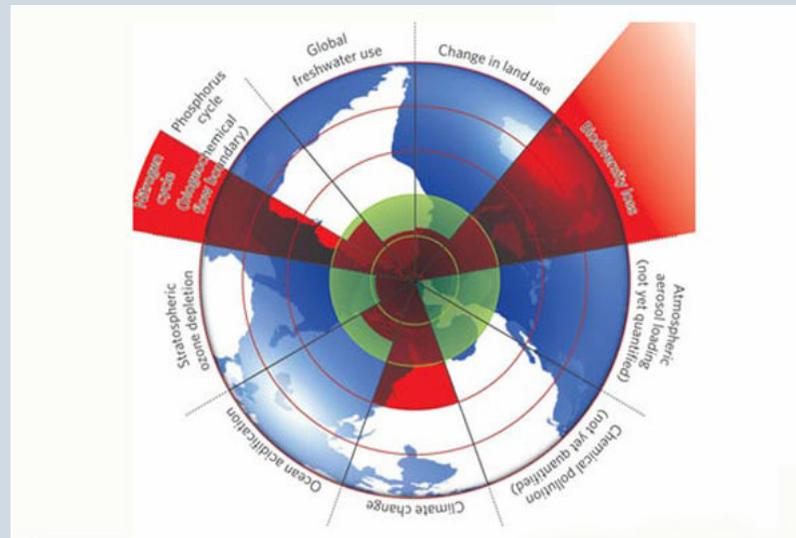


Planetary Boundaries and the Law



A new framing for sustainability

The PB concept calls for new or modified:

- **principles**
- **institutions**
- **treaties and other international agreements**

The PB concept calls for new governance based on principles of *recognition*, *respect* and *responsibility*:

*“Earth-system processes that are necessary for ensuring a safe operating space for humanity should be **recognized** and **respected**. We are all **responsible** for safeguarding those processes from the threats of serious or irreversible damage as a result of human activities.”*

Draft Declaration on Planetary Boundaries, Principle 1

Recognizing means

- ***acknowledging*** the processes and the need to act
- ***researching*** and ***developing*** understanding further – of processes, parameters, thresholds and boundaries
- ***identifying*** and ***monitoring*** human activities involved
- ***communicating*** information transparently to encourage public engagement, trust, common understanding and acceptance of shared responsibility

Respect means

- ***using*** scientific information to understand thresholds
- ***determining*** boundaries transparently on the basis of scientific advice, having taken into account social and economic considerations, public opinion and having assessed the risk of crossing the boundaries
- ***making decisions*** to minimise the risk of crossing the boundaries
- ***designing*** public and private sector institutions to safeguard thresholds and boundaries

Responsibility means

- ***establishing*** over-arching legal principles and duties to recognise and respect processes across the range of human activities that affect them
- ***ensuring*** people have the right to have them recognised and respected
- ***guaranteeing*** rights to information, participation and access to justice, including appropriate and effective remedies, and
- ***creating*** an independent public enforcement body with appropriate and effective legal powers and duties

Institutionally

- a new supra-sectoral body is needed as ‘keeper of the thresholds’
- needs **legal underpinning**
- Sustainable Development Council?
- Rio +20 zero draft, paragraph 52:

“We stress the need for a regular review of the state of the planet and the Earth’s carrying capacity and request the Secretary-General to coordinate the preparation of such a review in consultation with relevant international organizations and the UN system.”

Commitments

UN and States:

- To **review** and **improve** laws and policies
- To **cooperate** with and **report** to the supra-sectoral body

States to consider:

- the impact of their activities on processes, and
- how they can ensure that their activities do not exceed their **fair share** of the safe operating space.

Treaties and other international agreements

UN Framework Convention on Climate Change

*“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would **prevent dangerous anthropogenic interference with the climate system**. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”*

- not bad? pulling back? aerosols? ocean acidification?

Ocean acidification

“the UNFCCC alone **does not provide** an adequate legal framework for addressing OA because ocean acidification is not an effect of climate change...The UNFCCC could rather be seen as **exacerbating** OA by passively and even actively promoting the use of the oceans as carbon sinks in mitigating climate change.”

Rakhyun Kim, Australian National University,
PUP Conference abstract, March 2012

“a new MEA on ocean acidification is necessary to fill the regulatory gap.”

- a post-Kyoto agreement under the UNFCCC?
- an implementing agreement to the UN Convention on the Law of the Sea?

Convention on Biodiversity

*“The **objectives** of this Convention, to be pursued in accordance with its relevant provisions, are the **conservation** of biological diversity, the sustainable **use** of its components and the fair and equitable **sharing of the benefits** arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.”*

- conservation, use and sharing combined indiscriminately

Nitrogen

- **no holistic management regime for the N atom**

“A new international treaty targeted explicitly on nitrogen could be a powerful mechanism to bring the different elements of the nitrogen problem together.”

European Nitrogen Assessment, April 2011

“There is no global treaty to address these issues. An important step must be to address the priorities for international agreement, irrespective of possible legal format.”

Priorities for a new global treaty on nitrogen, Sutton *et al*,
PUP Conference abstract, March 2012

Nitrogen (etc.) at UN ECE level

1979 Convention on Long-Range Transboundary Air Pollution

- 1985 and 1994 Protocols to reduce **sulphur** emissions
- 1988 Protocol to control **nitrogen oxides** emissions
- 1991 Protocol to control **VOCs**
- 1998 Aarhus Protocols on **heavy metals** and **POPs**
- 1999 Gothenburg Protocol to abate acidification, eutrophication and ground-level ozone (**sulphur**, **NOx**, **ammonia** and **VOCs**)

Revised Gothenburg Protocol due April/May 2012

Phosphorus

*“phosphorus is **probably the most dangerous** of various impacts [of human activities] on our environment and also agriculture”*

Professor Paul Crutzen, February 2012

*“no existing international organisation is taking an active role in governing phosphorus resources to ensure its long-term sustainability for future food...There is substantial **institutional fragmentation** and **ambiguity** regarding roles and responsibilities.”*

Dr Dana Cordell, Global Phosphorus Research Initiative

Beyond MEAs?

*“...environmental and social goals must be mainstreamed into the activities of **all global economic institutions**. This avoids the current situation where their activities undermine gains achieved by environmental treaties because of poor policy coherence. This will require meaningful **high-level dialogue** among economic development and environmental institutions and the same government ministers – especially of finance or treasuries – to attend such dialogues to ensure consistent national engagement at the highest levels. The UN Sustainable Development Council that we propose could host such dialogues.”*

Biermann & Bernstein, The Guardian, 15th March 2012

Is dialogue enough?

Legal underpinning for World Bank's **exclusion** of environmental and social issues:

Articles of Agreement of the International Bank for Reconstruction and Development, Article I:

“The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes....

(ii) To promote private foreign investment....

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments...

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels...

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members...

The Bank shall be guided in all its decisions by the purposes set forth above.”

Article IV, Section 10, entitled 'Political Activity Prohibited':

*“The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. **Only economic considerations shall be relevant to their decisions**, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.”*

Two year **review** underway

*“The World Bank will be embarking on a two year process of updating and consolidating its **environmental and social safeguard policies** into an integrated environmental and social policy framework.....”*

World Bank website, August 2011

In conclusion:

Adopting the PB concept needs:

new and modified principles, institutions and legal agreements across the range of Earth-system processes and beyond MEAs, including an over-arching legal instrument to establish a supra-sectoral body

multidisciplinary hubs working together around those processes to develop understanding and propose institutional, legal and policy responses