

PONTIFICAL COMMISSION «JUSTITIA ET PAX»

THE UNIVERSALE PURPOSE OF CREATED THINGS

*Conference on the
Law of the Sea*

Working Paper No. 1

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OF CREATED THINGS

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I. NEW PERSPECTIVES

1. The quest for food and, in more recent times, the search for new supplies and markets for industry have often provoked migrations, invasions, colonial occupations and wars. Today, at a time when the economies of the technologically advanced countries are consuming more raw materials and energy than ever before, the legitimate claims of the developing peoples and the demographic growth of some of them demand that they too have access to new resources and spaces. It is at this point in history that major technological progress is in the process of opening up *the ocean space* and its immense wealth to human exploitation.

In this convergence of human need and human potentiality, mankind's permanent duty to provide for his own development is given a uniquely historic opportunity of progressing by peaceful means on a space as yet largely unaffected by the dissensions which have arisen in the course of human history on land; and to do this with the experience and the means which should ensure that this unhoped-for reserve is not irresponsibly squandered away.

2. In order to grasp this opportunity, *it seems the traditional concept of the high seas as res nullius is now obsolete*. It rested on the view that the oceans constituted an inexhaustible reserve, an indestructible environment, a vast expanse on which navigation, fishing and exploration called only for minor regulation. This is no longer the case. The existing regime serves the interests of the best-provided; the anarchic confrontation of interests would only multiply sources of conflict, lead to the available resources being squandered under the most devastating conditions, and jeopardize

the general ecological balance of our planet. In default of reaching a general agreement on an annual limit to the harvesting of fish so as to maintain stocks at optimum level, the day would inevitably come when this renewable resource, too, would be seriously threatened.

3. *The massive extension of the sovereignties of coastal states* is not a solution either. It introduces and extends to the sea rivalries between nations. It bestows added benefits on the countries already favored by nature, as it totally excludes landlocked countries and depends on the length of the coastline of the country concerned. It introduces a form of partitioning hardly conducive to scientific research, or to the quest for greater solidarity between peoples.

4. If words have any meaning, the 23rd ordinary session of the General Assembly of the United Nations opened up perspectives full of far-reaching implications by declaring the high seas “*the common heritage of mankind.*” According to this concept:

- a - Ocean space would be reserved for peaceful purposes. In a dual sense: it would not be surrendered to the confrontations of national sovereignties; its resources would be reserved for exclusively peaceful purposes, thus precluding them from being exploited by armament industries. This implies an evolution of the idea of national sovereignty.
- b - A vast space and a host of potentialities would be opened up to the pursuit of justice between peoples. The wealth of the oceans should benefit all, and especially the poorest. Not only the financial benefits would be shared, but also those derived from joint management and the transfer of technologies. A change in the traditional concepts of development aid takes shape.
- c - The reconciliation of mankind over a huge and enduring shared task, in which all peoples would participate, would lead to the establishment of an original framework in which the solidarity of the human family would be concretely

expressed and become a means of new progress. A decisive step would be taken in the organization of the solidarity of the human family.

- d - The management of the oceans would actively safeguard the interests of future generations, by a rational exploitation and the maintenance or continual reconstitution of the planet's fundamental balances.
- e - Once it has been tried on the oceans —a space privileged by its novelty and extent—, the concept of the common heritage of mankind could well be extended to other areas. We thus have here what is undoubtedly a new and innovative idea.

II. THE TEST OF REALITY

1. The idea of the seas as the common heritage of mankind has found very little expression on a practical level, as is proved by the Conference on the Law of the Sea, which has been in progress since 1973 and of which the sixth session opened in May 1977. It was easy to proclaim this idea a decade ago, when it committed its proponents to little. The test of reality seems to be turning against it.

2. *In the first place, the area of its application has been greatly restricted.* From now on, the right of coastal states to claim an “economic zone” of 200 nautical miles seems to have been secured. In this way, a third—and the most useful third—of the ocean space would pass, save for minor restrictions, under the exclusive national sovereignty of coastal states, with all the inequalities, injustices, uncertainties, sources of dissension and missed opportunities this would lead to.

3. *Even for what will remain of the high seas,* the principle has, for the moment, been retained only for the seabed and undersea resources, with the exclusion of the water column itself (fisheries...) which would remain under the traditional regime of freedom for all. It proves difficult to win acceptance for a really effective “high authority” and any enterprise of exploitation it would manage: the technologically advanced countries are trying to make the old concept of the high seas as *res nullius* prevail as far as possible in practice.

4. *The reasons for this reaction:*

- a) The necessary institutions and authorities for administering the seas as the common heritage of mankind are not ready.

The blueprints which have been drawn up reflect the complexity of the issues and in some cases seem to add to it.

- b) Meanwhile, the urgent problems we alluded to at the outset call out for solution and admit of no further delay.
- c) In this situation, there is little willingness to indulge in uncertain experimentation; those concerned are more inclined to use “proven” means such as extending national sovereignties to include adjacent regions of the sea. The technologically advanced countries see this as the simplest and most effective method of tackling the problems at stake. The poor countries, for their part, are thus given the chance of removing the sea spaces within their range, and the wealth they contain, from the exploitation by the more technologically advanced, of putting them in reserve for exploitation at a later date, and of assuring a strong bargaining position for themselves in order to negotiate the terms of a possible immediate exploitation in which they would play an active part. As regards the landlocked countries, it goes without saying that this procedure would only reinforce their geographically disadvantaged position.
- d) Both attitudes and the development of theory are lagging behind actual events. And this, for the time being, gives the more familiar concepts of national sovereignty and exclusively-owned property a certain advantage over those of supra-national sovereignties and the common heritage of mankind. An effort has been made to resolve the dilemma by calling for a revision of the idea of sovereignty: whether national or supra-national, it would no longer be “geographical” (global, covering the sum of realities of a given territory), but “functional” (particular, covering such or such a resource, or activity); it would thus be possible to envisage a network of national or supra-national sovereignties extending over the same area. But for the time

being, such a proposition does not carry conviction and undoubtedly needs, both in theoretical and practical terms, to be further elaborated and refined. Without underrating the importance of realities and practical experience for helping to change men's minds, a reflection on basic principles could induce men to make new developments. The principles of natural law on which the Church's traditional teaching in this field is based indicate the lines on which deeper and clearer theory may be reached, by affirming the universal purpose of created things.

III. THE UNIVERSAL PURPOSE OF CREATED THINGS

1. One of the difficulties of making the concept of the common heritage of mankind acceptable is that it is often presented, and in any event so understood, as being purely and simply antithetical to that of appropriation by individual states, and destined gradually to supersede it. Thus the RIO project (*Reshaping the International Order*, in which Professor TINBERGEN and his team formulate theoretical assumptions and specific proposals for the New International order), envisages an eventual system of United Nations agencies, linked together by an integrative machinery which “should ultimately aim at the pooling and sharing of all resources, material and non-material, including means of production, with a view to ensuring effective planning and management of the world economy and of global resource use in a way which would meet the essential objectives of equity and efficiency” (Chap. 19: *Packages for comprehensive negotiation*, 19.5.3.f.). Is such a machinery realistic? Is there no risk of it ossifying into a complicated international technocracy and of rendering ineffective the “genuinely democratic base” on which it is to be founded? But the RIO project itself believes that, in the short and medium term, the emphasis should be put on *self-reliance*, on the concept of the exclusive possession of goods by the peoples on whose territory they are located, and on a phase of “catching up” during which the newly independent countries would begin by asserting their identity within the framework of the intransigent national sovereignties which have benefited the industrialized countries so much.

Does not current world-wide conduct, whatever the name of the ideologies it goes under, rather plead for an enduring coexistence, in conformity with the experience and the basic impulses of social life, between more national forms of ownership and management and others truly shared by the whole of mankind? The chapter of the RIO project devoted to the oceans suggests a “functional” concept of sovereignty and property which would render the idea of the common heritage of mankind applicable not only to the high seas (under joint management), but also to the other parts of the ocean space entrusted to the jurisdiction and management of particular States (*Part IV, Annex 10, 10.3.1.*).

2. Instead of treating the two terms (appropriation by individuals or groups versus common heritage of mankind) as antithetical options, Christian reflection permits a reconciliation between the two, thanks to a third concept governing both, namely the dynamic principle of the “universal purpose of created things.” The implementation of this principle takes the form of the complementary approaches represented by various kinds of appropriation and common ownership: each is susceptible of a wide variety of forms; each remains under the sway of the higher principle of the universal purpose of created things; neither is destined purely and simply to disappear; the division of goods between the one and the other is not immutably fixed, but needs to be periodically revised in the light of changing circumstances, both at the national and world level.

3. The Church’s teaching has been developed, in modern times, through a confrontation with the problems posed by industrial property and, more recently, in response to discussions on the development of peoples in a spirit of solidarity. The guiding principles which have continually inspired it are simple even though in their exposition, they have not always been presented with the clarity which distinguishes the more recent formulations

of *Gaudium et Spes* (nos. 68-71) and *Populorum Progressio* (nos. 22-24):

God intended the earth and all that it contains for the use of every human being and people. Thus, as all men follow justice and unite in charity, created goods should abound for them on a reasonable basis (*Gaudium et Spes*, no. 69 par. 1).

In citing this, *Populorum Progressio* adds the further comment:

All other rights whatsoever, including those of property and of free commerce, are to be subordinated to this principle. They should not hinder but on the contrary favor its application. It is a grave and urgent social duty to redirect them to their primary finality (*Populorum Progressio*, no. 22).

- a) God gave the earth in common to men, to the human species as a whole. All men, all peoples, must have access to the material goods of the earth. And this in turn, from the viewpoint of these goods, comes to re-affirm that they are, and will remain intrinsically with a *universal purpose*.
- b) The universal purpose of created things is both a “given” and a task. *Particular appropriations of goods*, in various historic forms, enable men to exercise their freedom in a field in which they can develop their personality, manage and multiply goods in a responsible fashion, imbue them with humanity by the work they put into them, and turn trade into a diversified process of developing social bonds. The same –by analogy and *mutatis mutandis*– applies to intermediate collectivities and States. This presupposes, of course, that the division of labor does not condemn whole classes and peoples to a dehumanizing activity or that trade does not take the form of the exploitation of one class or people by another. In fact, a whole network of particular appropriations is thus postulated, more individual or more social, with different status corresponding to the nature, to the aims and to the activities of the various groupings in

which man is found, the management and trade of appropriated goods remaining subject to their universal purpose.

- c) But if the universal purpose of created things is largely brought about through particular appropriations, it is not without interest that it also takes the form of a *common heritage*, at the level of cities, nations, and even, if the institutional framework permits it, the whole international community. By analogy, what the Constitution *Gaudium et Spes* (no. 69) says of the major services which can be rendered by some forms of community property in economically less developed societies would be applicable here. At the world level, an effort must undoubtedly be made to guarantee by international agreements the maintenance and the enjoyment for all of such essential resources as the atmosphere, the balances of the biosphere, and tomorrow, perhaps, water. But the movement does not stop there; on a national level, an equitable redistribution of national revenue is sought by means of joint ownership, in such terms as social and cultural collective investments, social security institutions, and more direct control of particularly important or strategic means of production. At the world level, this same movement of joint ownership leads to the establishment of food stocks at the disposal of famine-stricken countries, buffer stocks of basic commodities, drawing rights on world monetary reserves, and perhaps – hopefully in the near future – a major world fund for development work as a whole (cf. *Populorum Progressio*, nos. 51-53).

IV. “AGGIORNAMENTO” OF THE CHURCH’S DOCTRINE

1. The debate on the sea, as the common heritage of mankind, by its very novelty, permits a renewed reading of a teaching which the Church has gradually elaborated to elucidate other issues and whose permanent constituents and creative force will be better grasped as a result.

The present time is doubly favorable for gaining a better understanding of this doctrine and developing it in the light of the problems faced by mankind today:

- At the world level, this is evident with the problem of the oceans and, in a wider context, of the New International order. Christians would be seriously evading their responsibilities if they ignored a debate which, even in its terminology, is dealing with matters with which the Church’s social teaching has always been concerned.
- At the national level, what is happening does help to elucidate both old (and unresolved) problems and new ones. The Church’s authentic doctrine, founded on the first and guiding principle of the universal purpose of created things, must inspire courageous attempts to curb urban and rural speculation in land, an issue in which often a false conception of property impedes original solutions. The same goes for industry and commerce: the various rights of the agents involved in the productive process (participation...), and their own specific identity, must first be recognized; then the real rights inherent in the various types of property must be subordinated to the common guiding principle of the universal purpose of goods.

2. Faced with the radical repudiation of the very principle of the private ownership (individual or social) of the means of production, the Church has, in the past, been led to emphasize the principle's permanent value, especially in order to safeguard the responsible freedom of men and groups of men in the face of a generalized and oppressive interference by the State (see further, among the more recent documents, *Mater et Magistra*, part II, chap. 1 and 4; and *Gaudium et Spes*, no. 71). In spite of a permanent effort to denounce abuses of property and recall the higher principle of the universal purpose of created things, many people, including Christians, have preferred to retain only the aspect of defense of their private property, ignoring the more fundamental principle involved.

In the immediate future, with regard to the oceans and their natural resources, the cultural climate is different: it is now the poor countries that are insisting on a "sovereign and unconditional" right of property (for each nation), and defying the concept of the "common heritage of mankind" —especially since this same principle has often been flaunted in the past to justify colonial expansion. It is not by ignoring their legitimate demands that the Church can help further the true perspective of a universal purpose for created things. It is rather by showing that this form of appropriation (by *particular* nations, as distinct from the *common heritage* of all mankind) responds to an enduring aspiration and that it is possible henceforth to urge its subordination to the overriding principle of the universal purpose of created things, and to accept the perspective of property managed in common, the establishment of which opens a complementary way, which does not exclude that of national patrimony: the balance between the two types can only be the result of free confrontation and commitments by countries whose own identity is recognized and who are equipped with real bargaining power.

3. Another lesson learnt from past experience can help current discussions and, in doing so, will become in turn a renewed source of enlightenment on an important issue of the Church's doctrinal effort. A gap has, in effect, developed between the Church's language and the culturally predominant one. In speaking of a "natural right" to property (or similar formulations), the Church asserts a fundamental element *in man*, in *each man*, an element which leads him to appropriate material goods to himself, in the human and social perspective already suggested. This element requires a concrete expression in positive law and gives it direction; but positive law is not purely and simply identifiable with the "natural right" in the way the Church understands it. On the other hand, for the predominant mentality, the term "right of property" immediately evokes a specific property legislation.

The result is that, by some in good faith (unenlightened), by many in bad faith, the Church's teaching has been, and still is, brought forth to authenticate an existing property regime as "natural" in the sense of "permanent and inviolable". In actual fact, the Church's doctrine of property entails the need to constantly re-examine, by the democratic procedures envisaged, the existing property regimes, and to adapt them to the human and social finality they ought to serve. The real question is thus the following: does the existing regime, and the development it is undergoing, still enable all men to exercise their "natural" (hence valid for all) right to have access in one form or another to some power over things, a power to be exercised in responsible freedom? Or, on the contrary, do the existing regime and its inner logic lead to the exclusion of the majority from such a perspective? And do they not lead, moreover, by a new abuse, to concentrate in the hands of a minority not only the responsibilities for property, but also all social and political powers?

At the Conference on the Law of the Sea now in progress, care must be taken not to make a "natural" right out of what may per-

haps be only a practical, historic, contingent and revisable method of dealing with a given situation. Thus, the “principle” of geographical contiguity is useful, but not absolute. It is based on a *de facto* geographical situation, not on ethical premises.

Whatever decisions are finally taken jointly at the Conference, or left to the choice of individual States, the configuration of the ocean space which will result from them will remain subordinated to new developments, under the more fundamental guidance of the universal purpose of created things: this governs as much the management of the parts left to the jurisdiction of individual States as that of the area entrusted to mankind as a whole, just as it does govern the balance between the two and their eventual interpretation.