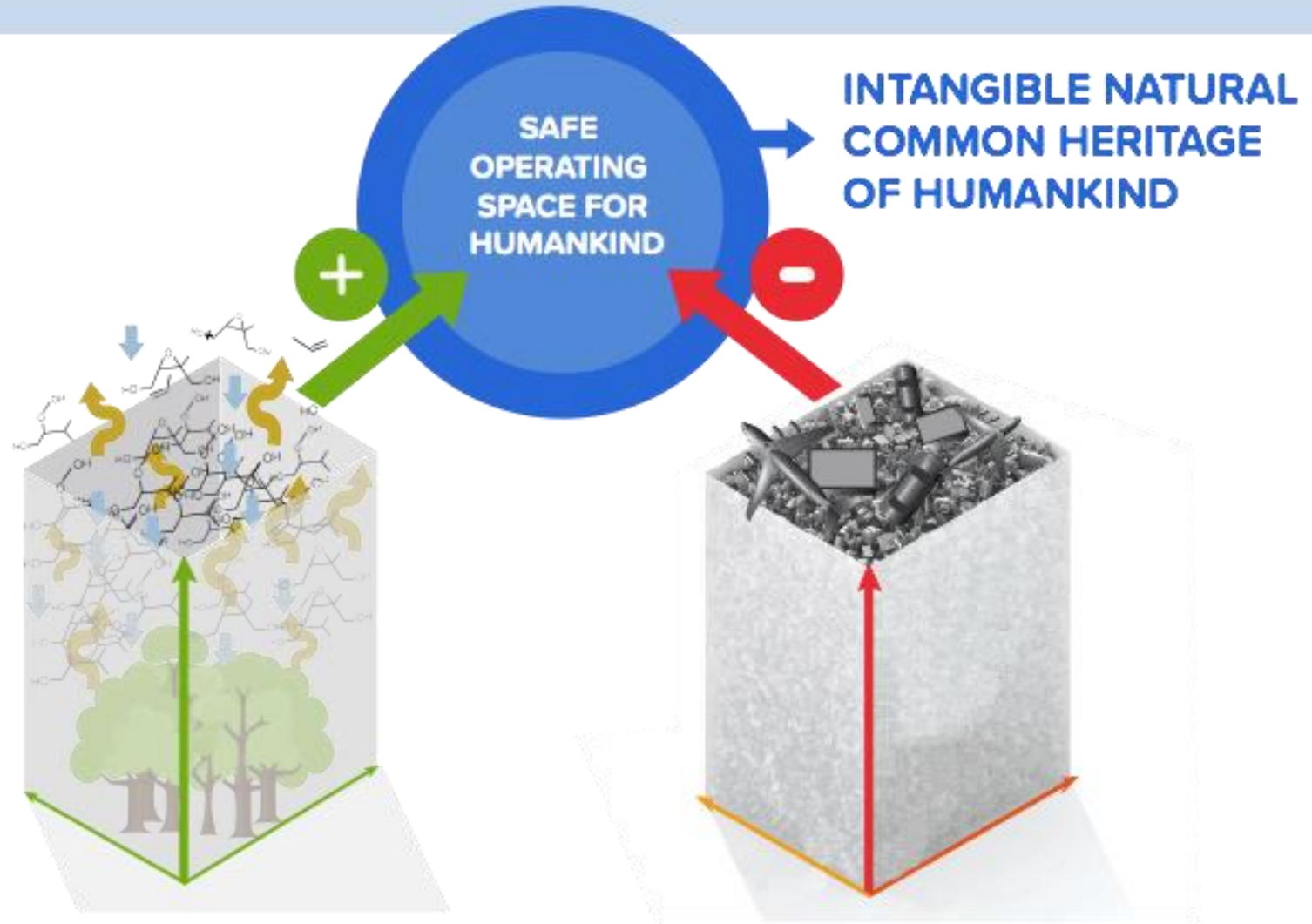
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External to the  
organization of  
human societies



# OUR PROPOSAL IS:

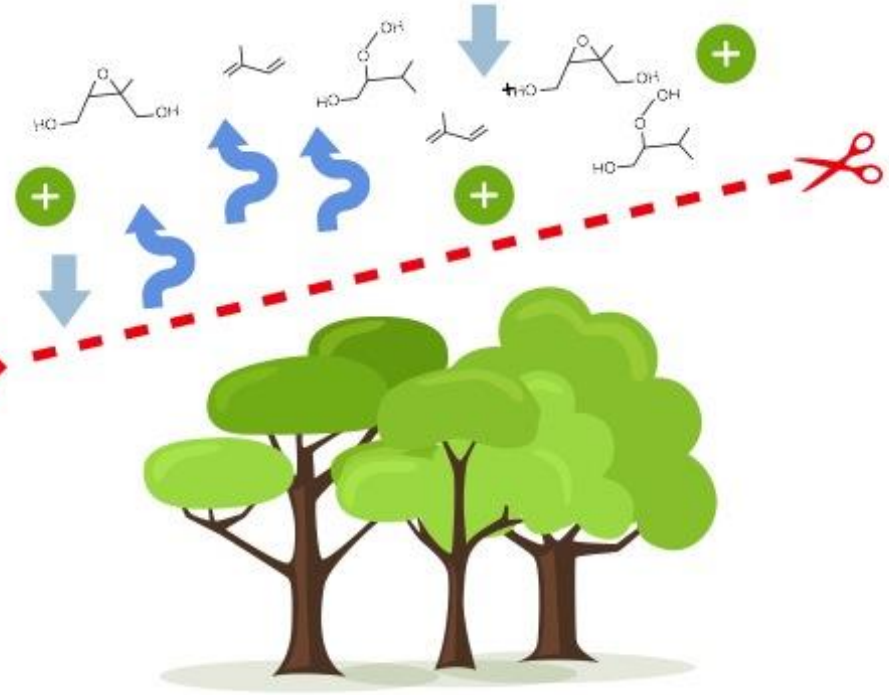
- Compensating the positive impacts on the biogeophysical cycles;
- Internalizing the hidden costs of damage done to the biogeophysical cycles into the economy.



# The Fundamental Role of Law



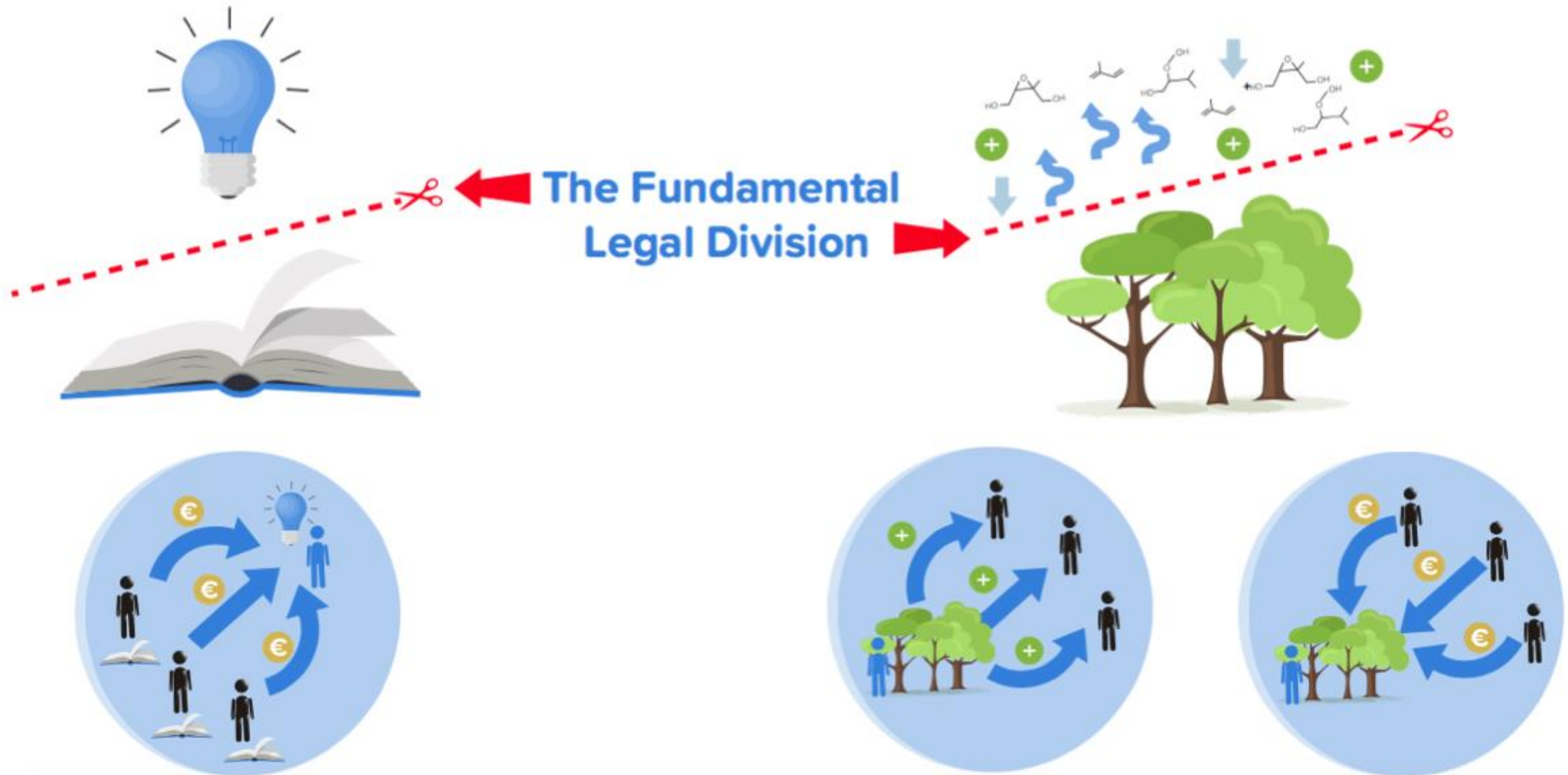
**The Fundamental  
Legal Division**



FUNCTIONING EARTH SYSTEM = NEW INTANGIBLE OBJECT OF LAW

# An new Intangible Object of Law

The fact of the Earth System Services being intangible can not constitute an insurmountable obstacle to its legal recognition



# Stable Climate – A Common Heritage of Humankind

- This stable pattern belongs to all humanity and next generations
- An intangible Legal Object of international law
- Removals and emissions can become visible in the Common Heritage
- Would have implied the institutionalization and governance of this legal object



**Article 15º, f) Portuguese Climate Law**



# Accountability + Governance = **Registry information**

- **Stable Climate =**
- **Well-function Pattern as Intangible Common Heritage =**
- **Positive Impacts on Climate are internalize in the Common Heritage**
- **System of accountancy – Not only CO2 - 9 Boundaries**
- **Registry of natural assets – Provison of Ecosystem Services**
- **Need for Institutional Governance**