



Jurisdiction and the Global Commons

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Introduction: What is the Global Commons?

The “global commons” refers to areas and systems that lie beyond national sovereignty yet sustain all human and ecological life. Traditionally, this concept includes the high seas, Antarctica, outer space, and the atmosphere. More recently, scholars have broadened it to encompass Earth’s critical regulatory systems—climate stability, biodiversity, and even cyberspace. The legal recognition of the global commons is crucial because these spaces and systems cannot be effectively governed by individual states acting alone. Establishing the global commons as a political jurisdiction would create shared responsibility, legal accountability, and institutional capacity to protect vital resources that transcend borders.

The Value of Establishing Jurisdiction

Creating jurisdiction over the global commons serves several goals. First, it provides legitimacy to global environmental governance, ensuring that collective action is grounded in law rather than voluntary pledges. Second, it allows for enforcement of obligations—whether through courts, administrative law, or criminal sanctions. Third, it provides a platform for inclusive participation, enabling global citizens and vulnerable communities to have a voice in managing shared planetary systems. In this way, jurisdiction over the global commons is both a legal innovation and a democratic project.

Developing the Legal Framework

The following strategies illustrate how through future jurisprudence, scholarship, advocacy and collective agreements we can attempt to establish new legal jurisdictions for the global commons. The source scholarship that supports each strategy is cited.

Strategy 1: Trusteeship and Public-Trust Approaches

Definition. Trusteeship frameworks treat the global commons as a fiduciary trust: states, international institutions, or even humanity at large are trustees, with duties to conserve and manage resources for present and future generations.

Scholarship. Edith Brown Weiss (1984) developed intergenerational equity through the planetary trust doctrine. Klaus Bosselmann (2015) later argued for revitalizing the UN Trusteeship Council to serve as a guardian of the global commons. Both models envision jurisdiction grounded in stewardship obligations that transcend national sovereignty.

Strategy 2: The Principle of Common Concern of Humankind

Definition. “Common concern” posits that certain issues, like climate change or biodiversity loss, inherently affect all states and peoples, creating shared duties regardless of borders. Unlike the common heritage doctrine, it does not demand shared ownership but does justify legal obligations of cooperation.

Scholarship. Thomas Cottier and colleagues (2018) articulate this principle as a foundation for jurisdiction. It has been applied to climate governance, human rights, and trade, offering a pathway to universal obligations enforceable in international law.

Strategy 3: Common Heritage and Treaty-Based Jurisdiction

Definition. The “common heritage of humankind” doctrine asserts that some resources (the seabed, outer space, Antarctica) cannot be appropriated by states but must be managed collectively. Jurisdiction is established through treaties that suspend sovereignty and create shared governance institutions.

Scholarship. Daniel Bodansky (2024) analyzes the BBNJ Agreement, which extends commons governance to marine genetic resources. Earlier frameworks under UNCLOS and the International Seabed Authority exemplify how treaty-based institutions generate enforceable jurisdiction for commons governance.

Strategy 4: Earth-System Law and Planetary Commons

Definition. Earth-system law moves beyond territorial commons to regulate planetary systems such as the carbon cycle, ocean circulation, and biodiversity networks. It conceptualizes the Earth itself as a juridical subject needing governance.

Scholarship. Louis Kotzé (2020) argues that Earth-system law is required in the Anthropocene to protect planetary boundaries. Rockström and colleagues reinforce this by linking planetary science to legal obligations, pushing for recognition of planetary commons as a category of jurisdiction.

Strategy 5: Global Administrative Law

Definition. Global Administrative Law (GAL) focuses on the procedural rules of global governance, ensuring that transnational regulatory bodies and treaty institutions adhere to transparency, participation, and accountability. Rather than one legislature, it builds jurisdiction by regulating how global regulators act.

Scholarship. Kingsbury, Krisch, and Stewart (2005) identify GAL as a way to bring order and legitimacy to fragmented global governance. By mandating participatory processes and judicial-style review, GAL embeds jurisdictional authority even without a centralized parliament.

Additional Pathways: Ecocide and Judicial Opinions

While not formal strategies of jurisdiction, ecocide and international court rulings are complementary tools. The 2021 Independent Expert Panel defined ecocide as a crime, giving the International Criminal Court a potential jurisdictional role over environmental destruction. Likewise, the 2024 ITLOS and 2025 ICJ opinions affirm that climate change and greenhouse gas emissions fall under existing treaties, expanding the reach of legal obligations to cover commons-related harms.

Conclusion

The global commons is both a concept and a legal frontier. By defining it as a jurisdiction, humanity can build the institutions required to safeguard shared resources and systems vital to survival. Trusteeship, common concern, common heritage, Earth-system law, and global administrative law represent distinct but complementary strategies for constructing this jurisdiction. Together with emerging tools like ecocide prosecutions and judicial opinions, they show that while the global commons has yet to be fully recognized as a legal jurisdiction, the building blocks already exist. Harnessing them coherently could transform the global commons from a fragile metaphor into a governing reality.

Annotated Bibliography:

Brown Weiss, Edith. [*In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*](#). (1988).

Introduces the “planetary trust” doctrine, proposing that the environment be treated as a trust between present and future generations. Provides a foundational legal framework for treating the global commons as a shared fiduciary responsibility.

Bosselmann, Klaus. [*Earth Governance: Trusteeship of the Global Commons*](#). Edward Elgar (2015).

Argues for reinvigorating the UN Trusteeship Council and building Earth trusteeship as a legal model for the global commons. Highlights how trusteeship can evolve into a governance regime with enforceable obligations.

Cottier, Thomas. [“The Principle of Common Concern of Humankind.”](#) Cambridge University Press (2021).

Outlines the principle of “common concern,” emphasizing that issues such as climate change transcend borders and thus create shared legal obligations for all states.

Bodansky, Daniel. [“The BBNJ Agreement and the Architecture of International Environmental Law.”](#) (2024).

Examines the new UN Agreement on Biodiversity Beyond National Jurisdiction (BBNJ), analyzing how it extends the common heritage doctrine to marine genetic resources and builds a jurisdictional framework for high seas governance.

Kotzé, Louis. [“Earth System Law: The Juridical Dimensions of the Anthropocene.”](#) *Global Environmental Politics* 20(1) (2019).

Presents the concept of “Earth system law,” arguing for legal recognition of the Earth’s regulatory systems (carbon cycle, biosphere) as objects of governance beyond state sovereignty.

Kingsbury, Benedict, Nico Krisch, and Richard B. Stewart. [“The Emergence of Global Administrative Law.”](#) *Law and Contemporary Problems* 68(3-4) (2005).

Proposes “global administrative law” as a framework to regulate transnational regulatory networks via transparency, participation, and review mechanisms. Offers a procedural way to build jurisdiction in the absence of formal legislative bodies.

Independent Expert Panel for the [Legal Definition of Ecocide](#). *Stop Ecocide Foundation* (2021).

Provides a draft definition of “ecocide” as a new international crime, potentially enforceable by the International Criminal Court. Establishes criminal liability as a tool to protect global commons.

International Tribunal for the Law of the Sea (ITLOS). [Advisory Opinion on Climate Change and UNCLOS](#) (2024).

Rules that anthropogenic greenhouse gas emissions constitute marine pollution under UNCLOS, expanding state obligations and clarifying jurisdictional authority over the oceans as a global commons.

International Court of Justice (ICJ). [Advisory Opinion on Climate Change Obligations](#) (2025).

Affirms states’ legal duties under international law to address climate change, reinforcing jurisdictional pathways for governing planetary-scale environmental risks.

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