

# The Environment and the Common Good

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This article by **Michela Cutajar** was previously submitted as part of ERL1002 and is being published with the author's permission. This piece entry delves into the nuanced distinction between "common goods" and "the common good," positioning the environment as an indispensable asset for the collective benefit of humanity. Through a detailed analysis, the paper examines the legislative frameworks of the European Union and Malta, such as the Natura 2000 initiative, which are designed to preserve environmental resources as global common goods, essential for both present and future generations. The case study of the proposed yacht marina in Marsascala serves as a focal point for exploring the inherent conflict between environmental stewardship and the encroachment of private interests, underscoring the critical role of legal mechanisms in safeguarding the common good against unsustainable development pressures.

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The common good may be defined as ‘the good in all human beings whilst the common goods are ought to be enjoyed by all human beings.’<sup>1</sup> There is a frequent misconception that ‘Common good’ and ‘Common goods’ are the same, but these notions, although related are not identical. Common goods may be tools to serve the common good of a civilisation, its state of affairs and the standard of living of the citizens for present and future generations. The environment and its social, cultural, and economic aspects are essential common goods which ought to be enjoyed by all, and which contribute to forming a common good, on an individual and communitarian level. The environment is commonly thought of as a common resource, but how truly common to all is it?

The legal notion of common goods has developed on a global scale, and environmental components may be regarded as ‘global goods.’ Considering the lack of global government, this notion of ‘global goods’ is more political in practice and is less likely to be obtained on such a large scale.<sup>2</sup> This balance is mostly present at national level and creates a difficulty in regulating globalisation. As an example, the Maltese national government must ‘collaborate with other governments and entities in the protection of the global environment.’<sup>3</sup> It is inarguable that the global resources, should contribute to a global common good, but to achieve this, effective global legislation must be promulgated.

The European Union (EU) reflects this ideal global government by working to establish a common good vision for its member states and for the union itself. The EU was set up after WWII to manage resources from the different member states and put them to use in achieving a common good goal. The Union recognises that ‘Environmental quality is central to our health, our economy and our well-being’, with these aspects affecting the common good of all European citizens.<sup>4</sup> It works heavily towards safeguarding the environment internationally by combating challenges such as climate change, unsustainable consumption and various forms of pollution which pose a threat to this common resource.

The EU’s Natura 2000 is an example of a funded project which has set up ecological networks of protected areas to ensure that valued species and habitats in Europe, such as the terrestrial biodiverse sites on the Maltese

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<sup>1</sup> Alan Xuereb, ‘The Common Good of Future Civilisation(s)’ (2017) *The Philosophical Society Review* 73.

<sup>2</sup> Marie-Anne Frison-Roche, ‘Common Goods’ (*mafr*) <<https://mafr.fr/en/article/bien-commun/#>> accessed 5 December 2022.

<sup>3</sup> Environment Protection Act, Chapter 549 of the Laws of Malta, Article 4 (1) (c).

<sup>4</sup> ‘Summaries of EU Legislation - Environment and Climate Change’ <<https://eur-lex.europa.eu/summary/chapter/20.html>> accessed 5 December 2022.

islands, are safeguarded for generations to come.<sup>5</sup> Malta was granted €1.3 million to co-finance the ‘Natura 2000 Management planning for Malta and Gozo’ project and meet the obligations listed under the Habitats and Bird Directives.<sup>6</sup> This project established legislation to protect and manage terrestrial sites on the island and to raise environmental awareness amongst the public and stakeholders.<sup>7</sup> The EU’s main objective behind this project is to encourage conservation and enjoyment of nature by working with it and not against it.<sup>8</sup> The Union recognises that these protected natural sites and species should not be threatened and has issued legal provisions to ensure that these common goods and all their offerings are enjoyed by civilisations conservatively and sustainably. This initiative illustrates how the EU encourages member states through common funding to reach a common good goal at both a national and international scale.

In trying to uphold human rights, democracy and the rule of law in Europe, the Council of Europe has set up the ‘12 Principles of Good Governance’ which define ‘Good Governance’ as ‘the responsible conduct of public affairs and management of public resources.’<sup>9</sup> These principles aim to promote local governments to ensure that common goods are genuinely used in the interest of the common good. The ninth principle deals with ‘sustainability and long-term orientation’ which ensures that the common good of future generations is not compromised in achieving the common good of the present. The impact on future generations should be considered when carrying out any development, whether it is environmental, social, economic, or financial, it should be asserted that no costs or tensions are reflected upon future generations. This principle outlines the need for the present generation to work towards a common good without jeopardising that of the future generations.

The United Nations (UN) is an intergovernmental organisation which tackles global problems such as poverty and social inequalities and aims to eradicate them through the sustainable development of nations.<sup>10</sup> In doing so, this association clearly has a common good goal for our global nations and even takes a further view of thinking as a species. As an example, the UN’s Law of the Sea Convention pertains to the principle of the common heritage of mankind as it considers the seabed and outer space as being

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<sup>5</sup> ‘European Protected Sites’ (*European Environment Agency*) <<https://www.eea.europa.eu/data-and-maps/explore-interactive-maps/european-protected-areas-1>> accessed 5 December 2022.

<sup>6</sup> European Commission: Directorate-General for Environment and Kerstin Sundseth, ‘The EU Birds and Habitats Directives - For nature and people in Europe’ (*European Commission*, 2015) <<https://op.europa.eu/en/publication-detail/-/publication/7230759d-f136-44ae-9715-1eacc26a11af/language-en>> accessed 5 December 2022.

<sup>7</sup> ‘Natura 2000 Management Planning for Terrestrial Sites in Malta & Gozo’ (*ERA*) <<https://era.org.mt/topic/natura-2000-management-planning-for-terrestrial-sites-in-malta-goza/>> accessed 5 December 2022.

<sup>8</sup> ‘Natura 2000’ (2008) <[https://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](https://ec.europa.eu/environment/nature/natura2000/index_en.htm)> accessed 5 December 2022.

<sup>9</sup> ‘12 Principles of Good Governance’ (*Council of Europe*) <<https://www.coe.int/en/web/centre-of-expertise-for-multilevel-governance/12-principles>> accessed 5 December 2022.

<sup>10</sup> ‘United Nations Foundation’ <<https://unfoundation.org>> accessed 5 December 2022.

universal common goods and not just international ones.<sup>11</sup>

The sustainable development goals set up by the UN are dedicated to global sustainable development on various frontiers to reach a common good globally. These seventeen goals recognise that domestic sustainable practices are not enough, and global problems need to be tackled as a global community, thus acquiring a universal character to obtain one collective common good. As illustrated in Figure 1 below, the planet is one of the criteria upon which these goals are focused, as it is a common good to be safeguarded globally. Through these goals, the UN is ‘determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of present and future generations.’<sup>12</sup> Agenda 2030 emphasises that the achievement of sustainable development is for everyone. Each goal is interdependent on the next as each sector is important, and thus the environmental sector is of absolute importance when it comes to contributing and strengthening all other sectors.<sup>13</sup>



Figure 1: Sustainable Development Goals related to the planet.<sup>14</sup>

## The Maltese Environment – A Common Good or a Manipulation for Privatisation?

As per the Constitution of Malta, the state has a duty to ‘protect and conserve the environment and its resources for the benefit of the present and future generations’, to combat pollution and ‘to promote, nurture and support the right of action in favour of the environment’.<sup>15</sup> The most fundamental law of the land recognises the essential value which our environment holds in forming a common good. The Environment Protection Act also states the duty of the state ‘to consider the environment as the common heritage and common concern of mankind’.<sup>16</sup> Although these duties are not enforceable in a court of law, they reflect the common good values which should be considered when acting and legislating in relation to the

<sup>11</sup> Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 397.

<sup>12</sup> ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (*United Nations*) <<https://sdgs.un.org/2030agenda>> accessed 5 December 2022.

<sup>13</sup> Hofielen Gerd and Matthias Kasper, ‘The Sustainable Development Goals (SDGs) and the Common Good’ (hmp 2018).

<sup>14</sup> ‘CDP and the Sustainable Development Goals (SDGs)’

<<https://www.cdp.net/en/policy/program-areas/sustainable-development-goals>> accessed 5 December 2022.

<sup>15</sup> Constitution of Malta, Article 9 (2)

<sup>16</sup> Environment Protection Act, Chapter 549 of the Laws of Malta, Article 4 (1) (f)

environment, but how truly considered are they in practice?

A yacht marina in the village of Marsascala had been proposed and met with substantial concerns by activists, expressing that, such a project would disturb the leisure and activities which have for a long time occupied this 'common resource' to accommodate 'the whims of the few, and for reasons which are not of public interests.'<sup>17</sup>

A 1997 report ruled out the use of the bay for the development of a potential marina as it would pose an environmental and social threat,<sup>18</sup> followed by a structure plan in 2006, which despite the previous study, identified the bay as a potential site, not considering that urbanisation had already drastically changed the village.<sup>19</sup> Again in 2009, a parliament publication warned that the project would not be recommended in case of loss of amenity or significant conflict.<sup>20</sup> A criterion was outlined to adapt a strategy to safeguard coastal and natural characteristics. The protection of cultural heritage, coastal and marine ecology and the protection of public spaces was referred to as essential. Referring to these studies which have been conducted over a decade ago would not be ideal considering that Marsascala has since been hit by a construction boom and the bay is the little open space remaining in what used to be known as a fishing village.

The Marsascala Residents' Network reached out to the EU commission, as they felt that this previous criterion would not be respected as the project would pose a threat to the ecology and amenity of the site. Besides causing damage to the marine ecology within the bay, the infrastructure and yachts would compromise the wellbeing of the protected Natura 2000's 'il-Magħluq' and its habitats and species. Failing to respect the EU principles of biodiversity conservation and protection would jeopardise economic activities at the bay such as fishing and coastal tourism, obstructing the common good and limiting these workers in their right to employment.<sup>21</sup> The bay would no longer be viable to swim in due to the space taken over by the marina and the polluted water. Such projects of marine spatial planning must ensure to lure economic benefits whilst understanding the marine environment in its 'dynamic and multi-dimensional nature', crucially done through 'active participation of stakeholders' to ensure that it benefits to the common good of society.<sup>22</sup>

This case study highlights the importance of civilian involvement as a fundamental principle in law and policy when proposing a project of this

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<sup>17</sup> Letter from Ann Bugeja to President von der Leyen, 'An Unsustainable Development of a Yacht Marina in Marsaskala Bay Malta' (27 December 2021).

<sup>18</sup> Deloitte & Touche Consulting Group Malta, Maritime Authority and Planning Authority, *Yachting development subject study: public consultation summary* (Malta Maritime Authority 1997)

<sup>19</sup> Marsascala Harbour Strategic Planning Assessment for Marina Facilities - Deloitte, Adi Associates, April 2006

<sup>20</sup> 'Development of Yachting Facilities in Malta' (Malta Maritime Authority and Ministry for Infrastructure Transport and Communications 2009).

<sup>21</sup> Bugeja Ann to President von der Leyen (n17)

<sup>22</sup> 'Annual Report and Accounts 2006' (Malta Environment and Planning Authority).

nature. In the face of such a threat to the village, the notion of protecting the common good as a community was evident as activists from all paths of life collectively defended the bay, and managed to do so upon the realisation that their access to the bay, its culture and environment and the access to a communitarian space are indispensable values as 'our personal and communitarian satisfaction reflect the environment we live in.'<sup>23</sup>

Conclusively, it is clear both domestically and internationally that the environment must be considered as an essential contributor to the common good and this must be reflected through legislation. Legislators must 'put sustainability and the well-being of citizens at the centre of economic policy',<sup>24</sup> ensuring that no threat too great is posed to environment and its multidimensional characteristics which contribute to the common good of citizens.

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<sup>23</sup> Marie Claire Gatt, 'Moviment favur il-Ġid Komuni'(2021) Moviment Graffiti <<https://www.movimentgraffitti.org/2021/12/30/marie-claire-gatt-moviment-favur-il-id-komuni/>> accessed 5 December 2022.

<sup>24</sup> European Commission (2019), op. cit., p.3.



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