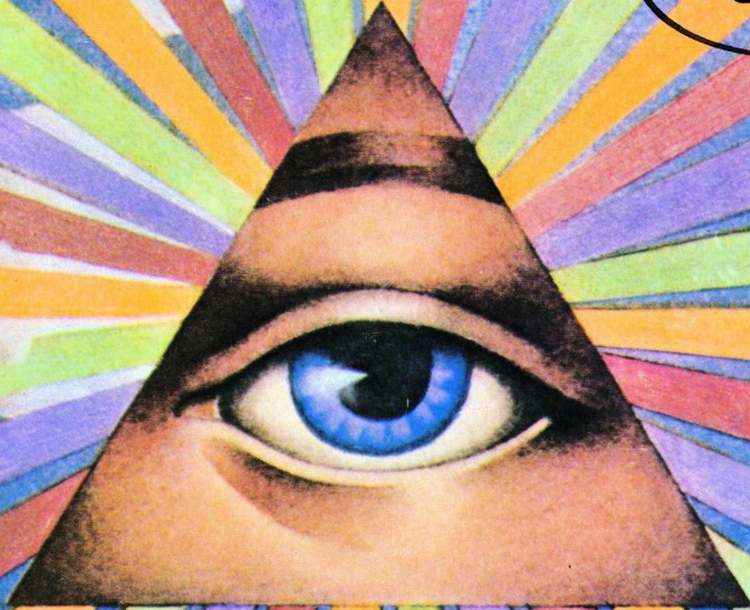


VISTA

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EMB



**ON SURVEYING
EARTH'S RESOURCES
FROM SPACE**

BY ELISABETH MANN BORGESE

WEATHER MODIFICATION
BY ROBERT H. McLAUGHLIN

25 YEARS OF
HUMAN RIGHTS
EFFORTS
BY ROBERT PLANT

KEEPING THE
ENERGY PEACE
BY THORNTON F. BRADSHAW

Who Owns the Earth's Resources?

Fancy yourself to be a scientist from another planet, observing, classifying, projecting what is going on on this small blue Earth.

There is a dominant species, called *homo sapiens*, you note.

Its point of departure in the evolution of life on Earth is somewhat blurred. For all the qualities, assumed to be specifically human, exist in man's animal ancestors as well: language, reason, tool-using, tool-making; even art, proto-science and proto-religion.

After some mulling over the blurred boundary between beast and *homo sapiens*, you fasten on *fire*. *Homo sapiens* is the animal that makes, uses, and controls fire.

Now you have him down: clearly delimited in space and time; earth-bound, terrestrial; bipedal; with the capacity to swim, but not to fly.

Then something happens.

Some specimen of *homo sapiens* acquires the capability to fly. And there are other striking mutations in his interaction with his environment.

A species that can fly, you note, is different from a species that cannot. A species that can transport itself beyond the limits of earth's atmosphere is different from one that is earth-bound. Comparing specific interactions with the environment, you note that the difference between the mutant and *homo sapiens* is far greater than the difference between *homo sapiens* and his animal ancestors. Clearly you are faced with a new species.

You can call him *homo audax*, audacious man.

The boundary line between *homo sapiens* and *homo audax* again appears blurred. Again you fasten on *fire* as the demarcation. But now it is atomic fire. *Homo audax* is the animal that makes, uses and controls atomic energy.

The impact of remote sensing by earth resource satellites—beyond national jurisdiction—on development, conservation and planning, has enormous economic potential.

Atomic energy, in fact, was the first manifestation of what is now quite a series of macro-technologies, whose productive power equals their destructive potential. They all transcend the "limits of national jurisdiction." Their effects are global, or at least transnational. If they are to be managed at all, they must be managed internationally, and only effective management can exploit their productive potential. If left unmanaged, their destructive potential will prevail. The disastrous effects of their "peaceful" unmanaged uses will in fact equal the disastrous effects of their warlike uses. The unilateral uses of weather control and modification, for example, may result in "geophysicide," no matter whether it is done under the auspices of war or peace. Other obvious examples are the uncontrolled release of radioactivity from the peaceful uses of atomic fission energy, atomic accidents, the accidental raising of biospheric temperatures due to uncontrolled high energy production, and pollution of land, water

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and the atmosphere. The uncontrolled, unmanaged even though "peaceful" uses of these macro-technologies affect not only nations but individuals directly. They act on "the quality of life."

International organizations, as they developed during the past half-century, are simply not geared to cope with problems of this sort.

And this, in fact, is the present predicament of *homo audax*. His evolution is incomplete. He is living, so to speak, with one foot in the twenty-first century while dragging the other in the nineteenth. The social, political and international structures erected by *homo sapiens* are breaking down under the onslaught of the macro-technologies which determine the nature of *homo audax*, and threaten to bury him.

Will he be in time to remake his political environment as he remade himself?

The oceans are the great laboratory for the making of the new world order.

Ever since the Government of Malta, over five years ago, introduced its famous item on the agenda of the General Assembly of the United Nations, "Examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the uses of their resources in the interest of mankind," the UN Seabed Committee has been laboring on institutional arrangements for the international, peaceful management of ocean space and resources for the benefit of mankind as a whole, with special regard for the needs of developing nations. The principle declaring these resources "common heritage of mankind" marks a radical point of departure in international relations —

nothing less than a "mutation" — apt to bring world order in line with the macro-technologies of *homo audax*.

Once an instrument for the international management of transnational technologies and resources will have been forged, this instrument — or adapted versions of it — can be applied to other areas of transnational activities. There is, in fact, no logical reason why it is only ocean space, resources and technologies that should be "the common heritage of mankind." The concept is expandable. My prediction is that it will, of necessity, be applied to earth resources as well, and to the transnational technologies instrumental to their effective management. High on the list of these are the earth-resource satellites. The first of these satellites has been in orbit for a few months now. A second one is scheduled for orbiting in 1974.

More than 300 experimenters, representing the United States (which, through NASA, runs the project), thirty-seven other nations, and two United Nations groups, are participating in the first flight of ERTS (Earth Resource Technology Satellite).

Uses of the satellite, with a direct impact on development strategies, include: the search for earth resources, including mineral deposits, soil with high growth potential, and fish at sea; the monitoring of such diverse phenomena as ice movements on the oceans, forest fires, mass insect movements (e.g., locusts) on land; flood predictions, and similar worldwide collection of warning data, collision avoidance and distress relay and rescue.

R.J. Helberg, Assistant Division Manager Space Division, The Boeing Company, gives a number of examples of intelligence gathered from space, used for the economic benefit of mankind. Fault structures extending from Swedish iron ore deposits into Finland and Norway were identified from about 1,000 miles up and are being explored for iron deposits. Photographs taken from about 125 miles up have assisted in Australian oil exploration. Much of the equipment utilized for gathering information about the moon is equally useful for earth.

Work has been divided into the field of agriculture-forestry resources, geology/hydrology (mineral and water resources), geography (cultural resources) and oceanography (marine resources). Disease patterns in timber can be detected from aerial or space

An international earth resource management organization would enhance both development and conservation — and one of the lessons of this decade is that you can't have one without the other.

reconnaissance as much as three years before difficulty can be observed from the ground.

Agricultural applications of thermal infrared scanners include: the detection of plant water stress due to various causes such as the need for irrigation, soil salinity, etc.; measuring occurrence of rainfall; measuring soil temperatures for indicating when the soil is warm enough for planting of crops; studying occurrence and patterns of freezes; monitoring thermal pollution; detecting springs and subsurface flow into lakes, rivers and oceans; estimating evapotranspiration of farmland, forest and rangelands; estimating water evaporation from lakes, ponds and reservoirs.

Potential global benefits from these techniques and their impact on agricultural improvements alone may reach as high as \$45 billion a year, according to the Department of Agriculture in the United States.

Dr. Arch Park, chief of NASA's ERTS program, predicted that ERTS may provide "subjective yield forecast" of surprising accuracy for crops. The ability to forecast crops, with its economic implications, poses serious problems for NASA in the use to be made from ERTS data. NASA has agreed with all participating experimenters that all ERTS data will be placed immediately in the public domain. This is a departure from NASA's general practice, and it undoubtedly is a step in the right direction. But there is still something frighteningly unilateral, voluntaristic and uncontrollable about this way of sharing information. At this time, no international agreement exists regarding the sharing of commercial and economic information through reconnaissance from space. And even if information is made available, most nations do not

have the technical capacity to interpret and utilize this information. Thus the space powers have in their possession an enormous advantage in the exploitation of the natural resources of earth and sea and in the planning of their own economies based on knowledge of what is available and what is being done in other countries.

It seems impossible to assume that such a situation will not lead to conflict and chaos. The organization of the administration and operation of a worldwide system of satellites, based on the principle of equal cooperation of all states without discrimination, seems mandatory.

The Working Group for Surveying the Earth by Satellites has met, and it is expected that the final report will be submitted during 1973.

In his opening statement at the 110th meeting of the Committee on the Peaceful Uses of Outer Space, the Chairman, Mr. Peter Jankowitsch of Austria, suggested that "the Committee should give due consideration to the advice of both the Scientific and Technical Subcommittee and the Legal Subcommittee. Particularly with regard to remote sensing — in view of the initial success of the ERTS — it should, in my view, request from the Working Group and the Scientific and Technical Subcommittee definite proposals — in accordance with the terms of reference, of course, for United Nations action, if any, in this field. Particularly as it is a multidisciplinary activity and of interest to other bodies of the General Assembly and the Economic and Social Council — that is, the Committee on Natural Resources and the proposed organization for the environment — it should consider how these activities could be coordinated."

In the meantime, the Intergovernmental Maritime Consultative Organization (IMCO) has taken the initiative in proposing a new international organization to own and manage a global maritime satellite communications service. The target date for the system to become operational is 1978. The first, major step was an agreement reached by IMCO's radio-communications subcommittee in London on March 5–9, 1973. The subcommittee voted 20 to 1 to convene an international conference of governments to take conclusive action on the establishment of the maritime service. The conference should be

held in October 1974. The only negative vote was cast by the United States.

A comprehensive maritime satellite plan should be ready for action by the full membership of the eighty nations participating in IMCO in November. Meanwhile, an IMCO panel of experts will develop the details of a maritime program. The four main items on the panel's agenda are:

—“Institutional arrangements” for the new organization that is to own and operate the new system.

—“Completion of overall technical parameters of an optimal system and its interface with the international telecommunication networks.”

—“Economic assessment of the system including its cost-benefit to the maritime community.”

—“Forecast of satellite traffic and rate of ship fitting” with terminals.

IMCO's bold initiative, led, incidentally, by the Soviet Union, may have far-reaching consequences, both for the emerging ocean-space institutions and for the earth resource management organization which might be created in their wake.

As far as the ocean-space institutions are concerned, the proposal is bound to strengthen the advocacy of an *operational* system as advanced by the developing nations and recently, most emphatically, by the People's Republic of China, as against a *regulatory* system, as suggested by the developed nations, including the Soviet Union. The IMCO proposal may, in fact, forecast a change in the position of the Soviet Union: It is difficult to see how one can propose an operational ownership and management system for the maritime satellites while leaving the rest of the ocean-space institutions, with which the satellite system obviously must be organically linked, with merely regulatory powers, or no powers at all. If the Soviet Union were to join the developing nations, the prospect for agreement at the Law of the Sea Conference would brighten considerably. An *operational* ocean regime, to my mind, is the only one that can give reality to the concept of the common heritage of mankind which, otherwise, would remain a gloss of speech, a flourish of rhetoric, flouted by the technologies and the economic power of the great developed nations. To be meaningful in legal terms, the concept of the common heritage of mankind must imply an *active* concept of sharing: sharing not only of profits, but of man-

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agement and decision making. This, in turn, implies an active concept of governance; for if the ocean-space institutions had nothing to *manage*, management could not be shared.

The IMCO proposal thus strengthens the concept of the common heritage of mankind and nourishes its legal content.

As for the nascent satellite system, IMCO's position parallels that of Malta — five years ago. Malta, at that time, limited its proposal to the seabed, the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. It did not deal with ocean space as a whole. IMCO deals with *marine* satellites, not with earth-resource, or other satellites.

Malta and the Seabed Committee gradually realized that ocean space is an ecological whole, and that you have to deal with it as a whole, or you can't deal with it at all. Satellite systems, likewise, are global, and multipurpose systems. It is likely to turn out, analogously, that you can deal with them globally, or not at all.

The Maltese Seabed proposal, nevertheless, served as a “trigger.” The IMCO proposal may well have the same function: It may trigger off the process of establishing an International Earth Resource Management Organization, linked to the Ocean Resource Management Organization.

This is the proposal we want to put forward in these pages. It is based on four major premises.

First, resources, in an era of population increase and advancing technology like ours, are becoming too scarce to be left to the whims of a market economy and the destructiveness of irrational and competitive private management. Resources — in other words, earth resources — have to follow the

way of ocean resources. That is, they must be declared the common heritage of mankind, which means they must be managed in global perspective, for the good of mankind as a whole, with special regard for the needs of developing nations.

Second, space technology, satellite technology, has progressed to such a point that it has acquired a quite considerable economic potential. Outer space — until now of interest only to the highly developed military powers — is moving into the sphere of interest of all nations and all people, as dramatically as ocean space. The impact of remote sensing by earth resource satellites operating in outer space beyond the limits of national jurisdiction — the impact of this on resource development, conservation and planning is simply enormous, with gains of literally hundreds of billions of dollars in sight annually. But here again, technology has outraced the law and the established international order. The Outer Space Treaty is obsolete and must be revised in view of the economic potential of space technology, especially from the point of view of the developing nations.

Third, in planning development for the coming decades, we should rid ourselves of the traditional and conservative concepts of development which may be encouraged by the archaic stage of the economy of many developing countries. There is no historical law that forces economic development of the developing nations through a “recapitulation” of the phases traversed by the industrial nations during the past centuries. Assuming the possibility, and necessity, of “phase-skipping,” development policy should start from the application of the highest available level of technological development, which includes a space technology that might well contribute to a revolutionary breakthrough in global resource management.

Fourth, the General Assembly of the United Nations has declared that the Second Development Decade should coordinate its efforts with those of a Disarmament Decade. This means, presumably, that savings through disarmament should be applied to development. No such savings, however, are in sight. The present proposal links disarmament and development in a different way: The same instruments on which the international community must rely for the data-gathering basis for global re-

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1961, located both in New York and Geneva (addresses: UNPA, P.O. Box 5900, Grand Central Post Office, New York, N.Y. 10017; Palais des Nations, CH-1211 Geneva 10, Switzerland). Both the New York and Geneva offices provide the same stamps.

While collectors could obtain UN philatelic material directly by writing either the Geneva or New York postal office, or through purchases from the one hundred and six UNPA outlets around the world, a standing order through the Customer Deposit Account Service provides certain benefits. Collectors using the service are automatically assured of receiving all new issues and need not run the risk of not having been aware of their appearances; notices of new issues are sent regularly; stamps arrive in official envelopes containing special cancellations, often a first day of issue postmark. The special account can be opened with a minimum deposit of \$20; the only cost to the collector for servicing this account is the postage he is charged for the new issues sent by the UN. Collectors can specify what quantities or combinations they wish to receive. Gift certificates for this account service feature Ole Hamann's personal signature.

In an effort to increase the 29,000 American subscribers to this service (approximately the same number as in Geneva), the UNPA engages in advertising campaigns, and sponsors stamp exhibits which appear at regional stamp shows in the United States. During 1972, the UNPA participated in some ninety such stamp exhibits, and the UN sales counter at these exhibits also took in over \$160,000. Many more exhibits take place throughout the world.

Hamann, an artist, is responsible for thirty-one UN stamp designs, including two designs in 1951 when the UNPA issued its first stamps. Although the revenue from collectors amounts to only about one percent of the world body's yearly budget of \$225,000,000, Hamann believes that stamps play a key role in sustaining educational knowledge of the UN. He proudly points to the stamp collector clubs specializing in UN stamps and to the many youths who crowd lines at the UN's New York headquarters on first days of issue as attesting to the truth that the tendency to think in terms of "either-or" in world relations is no less worthy than the integrative approach symbolized by the United Nations and its stamps. #

WHO OWNS THE EARTH'S RESOURCES?

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source management and development will inevitably serve to uncover military secrets; that is, they will render many of the available weapons systems obsolete. The international earth resource management organization thus would be a *peace system*, not in the sense that it would require disarmament as a prerequisite, but in the sense that it will entail the abandonment of weapons systems due to obsolescence.

In a paper presented in Brussels in September 1971, "Planning for a Global Remote-Sensing Information System," Harrison, Morley and Gregory make some most valuable suggestions with regard to the functions and programs for the new international organization. They also propose a time schedule for the establishment of this organization as well as some quite practical preparatory steps:

We propose that a small technically-oriented task force reporting to the UN Working Group on Remote-Sensing of the Earth by Satellite should be established. One of its main functions would be to solicit briefs from a wide variety of international interests, to review these briefs and to make such recommendations about the Global Remote-Sensing Information System as seem warranted for international community. We believe this task force should have a working life of about three years from initiation of planning to preparation of final report. In our view, the terms of reference for the task force should include, among others, specific directions to: (a) adhere to guiding principles, such as those outlined or a modified version thereof; (b) make an early start on the solicitation of briefs, especially those concerned with users' requirements for synoptic and cyclic data; (c) study the role of an international organization in the operation of each of the main elements of the system; and (d) recommend an organization to manage and fund those elements where internationalization seems warranted.

The task force should comprise a nucleus of two or three technical persons who could direct much or all of their efforts to the study. . . . Briefs would be solicited in areas of technology,

applications, training and political and legal aspects. Specialized review committees would be convened from time to time to consider the briefs and prepare relevant digests and recommendations. Perhaps 500 persons around the world would be so involved. Regional meetings could serve to minimize travel expenses.

The authors conclude that

we must also be realistic in recognizing challenges to the attainment of full international cooperation in global sensing. For these very reasons, it is essential that concerned nations of the world begin to think carefully about the international arrangements required to implement this developing capability. True, it is too early to define the systems but it is not too early to reach agreement on their international objectives and on a broad program to achieve them.

My own feeling is that the time schedule proposed by the authors (1971-1974) is too optimistic. I see a satellite organization emerging in the 1980's rather than the 1970's. On the other hand, I do not think it too early to try to define the system, in the context of the other international systems for the management of transnational resources and technologies which we must create over the next decades.

The new organization, to be called the International Earth Resource Management Organization (IERMO), must, like the ocean regime, have monitoring, regulatory, planning and operative functions. These must involve not only governments but producers (industries), consumers and scientists. Big Science looms even larger in space than it does in the oceans.

As in the ocean regime, the common-heritage status of resources — all those that can be observed and inventoried from the no-man's-land of outer space — creates certain new rights and entails certain new responsibilities. It implies the rightful sharing of all nations in the benefits and in the management of these resources — thus obliterating the notion of aid. It implies the responsibility of the sharing of technologies. More even than the ocean regime, IERMO will have to articulate the needs of a Society of Learning — which we must become if we want to survive.

To achieve this, IERMO will have three main activities, embodied in three active institutions, emerging from, and

responsible to, a participatory international structure and providing mechanisms of coordination and cooperation with a host of existing organizations which — just as in the oceans — now are mostly working at loggerheads.

1. *IERMO will operate a satellite system.* This will be a corporation, organized along the lines of the "Enterprise" proposed by the Latin American States as part of the ocean regime or the "Maritime Corporations" proposed as part of the *Ocean Regime* drafted by the Center for the Study of Democratic Institutions. It will absorb and enlarge the organization proposed by IMCO.

Individual nations or regional groups of nations may create their own satellite corporations (such as Comsat). These, however, must be registered and licensed by IERMO. The conditions and regulations of licensing will be part of the Charter of IERMO.

Both public and private corporations can only function on the basis of the fundamental principle that intelligence gathered from outer space is the common heritage of mankind and must be accessible to the world community and the appropriate organs of IERMO.

2. *IERMO will establish a Scientific Institute.*

This institute will have two different functions. On the one hand, it will assemble, analyze and interpret all data obtained by the satellite system and supporting earth stations; on the other hand it will provide training of experts in the analysis and interpretation of data — especially from the developing nations.

The Institute will function as part of a world university system. The specialists needed all over the world will, initially, not exceed a few hundred or at most a few thousand — a number small enough, at any rate, to be trained within the Institute itself. This training should be provided free of charge. The selection of candidates should be made by national governments.

3. The third active institution of IERMO is a *Planning Board* which will use the data and interpretations provided by the Institute for the global planning of resource use, recycling, and conservation. The Planning Board will have a certain number of mandatory ex-officio members (members of the planning board of the Ocean Regime,

the Resources and Transport Division of the Secretariat of the United Nations, the World Meteorological Organization, the Special Committee on the Problems of the Environment of the International Council of Scientific Unions, FAO, the ECOSOC Standing Committee on Natural Resources, etc.). Other members may be appointed by IERMO's Assembly and Commission, to which reference is made below. A third class of members of the Planning Board might come from *regional* planning boards which, undoubtedly, will have to be established where they do not already exist.

The Plans, covering, probably, periods of 50, 20, 10, 5 and 2 years, will have to be fully discussed and approved by the representative bodies of IERMO. Plans will be indicative only, not enforceable. There should be only one binding obligation, and that is that the plan *must* be discussed by all national Parliaments of member nations, the same way as ILO resolutions and decisions are. After that, it is up to each government to implement the parts of the plan relevant to it. It is assumed that, in the long run, plans will be so beneficial to all nations that noncompliance would simply be too costly.

Satellite system, Scientific Institute and Planning Board might be instruments of a technocracy, dominated by the technologically and militarily highly developed nations, which would channel the flow of resources in their own direction, thus further increasing the gap between developed and developing nations.

To prevent this from happening, the active institutions of the International Earth Resource Management Organization must emanate from, and be responsible to, participatory structures, based on an assembly system. One part of this system — the "State" or "governmental" part — might be elected by the General Assembly of the United Nations, on a regional basis (a fixed number of members for each geographic region); the other part (non-governmental) might be composed in a manner analogous to that in which the non-governmental sector of the ILO Assembly is composed — with the difference that in IERMO's case, this Assembly sector would be composed of *producers* and *consumers* rather than labor and management, and that a third sub-sector, Science, would have to be added. As in ILO, decisions of the IERMO

Assembly would be valid if approved by a majority of both the governmental and the non-governmental section or chamber.

The other organs, such as an IERMO Commission, a Secretariat, and a Tribunal before which multinational and international entities would have to have a standing, would follow traditional patterns, rather similar to those outlined in the *Ocean Regime*.

In spite of the doctrine of the permanent sovereignty over national resources, it should not be difficult for the developing nations to see that a revolutionary change in development implies a revolutionary change in the concept of ownership, not only among classes but also among nations.

Even though they now "own" a large share of the earth's resources, "ownership" does not seem to get them fast enough ahead, or very far beyond a post-colonial extraction economy which continues to widen the gap between the poor and the rich in the developing nations themselves. The adoption of the concept of common heritage for all earth resources would make them active managers rather than passive owners of their resources in the context of a worldwide resource management system and of a global process of learning.

The developed nations, on the other hand, are laboring under the specter of the rapidly progressive and soon irreversible pollution of the biosphere. They are clamoring for a "zero growth" economy, for austerity, for sacrifice. They can have this on either of two conditions: the maintenance of the status quo, with the rich remaining rich and the poor, poor. This would not seem to be an acceptable proposition. "Zero growth," in a world in which at least one half of the people are undernourished and lack the essentials of a decent life, seems an outrage.

The alternative, then, is a radical redistribution of resources and energy. For this, an international earth resource management organization would be an essential tool. It would enhance both development and conservation — and one of the lessons of this decade is likely to be that you can't have one without having the other.

As a beginning effort on this problem, I submit the following Proposed Declaration of Principles for the International Earth Resources Management Organization:

PROPOSED DECLARATION OF PRINCIPLES

THE GENERAL ASSEMBLY

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies; the United Nations General Assembly Resolution 1721 (XVI) of December 20, 1961) on the Peaceful Uses of Outer Space; the United Nations General Assembly Resolution 1962 (XVIII), dated December 13, 1963, on the Declaration of Legal Principles Governing Activities of States in the Exploration and Use of Outer Space; the United Nations General Assembly Resolution 1963 (XVIII), dated December 13, 1963, on International Cooperation in the Peaceful Uses of Outer Space; the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, entered into force August 20, 1964; Special Agreement, entered into force August 20, 1964, relating to the establishment of a Global Commercial Communications Satellite System; the Communications Satellite System Arbitration Agreement, entered into force November 21, 1966; the United Nations Document A/AC.105/C.2 W.2 Rev.3, dated September 24, 1965, constituting a Comparative Table of Provisions Contained in the Proposals for a Treaty for Liability for Damage Caused by Objects Launched into Outer Space; and the Annex to Resolution 2345 (XXII), December 19, 1968, of the United Nations General Assembly being an Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space;

Affirming that recent developments in space technology have added an economic potential to the use of outer space;

Recognizing that the existing legal regime of outer space does not provide substantive rules for regulating the use of outer space for economic purposes such as earth resource development;

Convinced that outer space shall be reserved exclusively for peaceful purposes and that the exploration of outer space and the use of resources developed on the basis of space technology shall be carried out for the benefit of mankind as a whole;

Believing it essential that an international regime applying to outer space and its resource potential and including appropriate international machinery should be established as soon as possible;

Bearing in mind that the development and use of resources made available by satellite technology shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects for technologically less developed nations from such activities,

Solemnly declares that

1. Earth resources, both mineral and vegetal, renewable and non-renewable, are the common heritage of mankind.

2. No state or person, natural or juridical, shall claim, exercise or acquire rights with respect to earth resources incompatible with the international regime to be established and the principles of this Declaration.

3. All activities regarding the exploration of earth resources from outer space and their use and other related activities shall be governed by the international regime to be established.

4. Satellite systems shall be used exclusively for peaceful purposes by all states without discrimination, in accordance with the international regime to be established.

5. States shall act in outer space in accordance with the applicable principles and rules of international law including the Charter of the United Nations and Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on October 24, 1970, in the interest of maintaining international peace and security and promoting international cooperation and mutual understanding.

6. Resource exploration from outer space and the use of such resources shall be carried out for the benefit of mankind as a whole, and taking into particular consideration the interests and needs of the developing nations.

7. Satellite systems shall be used exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to outer space.

8. On the basis of the principles of this Declaration an International Earth Resource Management Organization (IERMO) and including appropriate international machinery to give effect to its provisions shall be established by an international Treaty of a universal character, generally agreed upon. The Treaty shall, *inter alia*, provide for the orderly observation and inventorying of earth resources and for expanding opportunities in the use thereof, and ensure the equitable sharing by states in the benefits derived therefrom, taking into particular consideration the interests and needs of developing countries.

9. States shall promote international cooperation in scientific research exclusively for peaceful purposes:

(a) By participation in the programs and plans proposed by IERMO's institutions;

(b) Through effective publication of research programs and dissemination of the results of research through international channels;

(c) By cooperation in the measures proposed by IERMO to strengthen research, analysis, and interpretation capabilities of developing countries.

No such activity shall form the legal basis for any claim with respect to any part of resources.

10. With respect to activities in outer space and acting in conformity with the international regime to be established, States shall take appropriate measures for and shall cooperate in the adoption and implementation of international rules, standards, and procedures for, *inter alia*:

(a) Prevention of pollution and contamination and other hazards to outer space and the atmosphere and of interference with the ecological balance of the biosphere;

(b) Protection and conservation of natural resources and prevention of damage to the flora and fauna of the environment.

11. In their activities in outer space, including those relating to earth resources, States shall pay due regard to the rights and legitimate interests of adjacent States in the region of such activities, as well as of all other States which may be affected by such activities. Consultations shall be maintained with the adjacent States concerned with respect to activities relating to the exploration and use of their resources with a view to avoiding infringement of such rights and interests.

12. Nothing herein shall affect:

(a) The legal status of the air space of nations or their territorial sovereignty;

(b) The rights of adjacent States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their airspace or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in outer space, subject to the international regime to be established.

13. Every State shall have the responsibility to ensure that activities in outer space, including those relating to resources whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international regime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability.

14. The parties to any dispute relating to activities in outer space and dealing with earth resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international regime to be established.

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The Environmental Challenge

A SPECIAL ISSUE ON UN ACTIVITIES

Dick Hess



member of specialized agencies; the German Democratic Republic is not.

The costs of the Stockholm Conference were not confined to Mr. Strong's budget of a million dollars for a year for his temporarily recruited staff. He estimated some \$20 million to \$30 million had been invested in the Conference, including the seminars and the inputs of the specialized agencies and governments. The Fund recommended for the UN machinery which would carry out the decisions of the Conference and coordinate the international machinery, he estimated, should be around \$30 million to \$40 million a year. President Nixon has proposed a Fund of \$100 million for five years.

In answering one question, Mr. Strong stated that the proposed "Earthwatch" on the environment was much more powerful than indicated. In conjunction with acceptance of the principle of responsibility there was a tool for action. The violations would show up and, yes, he could see the time when the Security Council might discuss environmental aggression. While the declaration of principles was not intended to be a binding document as such, he cautioned against underestimating the political power of the principle.

A "NEW ORDER FOR THE SEAS"

The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction completed a five-week session on March 30 working on its continuing task of preparation for a Conference on the Law of the Sea, tentatively and hopefully scheduled for 1973. It will meet again in Geneva from July 17 to August 18, 1972. The four-year-old Committee was enlarged to ninety-one by five new members, including the People's Republic of China.

The tasks pursued in its three subcommittees were concerned respectively with (1) an international regime and organizational machinery to govern exploration and exploitation of the sea-bed; (2) preparation of a list of subjects and issues to be taken up by the forthcoming Conference on the Law of the Sea; and (3) the preservation of the marine environment and scientific research.

The enormous significance of the un-

dertaking of the ninety-one member states was stressed by Secretary-General Kurt Waldheim when he addressed them for the first time. "You are faced with a task which is of the greatest importance to the world community as a whole and to the well-being of future generations," he said. "Your work is to create a new order for the seas which will also provide a new framework for international cooperation and a new *modus operandi* among states." New vistas were being opened up for international institutions. Their functions would have to conform with the new demands of the remaining part of this century. The new order of the seas would have to match the great strides being made in science and technology and, at the same time, would have to reflect the new political and economic realities of our times, he said.

With such an undertaking, instant results would not be expected, Mr. Waldheim said. "Many interests at variance have to be reconciled and a firm common ground established." He congratulated them on their first successes toward this goal—especially the declaration of principles on the sea-bed and ocean floor beyond the limits of national jurisdiction, principles "which break new ground in virgin territory." This job had to be looked at in a broad historical context. Many doubted whether existing law was adequate to meet the demands of the times. While these new laws should remove obstacles to the best use of the oceans, "they should equally protect the marine environment from degradation, for we depend on it for a good share of the food we consume and even the air we breathe."

Pointing out that the world population was expected to double by the year 2000, the Secretary-General noted that then "twice as many people will have to be fed, hopefully better." The demand for new materials will increase at an exponential rate as industrialization expands, and fears had already been expressed that "the world may be over-reaching itself." Experts had stated there were limits to the exploitation of land-based resources and many were not infinite and renewable. "We are increasingly turning to the immersed parts of our planet for new resources of food, fuel, minerals and even additional space." Minerals such as copper, nickel, cobalt and manganese had the remarkable property of renewing

themselves on the ocean floor more rapidly than they could be exploited. The wealth of the seas and ocean floors must be used wisely and for the benefit of the world community, especially for the poorer countries, he declared.

While the Committee's main task is to draft articles for an international treaty or treaties to be considered by that Conference, it is still in the stage of debating the many complex and interlocking issues which must be clarified before the actual drafting can begin. In summing up the work of the session, the Committee Chairman, Hamilton S. Amerasinghe of Ceylon, said that although no concrete decisions had been taken, there had been progress in the sense that matters of substance had been discussed in the subcommittees. He added that the decision of the General Assembly later this year on whether the Conference of the Law of the Sea would take place in 1973, as planned, would depend very much on the progress made at the Committee's next session.

Subcommittee I discussed questions of an international regime, and the international organizational machinery for such a regime. On the first item, the Chairman said there had been "substantial and encouraging progress," and drew a parallel between its work and the early discussions on the preparatory work for the United Nations Charter. The main questions raised had been: what area, resources and activities were to be covered by the regime. On the second item, the machinery, the debate covered such matters as whether the machinery itself should be directly engaged in exploration and exploitation; whether it should license states and private firms to carry out activities in the area; whether it should have joint ventures; and whether decisions should be taken by a simple or two-thirds majority, by weighted voting or consensus.

Disappointment was expressed that no decision was taken in Subcommittee II, which had the job of drawing up a comprehensive list of subjects and issues to be submitted to the Conference on the Law of the Sea. However, a comprehensive list sponsored by fifty-six of the group of seventy-seven developing countries was introduced, and some amendments were added. The full Committee decided that informal consultations should take place between now and the summer ses-

sion in Geneva, under the general guidance of the Committee Chairman in an effort to reach general agreement.

The list contained the following main headings: international regime for the sea-bed and the ocean floor beyond national jurisdiction; territorial sea, contiguous zone; straits; continental shelf; exclusive economic zone beyond the territorial sea; rights and interest of states with broad shelves; preservation of the marine environment; settlement of disputes; peaceful uses of ocean space; historical treasures of the sea and transmission from the high seas. The list was not necessarily exhaustive, the sponsors said, nor did it prejudice the position of any state.

Subcommittee III on marine environment authorized its Chairman to transmit the records of its deliberations to the United Nations Conference on the Human Environment in Stockholm. It informed the Conference that the Committee was competent to elaborate treaty articles on the question of marine pollution and was awaiting the outcome of the Conference. In addition to the report of the latter, this subcommittee at its next session will consider such matters as the Oslo Regional Dumping Convention, technological capabilities of developing countries, the sharing of knowledge and technology between developed and developing countries, the training of personnel from developing countries and the transfer of technology to developing countries.

At the closing meeting, Kuwait proposed a moratorium which would "call upon all states engaged in activities in the sea-bed to cease and desist from all commercial activities therein and to refrain from engaging directly or through their nationals in any operations aimed at the commercial exploitation of the area before the establishment of the regime." All arrangements made or to be made for the commercial exploitation of the resources of the area prior to the establishment of the regime "shall have no legal validity and shall not form the legal basis for any claims with respect to any part of the area or its resources," according to the draft resolution. The proposal would be before the Committee at its next session.

Among the complex and controversial issues—and they are legion—is the precise definition of the area beyond the

limits of national jurisdiction. Some say it should start 200 miles from shore, others favor varying distances between 40 and 100 miles; some at a depth of 200 meters and others at greater depths ranging from 2,500 meters. The question of an intermediate zone or "trusteeship zone" between the territorial sea and the completely international area has been introduced. Among others raised: "What does freedom of the high seas mean? What are the limits of the continental shelf? The territorial sea—how wide is it? How are the interests of the coastal state to be protected? How is the right of innocent passage to be defined? On the subject of fishing and conservation of living resources, what rights should coastal states have beyond the territorial sea? What should govern special zones of jurisdiction including economic zones, and straits used for international navigation?"

As a concrete example of the latter, the USSR and Japan recently expressed concern over the Indonesian-Malaysian claim to the Strait of Malacca, shortest water route between the Middle East and the Far East.

In his first policy speech before the Sea-Bed Committee, the Chinese representative, An Chih-Yuan, reiterated on behalf of his government: "China's Taiwan Province and all the islands appertaining to it, including Tiaoyu Island, Hungwei Island, Chiwei Island, Nanshao Island, Peihshiao Island, etc., are part of China's sacred territory. The sea-bed resources of the seas around these islands and of the shallow seas adjacent to other parts of China belong completely to China and it is absolutely impermissible for any foreign aggressor to poke his fingers into them. No one whosoever is allowed to create any pretext to carve off China's territory and plunder the sea resources belonging to China. And no one will ever succeed in doing so."

The statement was made in the context of the United States "forcibly occupying China's territory Taiwan Province," alleged collusion of the United States with the Japanese in "the fraud" of "the reversion of Okinawa" in an attempt to include some of the islands mentioned, and "submarine explorations" in China's coastal seas in collusion with the "Chiang Kai-shek clique" in an attempt to further plunder China's sea-bed resources. The Chinese overall policy statement stressed

the equality of all countries regardless of size and firm opposition to the hegemony of the two superpowers who, China's representative claimed, were "contending and colluding" to dominate the seas and oceans. While paying lip service to the "peaceful uses of the sea-bed," he said, the two superpowers were in fact stepping up the development of nuclear submarines, and emplacing military installations and using the sea-bed for arms expansion and war preparations. "While talking glibly about 'joint exploitation of sea-bed resources,' they are in fact sending out their so-called 'research vessels' into the territorial seas and unbridled plunder of the sea-bed resources and coastal fishing areas of other countries," Mr. An Chih-Yuan declared. The current international struggle with regard to the rights over the seas and oceans was "in essence a struggle between aggression and anti-aggression, plunder and anti-plunder, and hegemony and anti-hegemony, a struggle of Asian, African and Latin American countries in defense of their national rights and interests and state sovereignty against the maritime hegemony of the superpowers." The Chinese maintained that the sea-bed and ocean floor beyond the limits of territorial seas and national jurisdiction "should be used for peaceful purposes in the interest of safeguarding international peace and security."

SECRETARIAT APPOINTMENTS

Secretary-General Kurt Waldheim announced a series of appointments to high positions in the Secretariat at the end of March. They included that of F. Bradford Morse, a Republican congressman of the United States from Massachusetts with long experience in international matters, who becomes Under-Secretary-General for Political and General Assembly Affairs—and the top-level U.S. national in the Secretariat, a distinction long held by the late Ralph Bunche.

The Under-Secretary-General for Political Affairs and Decolonization will be Tang Ming-Chao, who was a member of the Chinese delegation to the 1971 General Assembly, with ambassadorial rank, and a Deputy in the National Congress of the People's Republic of China. He is a former editor of a Chinese newspaper in New York and has a background



VISTA

THE
MAGAZINE
OF THE
UNITED NATIONS
ASSOCIATION
JANUARY/FEBRUARY 1972
ONE DOLLAR

**How
Much is
Enough?
George
Ignatieff**

SEE PAGE 14



Irene Charney

WHO OWNS THE OCEANS?

The oceans are man's last frontier on this planet. To conserve the purity of their wilderness and the mystery of their wild life while industrialization is sprawling farther and farther out, deeper and deeper down, is no small task. Mankind, pushed off the edge of overcrowded continents, finds itself at a turning point in its evolution. Advanced technology enables man to return to his pristine nature. The highest mammal on the scale of natural evolution, he has been made by cultural evolution with its technology into a clumsy, rapacious bird; now, technology is devising artificial gills for him, so he can be fish again, and breathe and live down there where life began.

This new species of man is still scarce in its old-new medium. The social and political order for this new frontier is primitive and heroic. Most of the mistakes made on earth have yet to be made in the deep seas.

Must they be made? Ocean space—and its ecology—is one and indivisible. Legal order, political order, economic order must adapt to this fundamental fact. Then the oceans will be bountiful. But if we violate their nature, imposing on their vastness an order, or disorder, that is rapidly becoming obsolete even in our petty continents, the oceans will die. Poisoned. Polluted. Poisoning. Polluting. Their death a phase in the death of our planet.

The growing excitement about ocean space is not surprising. There is hardly an organization—scientific, industrial or governmental—that is not concerned. Resolutions and manifestoes on what to do with the oceans abound. They come from Monaco and Dakar. From Geneva and London. From New York and Rhode Island. From women's clubs, Bar Associations, United Nations Associations, Parlia-

Yugoslav constitutional law during the last quarter of this century may play the role American constitutional law played during the last quarter of the 18th.

mentarians, major spokesmen for major governments. Basically they all turn on the four points Arvid Pardo, Ambassador of Malta to the United Nations, proposed to the First Committee of the General Assembly of the United Nations, on November 1, 1967:

- Ocean space, beyond the limits of national jurisdiction, is the common heritage of mankind.
- Ocean space, beyond the limits of national jurisdiction, is not subject to claims of national sovereignty.
- Ocean space must be used for peaceful purposes only.
- The resources of ocean space, beyond the limits of national jurisdiction, must be explored and exploited with a maximum of international cooperation, for the benefit of all mankind.

It is the first of these points, the concept of the "Common Heritage of Man-

Elisabeth Mann Borgese, *daughter of author Thomas Mann, is a resident fellow at the Center for the Study of Democratic Institutions. She is an expert on the subject of ownership and control of the high seas.*

kind," that I would like to explore here, because it portends a revolutionary development with implications that jolt the mind. That the oceans belong to mankind as a whole and cannot be appropriated by any nation, is one of the oldest—perhaps the oldest—of all international laws. Ivan the Terrible was the first to formulate it, in his own way. The oceans, he is reported to have said, are "God's road." Queen Elizabeth I of England, in disposing of the Spanish Ambassador's complaints on the depredations by Sir Francis Drake on the Spanish treasure fleet, is quoted as having said, "The use of the sea and the air is common to all. Neither can title to the oceans belong to any people or private persons forasmuch as neither nature nor public use or custom permitted any possession thereof."

President Johnson, in his now famous statement of July 13, 1966, declared: "Under no circumstances, we believe, must we ever allow the prospects of rich harvest and mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottom are, and remain, the legacy of all human beings."

This concept of "common property" is a novel one in international law but an ancient one in civil law, antedating the rise of capitalism and socialism. Under the feudal order, ownership was a "bundle of rights," including the right to use. The Latin *proprietas* meant both "property" and "propriety," that is, property that had to be used properly. The absoluteness of property, including the right to use it asocially, or to misuse it, is a symptom of degeneracy. Absolute ownership

is as meaningless as absolute territorial sovereignty or absolute individualism. Property, sovereignty, and individual rights have meaning only within a wider social context. They are "common" as much as "individual." The three, in fact, are linked, both in their historical origin and in their philosophical essence; and this may explain why all three of them are in crisis today.

The Roman Catholic Church spiritually never quite moved into the era of nationalism and capitalism but tended to adhere to the pre-capitalist notion of "property," even though, as a matter of practical policy, she traditionally sided with capital. Today, she is among the most advanced advocates of "common property." In "Populorum Progression," the encyclical that does to "property" what "Pacem in Terris" did to sovereignty, Pope Paul VI stated: "... private property does not constitute for anyone an absolute and unconditioned right. No one is justified in keeping for his exclusive use what he does not need when others lack necessities . . . the right to property must never be exercised to the detriment of the common good. If there should arise a conflict between acquired private rights and primary community exigencies, it is the responsibility of public authorities to look for a solution, with active participation of individuals and social groups. . . . It is unfortunate that in these new conditions [of the industrialization] of society a system has been constructed which considers profit as the key motive for economic progress, competition as the supreme law of economics, and private ownership of the means of production as an absolute right that has no limits and carries no corresponding social obligation."

These are strong words. But the Roman Catholic Church is not alone. A couple of decades earlier, the Archbishop of Canterbury declared all the waters, not only of the high seas, together with all the other "elements of life," to be "common property." "There are four requisites for life which are provided by nature, even apart from man's labor: air, light, land, and water. . . . I am not persuaded that the right way to deal with this question is by nationalization of the land . . . but I am sure we need to assert the prior interest of the community respecting land and water with a vigor of which recent political history shows no trace. Here, supremely, the principle of the old Christian

tradition holds good that the right of property is the right of administration or stewardship—never the right of exclusive use."

Boodhan, the Hindu doctrine whose followers achieved the voluntary distribution of 2,100,000 acres of land in India, adheres to a similar pre-capitalistic concept of common property. Following Gandhi's teachings, Boodhan advocates the transformation of "legal ownership" from "private" to "community." This, again, considers ownership as a "bundle of rights." Of these, the right to usufruct, the right to inheritance, and the right to alienation or transfer remain intact. But property must be used in the common interest, and at least one-twentieth of it must be given away for community use or redistribution.

Moving from the religious-economic or ethical-economic to the political-economic sphere, the most evolved theory of "common property" is in Yugoslav constitutional law, which rests on the concept of *social property*.

The term "social property" has a negative meaning. It indicates the negation of the right to ownership to each and all. No one, neither State nor community, neither enterprise, working collective, nor individual has ownership rights with regard to social property. Social property implies a form of removal from ownership.

Social property expresses a new relationship not only between persons and things, but also among persons. The principle of *self-management* grows organically from the concept of social property; for if there are not owners and non-owners, neither can there be employers and employees.

The principle of self-management creates a new bundle of collective or "environmental" (understanding "environmental" first of all in the social sense) rights without which the old individual rights, whether civic and political or economic, are today meaningless. It also creates new duties and responsibilities.

Self-management is organically linked with *management*. Social property and its management system represent a theoretical, political and legal whole, covering maintenance, conservation and use of social property, including investment and distribution, as well as planning, developing and sharing of benefits.

A self-management system based on social property, finally, implies a new

mechanism for decision-making which transforms the traditional representative political structures and creates a new synthesis of individual and common interests, of autonomy and unity, of participational democracy. In the Yugoslav Constitution, this synthesis is embodied in the *assembly system*: a kind of rotating bicameral system in which the representatives of the political (territorial) communities share in decision-making and planning with the representatives of the producing communities and the communities of science (functional, non-territorial communities). This intertwining of political (territorial) and functional (non-territorial) interests and powers represents a transcendence of the traditional principle of federalism which applied to the political sphere only, and its enlargement into the social, cultural, and economic spheres, a process defined by Yugoslav theory as *polyvalent federalism*. Moving in the direction of the withering away of the State, polyvalent federalism has some of the traits of the pre-Nation-State era of the Middle Ages, as described, in particular, by the German, Johannes Althusius.

Of this logically and organically coherent structure of Yugoslav constitutional theory the world community, without quite knowing what it was doing, has adopted the basis: social property. In the Declaration of Principles Governing the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, adopted by the 25th General Assembly of the United Nations, the world community has renamed it the Common Heritage of Mankind. But the concept is exactly the same.

The Common Heritage of Mankind is a negative concept. Common Heritage is non-property: it cannot be appropriated by any nation, enterprise or individual. ("The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.")

The Common Heritage of Mankind implies a management system and the right of every nation, rich or poor, to participate in this management. ("The regime shall, *inter alia*, provide for the orderly and safe development and rational management of the area and its resources. . . .")

And it implies a sharing of benefits,

bearing in mind the particular needs of developing nations. ("... and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.")

The technological imperative that forces on us the concept of common heritage of mankind is twofold: The inexorable advance of the pollution of the environment, with the concomitant increasing urgency of controlling pollution by a *rational management of the environment* exclude the existence of private property as we know it. Second, there has been a shift in the importance of the factors creating wealth. In the past, the primary wealth-creating factors were land, natural resources, and capital. These could be "owned." Today, the primary wealth-producing factors are science and technology, skill and organization. These cannot be "owned" in the same sense. They are the common heritage of mankind, or its social property.

All this implies that the concept of the Common Heritage of Mankind, although applied at first only to the nonliving resources of the seabed beyond the limits of national jurisdiction, will not remain restricted to these resources. It is a creeping concept. From these limited resources, it will logically be extended to the minerals suspended in the water column, to the living resources of ocean space, to communications and services, to all uses of ocean space. From there it will be extended to resources, energy, the atmosphere, and to transnational communications and services in general. There will be "regimes" for each one of these areas of transnational activities, based on the concept of the Common Heritage of Mankind.

This is indeed a revolutionary development.

The world community is still staggering under its impact, still groping for definitions, for legal implications and institutional corollaries.

It is not surprising that paradoxical things may happen in a situation like this.

What the world community has been doing, in fact, was to try to build an old constitutional structure, inherited from the international organizations of the first half of the twentieth century, on the new basis of the common heritage of mankind. None of the draft treaties now be-

World order is in a process of transition from political federative association to polyvalent federative association.

fore the United Nations embodies the constitutional and institutional corollaries of the concept of the common heritage of mankind.

When the structure does not fit its base, there is trouble.

At the Center for the Study of Democratic Institutions we have built a model for an ocean regime, adapting the structure of the Yugoslav Constitution to the needs of an international ocean regime based on the concept of the Common Heritage or social property of Mankind. We provided for the autonomous (self-managing) participation of enterprises (industries and fisheries, communications and scientific organizations) in the management and planning of ocean space and resources, through a rotating bicameral assembly system in which the representatives of the political territorial communities, elected on a regional basis, share decision-making and planning with the representatives of the transnational working communities and the transnational community of science.

Looking at this model, one cannot deny that the structure fits well on its base. All one can object to is that the whole thing looks far-out. Not so far, though, as one might think at first sight.

Nations are today no longer the sole actors in world affairs. The range of multinational, transnational activities is growing steadily, and intergovernmental, non-governmental international and multinational entities and organizations are taking their place across, around, and over the nineteenth-century Nation-State. This represents, in a sense not anticipated by Marx, the external dimension of the withering away of the State.

The Nation-State, of course, is still with us, and its role in international organization must remain of primary importance.

In our model, the Nation-State, on a

basis of sovereign equality, is represented on the Commission, that is, the controlling organ. In the policy-making organ, on the other hand, our model departs from the traditional pattern and introduces the pattern of Yugoslav polyvalent federalism.

Let me add that this pattern, adapted to the needs of an international ocean regime, provides a new instrument for the making of science policy which is badly needed today. It provides for the participation of scientists in decision-making. None of the drafts now before the United Nations takes advantage of the occasion for creating such an instrument. The UN drafts all fall short of responding adequately to the challenge of the scientific revolution.

The model also provides for effective control of the new giant entity, the multinational corporation, which today escapes effective control. Such control, obviously, cannot be achieved by any one nation, nor by the super-bureaucracy of a superstate, but only through the responsible participation of these entities in the planning and decision-making processes.

The model provides, finally, an element of balance between the very few large states or superpowers and the numerous small ones. Greater emphasis on regional and functional transnational interests and their representation helps bridge the gap between developed and developing nations and creates a new synthesis between equity and efficiency.

And this, perhaps, will be the main reason why the world community may begin to look at a model of this sort, having exhausted the discussion on the dilemma between a one-nation-one-vote system which is not practical for a body charged with managerial responsibilities, and any form of "weighting the vote," which is politically and ethically unacceptable in a world of nation-states.

World order is in a process of transition from political federative association to polyvalent federative association; from territorially based community to functionally based community; from a mechanistic constitutional model to an organic constitutional model. In this development Yugoslav constitutional law and political theory, during the last quarter of this century, may play the role American constitutional law and political theory played during the last quarter of the eighteenth century. #

9/24

Called Visa about
EM/B's check. \$300
They will look into
it.

VISTA

Dear Elisabeth,

As you may have heard from Mary, the little magazine is no more. A new group has swept very clean, & we are all out on our collective ear. Much bitterness & dismay.

Under separate cover, I am sending you 10 copies of the last issue. Ironically, we

just heard from Robert Muller, an
assistant Secretary-General at the
UN, that he considered the current
issue absolutely top-drawer - in
particular the EMB piece.

Ah, well, so it goes,

Most cordially and
admiringly

Davidson

P.S. Your check is in the works.



for the Study of Democratic Institutions / The Fund for the Republic, Inc.

August 25, 1973

Dear Marion,

yes, I had heard from Mary. It is just too bad! We had not understood, however, that this was actually the last issue!

Forged the bitterness you should feel very proud for having done a really good-rate job. And everything comes to an end, c'est la vie! And even if a company, it's good to think, "it died at the height of its powers - with all its muscles intact!"


I wish we could enlist your talents for Pacom in Brussels. Would we need an editor like you!

What are your plans?

All the best,

Elizabeth

The
Center *for the Study of Democratic Institutions / The Fund for the Republic, Inc.*



May 18, 1973

Marion Bijur
Managing Editor
Editorial Offices
Vista
833 United Nations Plaza
New York, N.Y. 10017

Dear Marion,

Splendid!

Cordially yours,

Elisabeth Mann Borgese
Senior Fellow

VISTA

April 10, 1973

Mrs. Elisabeth Mann Borgese
The Center for the Study of Democratic Institutions
Box 4068
Santa Barbara, Calif. 93103

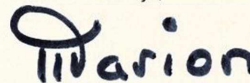
Dear Elisabeth:

First-rate piece, as usual. Many thanks. It is long, yes, but with your permission, I would like to extract the proposed Declaration of Principles from the main body of the article, and present it on a double-page spread to be studied by those interested readers or to be skipped by the less concerned. With careful patching and transitioning, I will then shape the rest of the piece into a cohesive whole, more accessible to our read-as-they-run constituency.

The IMCO proposal stays, of course. Indeed crucial. As a matter of fact, I hope not to delete anything, just re-arrange a bit.

Again, my thanks. We plan to use it in our June issue, although we never can commit ourselves completely to a publication date. And we pay, as usual, when the article appears.

Cordially,



Marion Bijur
Managing Editor

MB/rg

February 17, 1972

Miss Marion Bijur
Managing Editor
Vista
833 United Nations Plaza
New York, New York 10017

Dear Miss Bijur:

I would be very grateful if you could send me six copies of the issue of Vista containing my article.

With all good wishes,

Sincerely yours,

Elisabeth Mann Borgese

February 14, 1972

Miss Marion Bijur
Managing Editor
Vista
833 United Nations Plaza
New York, New York 10017

Dear Miss Bijur:

Thanks for your kind letter of February 11th and
the enclosed check.

With all good wishes,

Sincerely yours,

Elisabeth Mann Borgese

VISTA

February 11, 1972

Mrs. Elisabeth Mann Borgese
Center for the Study of Democratic Institutions
Box 4068
Santa Barbara, Calif. 93103

Dear Elisabeth Borgese:

At long last, your check for the good piece appearing in our current VISTA.

Sorry to have missed your phone call -- I would have enjoyed a moment of conversation with you.

Cordially,

Marion Bijur

Marion Bijur
Managing Editor

MB/rg

VISTA

August 15, 1972

Miss Marion Bijur
Managing Editor
Vista
833 U.N. Plaza
New York, N.Y. 10017

Dear Miss Bijur:

I'll try my best to be romantic. I am very pleased by your demand for an encore and I shall do the article as soon as I can.

Cordially yours,

Elisabeth Mann Borgese

VISTA

August 2, 1972

Mrs. Elisabeth Mann Borgese
Center for the Study of Democratic Institutions
Box 4068
Santa Barbara, California 93103

Dear Mrs. Borgese:

Now that you have done the Ocean Regime piece for VISTA, what more natural than that you should follow it up with an article on the IERMO?

Is there any romantic, literary, or historic mantle you could wrap the subject in for us? Could you let your eloquent pen play with the concept a bit so that the VISTA piece would be both longer and perhaps more "reader-ly" than the necessarily concise paper presented to the Center conference?

We could use 3,000 words, and we pay \$300 on acceptance. Deadline is your convenience.

I do hope you will find the time and inclination to do this.

Cordially,

Marion Bijur

Marion Bijur
Managing Editor

MB:dr

VISTA

October 15, 1971

Mrs. Marion Bijur
Managing Editor
Vista
833 United Nations Plaza
New York, New York 10017

Dear Mrs Bijur:

Thank you for your letter of October 13. I am delighted that you can use my piece on Yugoslav Constitutional Law. Please send it along after you have edited it.

The honorarium is fine. Thanks again.

Cordially yours,

Elisabeth Mann Borgese

Borgese

VISTA

October 13, 1971

Mrs. Elisabeth Mann Borgese
Center for the Study of Democratic Institutions
Santa Barbara, California

Dear Mrs. Borgese:

Many thanks for the article on "Yugoslav Constitutional Law As a Model for World Law and the Law of the Sea," which Mary Harvey sent along to us.

We would very much like to use it in an upcoming issue, probably after the first of the year. Some editing in the interest of space will have to be done, but we will send it back to you for final approval. Our honorarium is \$250, as usual.

It's good that we could finally welcome you to our pages.

Cordially,

Marion Bijur

Marion Bijur
Managing Editor

MB/rg

Yugoslav Constitutional Law As a Model for
World Law and The Law of The Seas

I want to look at Yugoslav Constitutional Law as a possible model for emerging international constitutional law and especially for the law of the seas. I want to look at this kind of emerging international law as an inevitable complement and fulfilment of Yugoslav Constitutional Law.

The connection may at first sight seem surprising. But then, Yugoslavia is, after all, a multinational community. It comprises within its constitutional system both developed and developing, both landlocked and maritime nations. The problems Yugoslavia is facing in narrowing the gap between these are familiar to those who deal with the world community at large.

Yugoslavia lies at the confluence between North and South. It also lies at the crossroads between East and West. Steering its independent course of non-alignment, yet it found itself in a natural position to synthesize the best elements of East and West, of economic democracy and political democracy. It should be obvious that the world at large could learn from this experiment.

At the Center for the Study of Democratic Institutions we have been trying to do just that. During the last four years we have elaborated a model constitution for the oceans, the Ocean Regime, which is heavily indebted to the Yugoslav Constitution of 1963. This indebtedness, obviously, does not extend to operational details which link the constitutional structure to the local and temporal environment in which it is to operate. Such operational details are neither generalizable nor permanent. Yugoslav constitutional law will go its own way, through

its own evolution, adapting to its own local and temporal needs. The law of the seas, which we conceive to provide a pattern for the future framework of international law in general, will have its own evolution.

What I want to deal with here is basic structure.

The basic structure of Yugoslav Constitutional Law rests on the concept of social property, a concept little understood abroad.

The term "social property" has a negative meaning. It indicates the negation of the right to ownership to each and all. No one, neither State nor community, neither enterprise, working collective, nor individual has ownership rights with regard to social property. Social property implies a form of removal from ownership.

Social property expresses a new relationship not only between persons and things, but also among persons. The principle of self-management grows organically from the concept of social property; for if there are not owners and non-owners, neither can there be employers and employees.

The principle of self-management creates a new bundle of collective or "environmental" (understanding "environmental" first of all in the social sense) rights without which the old individual rights, whether civic and political or economic, are today meaningless. It also creates new duties and responsibilities.

Self-management is organically linked with management. Social property and its management system represent a theoretical, political and legal whole, covering maintenance, conservation and use of social property, including investment and distribution, as well as planning, developing and sharing of benefits.

A self-management system based on social property, finally, implies a new mechanism for decision-making which transforms the traditional representative political structures and creates a new synthesis of individual and common interests, of autonomy and unity, of participational democracy. In the Yugoslav Constitution, this synthesis is embodied in the assembly system: a kind of rotating bi-cameral system in which the representatives of the political (territorial) communities share in decision-making and planning with the representatives of the working communities and the community of science (functional, non-territorial communities). This intertwining of political (territorial) and functional (non-territorial) interests and powers represents a transcendence of the traditional principle of federalism which applied to the political sphere only, and its enlargement into the social, cultural, and economic spheres, a process defined by Yugoslav theory as polyvalent federalism. Moving in the direction of the withering away of the State, polyvalent federalism has some of the traits of the pre-Nation-State era of the Middle Ages, as described, in particular, by the German, Johannes Althusius.

Of this logically and organically coherent structure of Yugoslav constitutional theory the world community, without quite knowing what it was doing, has adopted the basis: social property. In the Declaration of Principles Governing the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, adopted by the XXVth General Assembly of the United Nations, the world community has renamed it the Common Heritage of Mankind. But the concept is exactly the same.

The Common Heritage of Mankind is a negative concept. Common Heritage is non-property: It cannot be appropriated by any nation, enterprise or individual ("The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof").

The Common Heritage of Mankind implies a management system and the right of every nation, rich or poor, to participate in this management ("The regime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources...").

And it implies a sharing of benefits, bearing in mind the particular needs of developing nations ("...and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal").

The technological imperative that forces on us the concept of common heritage of mankind is twofold: The inexorable advance of the pollution of the environment, with the concomitant increasing urgency of controlling pollution by a rational management of the environment exclude the existence of private property as we know it. You can have environment control or private property: not both. Second, there has been a shift in the importance of the factors creating wealth. In the past, the primary wealth-creating factors were land, natural resources, and capital. These could be "owned." Today, the primary wealth-producing factors are science and technology, skill and organization. These cannot be "owned" in the same sense. They are the common

heritage of mankind, or its social property.

All this implies that the concept of the Common Heritage of Mankind, although applied at first only to the nonliving resources of the seabed beyond the limits of national jurisdiction, will not remain restricted to these resources. It is a creeping concept. From these limited resources, it will logically be extended to the minerals suspended in the water column, to the living resources of ocean space, to communications and services, to all uses of ocean space. From there it will be extended to resources, energy, the atmosphere, and to transnational communications and services in general. There will be "regimes" for each one of these areas of transnational activities, based on the concept of the Common Heritage of Mankind.

This is indeed a revolutionary development.

The world community is still staggering under its impact, still groping for definitions for legal implications and institutional corollaries.

It is not surprising that paradoxical things may happen in a situation like this.

What the world community has been doing, in fact, was to try to build an old constitutional structure, inherited from the international organizations of the first half of the twentieth century, on the new basis of the common heritage of mankind. None of the draft treaties now before the United Nations embodies the constitutional and institutional corollaries of the concept of the common heritage of mankind.

When the structure does not fit its base, there is trouble.

At the Center for the Study of Democratic Institutions we have built a model for an ocean regime, adapting the structure of the Yugoslav Constitution to the needs of an international ocean regime based on the concept of the Common Heritage or social property of Mankind. We provided for the autonomous (self-managing) participation of enterprises (industries and fisheries, communications and scientific organizations) in the management and planning of ocean space and resources, through a rotating bicameral assembly system in which the representatives of the political territorial communities, elected on a regional basis, share decision-making and planning with the representatives of the transnational working communities and the transnational community of science.

Looking at this model, one cannot deny that the structure fits well on its base. All one can object to is that the whole thing *is* looks far-out. Not so far, though, as one might *think* at first sight.

Nations are today no longer the sole actors in world affairs. The range of multinational, transnational activities is growing steadily, and intergovernmental, nongovernmental international and multinational entities and organizations are taking their place across, around, and over the nineteenth-century Nation-State. This development and its implications in international law has been fully described by Wolfgang Friedmann and others. It represents, in a sense not anticipated by Marx, the external dimension of the withering away of the State.

The Nation-State, of course, is still with us, and its role in international organization must remain of primary importance.

In our model, the Nation-State, on a basis of sovereign equality, is represented on the Commission, that is, the controlling organ. In the policy-making organ, on the other hand, our model departs from the traditional pattern and introduces the pattern of Yugoslav polyvalent federalism.

Let me add that this pattern, adapted to the needs of an international ocean regime, provides a new instrument for the making of science policy which is badly needed today. It provides for the participation of scientists in decision-making. None of the drafts now before the United Nations takes advantage of the occasion for creating such an instrument. The U. N. drafts all fall short of responding adequately to the challenge of the scientific revolution.

The model also provides for effective control of the new giant entity, the multinational corporation, which today escapes effective control. Such control, obviously, cannot be achieved by any one nation, nor by the super-bureaucracy of a superstate, but only through the responsible participation of these entities in the planning and decision-making processes.

The model provides, finally, an element of balance between the very few large states or superpowers and the numerous small ones. Greater emphasis on regional and functional transnational interests and their representation helps bridge the gap between developed and developing nations and creates a new synthesis between equity and efficiency.

And this, perhaps, will be the main reason why the world community may begin to look at a model of this sort, having exhausted the discussion on the dilemma between a one-nation-one-vote system which is not practical for a body charged with managerial responsibilities, and any form of "weighting the vote," which is politically and ethically unacceptable in a world of nation-states.

Without going back to the theories of Althusius, we find a perfectly valid precedent in modern international law and international organization for this kind of association in decision-making between political (governmental) and functional (labor and management) representatives, and that is in the I.L.O.

World order is in a process of transition from political federative association to polyvalent federative association; from territorially based community to functionally based community; from a mechanistic constitutional model to an organic constitutional model. In this development Yugoslav constitutional law and political theory, during the last quarter of this century, may play the role American constitutional law and political theory played during the last quarter of the eighteenth century.

The ocean regime of the nineteen-seventies may be the first one in a series of functional-political authorities or communities based on the fundamental principles that inspired Yugoslav constitutional law in the nineteen-sixties. Considering the inextricable connection between internal and external developments -- of which, again, Yugoslav political theory is perhaps more aware than any other -- it is certain that, just as this theory invites universalization, or may even be more applicable at the universal level and in more fully

industrialized and developed nations than in Yugoslavia, such universalization, in turn, will contribute to strengthen and develop Yugoslav political theory and constitutional law at home.

Elisabeth Mann Borgese

VISTA

February 14, 1973

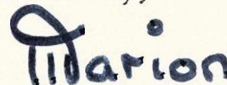
Mrs. Elisabeth Mann Borgese
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Dear Elisabeth:

May we look forward - in the foreseeable future - to an article by you on the IERMO? You did say last August that you would be willing to do this for us, and I'm hoping to use it either in our June issue, which has an April 1st deadline, or the August VISTA, with a June 1st deadline.

Best wishes to you - I like to think of you and Mary enjoying your Eden out there while we shiver here in 9^o cold.

Cordially,



Marion Bijur
Managing Editor

MB/rg

February 28, 1973

Ms. Marion Bijur
Managing Editor
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Dear Marion:

Thanks for your reminder. I will try to shoot at the April 1st date. It should not be impossible to meet it but if I miss, I certainly can promise June 1st. Of course I would like to get the piece out as soon as possible.

It's a rainy Eden here these days but nice anyway.

All the best.

Sincerely,

Elisabeth Mann Borgese
Senior Fellow