

THE COMMON HERITAGE OF MANKIND

by

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It is a privilege to spend with you this last day of a year of long hard work for all of us, and to dedicate a few moments of attention to a subject that is of common interest to your organization and ours, and that is the current transformation of the concept of property or ownership and its replacement with the concept of the common heritage of mankind. This transformation affects your own activities, whether you are dealing with housing or with industrial quality control; and it is basic to our whole work on the law of the sea and on the new international order in general.

In countries with advanced environmental legislation there is indeed a headlong clash between the defenders of ownership rights and the advocates of environmental quality control. The traditional concept of ownership, based on Roman Law, included the ius utendi et abutendi, that is, the right to use and to misuse. Environmental quality control, and the concern for the scarcity of natural resources, force us increasingly to give up the right to misuse, and thus to change the concept of ownership.

The Yugoslav self-management theory -- one of the most original, interesting, and advanced contributions to modern political theory -- is based on a further development (which it precedes) of this concept of ownership. The Yugoslav concept of social ownership, on which the entire self-management system is based -- is in fact a concept of non-ownership of resources or means of production. Such resources or means of production, in Yugoslav theory, have three attributes: 1) they cannot be owned: not by the State, nor by companies or enterprises, nor by individuals. They cannot be appropriated; and here lies the basic difference between Yugoslav communism and all other forms of communism where socially owned resources are in fact State-owned. 2) they require a system of management

in which all users participate, and it is thus that social ownership is the basis of self-management, and one cannot exist without the other. Self-management, in turn, requires a participational political system, where delegates of all self-managing enterprises participate in the decision-making processes of the political system. 3), social ownership in Yugoslavia implies benefit sharing in the widest sense, that is, a sharing not only of financial benefits but a sharing of management prerogatives and the acquisition of know-how.

In the law of the sea we have developed this concept one step further: the concept of the Common Heritage of Mankind has five attributes: the three of social ownership, that is, the common heritage of mankind cannot be appropriated; it requires a system of management, and it requires benefit sharing in the widest sense, including the transfer of technologies and participation in decision-making; and two additional attributes: 4) Resources and means of production which are the common heritage of mankind can be used for peaceful purposes only; that is, they have a disarmament implication and 5) they must be preserved for future generations; that is, they have a strong environmental implication.

The concept of the common heritage of mankind was first proposed by Ambassador Arvid Pardo of Malta in his historic address to the United Nations General Assembly of November 1, 1967. which initiated the legal and political phase of the marine revolution, whose scientific and technological phase had been in course for some time. Technological advance had in fact undermined the traditional law of the sea and made it obsolete. Neither the freedom of the seas nor national sovereignty, which were the twin pillars on which the old law of the sea was based, were any longer

viable propositions. Freedom in the oceans was becoming obsolete in the sense in which it is becoming obsolete in all technologically highly developed areas: that is, you cannot have freedom of traffic on Trafalgar Square during rush hour; obviously this freedom must be regulated; nor does the free market or free enterprise work the way it used to in our small, crowded and interdependent world. The penetration of the industrial revolution into the oceans made the freedom of the seas a thing of the past. Sovereignty, on the other hand, did not offer a viable solution either: for many of the problems we have to deal with in the oceans do not heed national boundaries. Waves and currents, and pollution moves, and fish move, and there can be no rational system of management for national ocean space -- no matter where you draw the boundary -- without a complementary system for international ocean space: a system that looks at the ocean environment as a whole and on all uses of the oceans in their interactions. So, freedom and sovereignty are obsolete, and must be superseded by a new concept, and that is the concept of the common heritage of mankind.

More than providing a basis for the solution of problems in the oceans, the concept of the common heritage of mankind heralds a revolution in international relations. For, with its attributes, as I have defined them for you, this concept transforms the relations between poor and rich nations, replacing the humiliating notion of "foreign aid" with a sharing in the common heritage; advancing the transfer of technology and know-how; and providing a managerial framework or "machinery," in which poor and rich nations cooperate in a new partnership. The Enterprise of the Seabed Authority proposed by the Law of the Sea Conference is a real breakthrough in this direction.

Is all this utopian? Will we ever succeed in building this new order in the oceans, this new international order?

At the moment, the prospect is not very bright. Positions have hardened, and the concept of the common heritage of mankind is endangered in two ways.

First, there is a rebellion of the rich nations against the advances of the poor. The industrialized nations do not want what they think amounts to a monopolistic control on the part of the majority of poor nations. They want free enterprise, they want freedom of access for their companies to the mineral resources of the deep seabed beyond the limits of national jurisdiction, and while they are ready to pay some royalties to an international agency, they seem unwilling at this point even to enter into joint ventures with the public international enterprise of the seabed authority. The work of the First Committee of the Law of the Sea Conference, which was charged with the responsibility of drafting a constitution for the seabed authority, is in jeopardy at this moment. I am sorry to say that the EEC -- led by West Germany -- is playing a rather crucial role in this rebellion against the poor, with the full agreement, of course, of the United States and the Soviet Union.

The second danger to the Common Heritage comes from advancing claims to national jurisdiction, which shrink its economic viability and, therefore, the political viability of the International Seabed Authority.

The text proposed by the Law of the Sea Conference extends national jurisdiction to include the whole outer continental margin, including the rise, right down to the abyssal ocean floor, whose boundary, incidentally, is very hard to determine. This means that not only all petroleum resources accessible in the foreseeable future, fall under national jurisdiction, but even a part of the ferro-manganese nodules, with which the deep ocean floor is pebbled and from which copper, nickel,

manganese and cobalt can be extracted. So what remains to the International Seabed Authority? Not enough to build a new international economic order, certainly. Not enough even, to support the elaborate machinery the first Committee proposes to erect for the management of the common heritage of mankind which was so much richer in 1967 when Ambassador Pardo made his revolutionary proposals.

It is interesting to note, incidentally, that it was again the rich nations and this time, in particular the United States that advanced ever more extravagant national claims in ocean space. The poor nations merely followed suit: which, in a way, is pathetic; for most of them gain very little or nothing at all. Some of the developing nations are having, in fact, second thoughts on the whole subject of national claims. Thus Algeria has recently making rather strong statements against the whole concept of the Economic Zone. How far this reaction will go is difficult to assess at this moment. The land-locked and geographically disadvantaged States -- to which your country belongs -- are a strong group, with sufficient votes, potentially, to block any decision at the Law of the Sea Conference. On the other hand, it is not likely, that countries like Algeria would wish to divide the group of developing nations on this thorny issue. I think the economic zone at least, that is an extension of 200 miles from the coast, is with us to stay.

But while the common heritage has thus shrunk in terms of economic geography, it can, and in fact, it must be expanded in other ways. As a matter of fact there are strong voices -- mostly, again, among the poor nations -- pressing in this direction.

As matters stand now the concept of the common heritage extends only to the nonliving resources of the deep seabed beyond the limits of national jurisdiction. This was established in the Declaration of Principles adopted

by the General Assembly in 1970 in the wake of Ambassador Pardo's speech, and this is embodied in the documents issued by the Law of the Sea Conference. It is not enough, however. It is becoming ever more obvious that the living resources of the sea must come under the same regime. They can no longer be subject to the old principle of the freedom of the seas, including the freedom to fish. Severe overfishing and pollution of coastal zones, where most of the fishing takes place, are endangering one after the other of the commercial species of fish. The living resources of the sea must be managed as common heritage of mankind -- or they will be wasted and depleted to the detriment of all. Since, unlike the minerals of the seabed, the living resources move across boundaries, the common heritage principle, in some ways, will have to be extended to cover both international and national ocean space. In other words, all resources of the oceans anywhere will have to become common heritage of mankind.

And why stop at the edge of the oceans? Once we have entered areas under national jurisdiction?

It is in fact my prediction that all natural resources will have to be treated, eventually, as common heritage of mankind. Only thus can we deal with the transnational implications of energy management, or cope with world starvation, or with the problems of environmental protection.

Which takes us back where we started from: You can have either private property or a sound environmental policy, including industrial quality control. You cannot have both. Technologies, scarcity, and environmental problems are transforming our notions on private property. The concept of the common heritage of mankind is bound to supersede the classical notion of ownership and private property.