

THE COMMON HERITAGE OF MANKIND AND THE NEW CONCEPTS OF RESPONSIBILITY

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It is a great pleasure for me to be in the beautiful city of Bratislava for the second time, on the occasion of the Conference on Danube River Bonds: Bio-Environment and Bio-Culture. About 20 years ago, I had come here to attend a regional meeting of the World Federation of the United Nations Associations, in an entirely different capacity, as the President of the Turkish Association.

It was mainly because of the WFUNA meetings that I had a chance to develop a fruitful friendship with Dr. Agni Vlavianos-Arvanitis, whose inspiration, dedication and charming handling of issues paved the way for creating the Biopolitics International Organisation in the following years. The establishment of the Organisation was the direct outcome of her conscious appeal during the Berlin Congress of WFUNA in 1987. Congratulations are due to the B.I.O. President and to Mr. Jan Morovic, President of City University Bratislava, for providing the opportunity to exchange views on various aspects of the preservation of the bio-environment in this warm and friendly atmosphere. Through such exchange of ideas and experiences, we will be able to contribute better to human survival, welfare and development.

The Copernicus revolution had proclaimed that the centre of the Universe was not the Earth, but the sun. Similarly, states are becoming less and less the centre of international legal relations; the focus becoming more and more mankind and its individual components, human persons.

In International Environmental Law, national interest has traditionally meant the identification of interests of one country that are distinct from, or even contrary to, those of another. But increasingly, it is recognised that the global environment has interests that are common to all countries. It is not meaningless that the report of the World Commission on Environment and Development, in other words, the Brundtland Report, was titled Our Common Future. In the case of ozone depletion, the interest of Great Britain or Germany is not contrary to that of the Slovak Republic. The same can be said for marine pollution, the transport of hazardous waste, the concentration of greenhouse gases, or the threats for Danubian States of a multitude of significant adverse effects resulting from human activity and stretching out beyond an area under the jurisdiction of a single state. Therefore the traditional definition of national interest, based on the underlying assumption that one state's national interest conflicts with that of other states, is increasingly becoming irrelevant.

Within this context, "the common heritage of mankind" has now become one of the mostly pronounced concepts in modern environmentalism. Its scope has been steadily widening and its protection is becoming gradually the subject of environmental ethics and International Environmental Law at the same time. However, depending upon its definition and different ethical approaches, the importance attributed to this concept changes from one person to another and also over time. The variable character of the concept is further complicated by the nature of the responsibility towards its protection and development. Common heritage are the goods and values which provide common benefit to all, and which are transmitted from one generation to future generations. The term is detached from its financial connotations, but it has a certain relationship with such concepts as integrity, protection and the transmission to future generations.

The UN General Assembly, in its Resolution No: 43-53 of December 1988, preferred to use the concept of "common concern of mankind," instead of common heritage of mankind, for the issues that are generally basic to mankind as a whole. It was a more suitable and neutral concept in dealing with planetary resources than the earlier concept of common heritage. As a result proprietary considerations were considerably excluded. The components constituting the new concept of "common concern of mankind" lay in "involvement of all countries, all societies, a long-term temporal dimension, encompassing present as well as future generations, and some sort of sharing of burdens of environmental protection." The word "mankind" implies a link with the human rights framework and with the long-term temporal dimension, including the inclusion of future generation.

The term "common heritage of mankind" is frequently used in International Environmental Law, because sustainability itself is another name for intergenerational equity. It means living within the bounds of the regenerative, absorptive, and carrying capacities of the Earth, so that both current and future needs of ongoing generations can be met. The hard truth is that we presently live unsustainably and, thereby, deprive our children and succeeding generations. Intergenerational equity is becoming one of the most important preconditions for the protection of the values of the ecosystem. Rapid population growth, the fast pace of industrial development and urbanisation, together with the process of globalisation, cause an increase in the temporal dimension in International Environmental Law. Despite this progress, the number of concrete steps taken to ensure the implementation of this principle is by no means great. There is still a resistance on the part of traditional law schools to its crystallisation in law. On the other hand, discussions on the nature of the rights of future generations, based on ethical considerations, have been continuing.

There are those who maintain that present generations do not destroy or significantly alter world resources and the environment and, therefore, the obligations to future generations are baseless. This approach reflects the original natural flow theory of English water law, according to which upstream riparians could use stream water so long as their use did not impair in any way the quantity or quality of water for those downstream.

According to the alternative approach, the present generation consumes all that it wants today and generates as much wealth as it can, either because there is no certainty that future generations will exist or because maximising consumption today is the best way to maximise wealth for future generations. However, moral approaches that put stronger obligations to future generations tend to prevail. The principal of intergenerational equity dictates that all generations have an equal place in relation to the natural system and there is no basis for preferring the present generation over future ones in their use of the planet.

Sustainability requires that the Earth and its resources be regarded not only as a consumption opportunity, but as a "planetary trust," passed on to us by our ancestors to be enjoyed and passed on to our descendants for their use. Such an understanding conveys both rights and responsibilities. The common heritage of mankind cannot be protected for the purpose of "nature as a museum" because this approach is not compatible with the changing needs of humanity. It involves a partnership not only between those who are living but, between those who are dead and those who are to be born, as rightly noted by Edmund Burke.

The first reference to succeeding generations can be found in the preamble of the UN Charter which was adopted in 1945. In the 1972 Stockholm Declaration on the Human Environment, a reference has been made to the safeguarding of the interest of present and future generations in Principles 1 and 2. The 1974 Charter on Economic Rights and Duties of the States - Article 30 - provides that "the protection, preservation and improvement of the environment for the benefit of present and future generations is the responsibility of all states."

The notions of "future beneficiaries" and "future interests" underlie the basic concept of the common heritage of mankind which has found its way into the 1982 UN Convention on the Law of the Sea - Article 136. The preamble of the 1982 World Charter for Nature contains a similar reference. The principles proposed in 1987 by the Brundtland Commission include that of intergenerational equity, whereby "states shall conserve and use environmental and natural resources for the benefit of present and future generations." The 1990 Second World Climate Conference Ministerial Declaration, the 1990 Paris Charter, and Agenda 21, adopted in Rio de Janeiro in 1992, have similar clauses.

International Environmental Law is still far from having concrete rules to ensure the proper implementation of the principle of the common heritage of mankind. The protection and utilisation of transboundary watercourses, as in the case of the Danube, is one of the most important examples in this context, which is of great concern for the international community. Upper riparian states often interfere with the flow of watercourses in various ways and distort the ecological balance, as a result of pollution, disregarding their international responsibilities.

Article IV, of the 1909 US-UK Boundary Waters Treaty had stated that "water shall not be polluted on either side to the injury of health or property of the other." Ever since the beginning of the 20th century, the scope of international agreements that deal largely with research, information exchange and monitoring has expanded significantly to agreements that require reductions in pollutant emissions and changes in control technology. Despite this fact, life-support systems, ecological processes, environmental conditions and cultural resources necessary for the survival of mankind and the maintenance of a healthy human environment still need to be sustained.

Despite the abundance of multilateral and bilateral treaties, conventions and other legal instruments, adverse transboundary impacts on the riparian environment still exist. It is hoped that the Convention on Co-operation for the Protection and Sustainable Use of the Danube River which was signed by 11 states on June 29, 1994, will produce better effects than before. This Convention is open also for signature by other states. The "polluter pays" principle and the "precautionary principle" are most important instruments of this Convention.

Countries along the Danube should co-operate closely in monitoring the changes affecting their immediate environment. Scientific co-operation should include not only the riparian states, but all other states in the region, particularly those which have access to the Black Sea. An effective system of co-operation for research, monitoring and control has to be established within the context of 1994 Convention signed by 11 countries in the region. Not only states, but also civil society organisations, local authorities and the people at large should develop an effective system of co-operation in order to carry out their moral obligations towards the protection of the Danube. Special training programmes have to be developed in order to raise the level of awareness of the public towards hazards to the bio-environment. Curricula of the International University for the Bio-Environment should include topics on the preservation of the Danube river, along with more general subjects. The approaches adopted during this conference must be used as a model for more general issues.

The music performed during this conference excellently reflected the beauties of harmony in art and one of our colleagues drew our attention to the need for harmony in the natural order. The concept of harmony has its roots in the ideas of such philosophers as Aristotle and St. Thomas d'Aquinas, who had praised the harmony in the natural order. Any harm to the sustainability of this harmony was regarded as incompatible with ethical principles. It is hoped that the conference on Danube River Bonds will enlarge our horizons for further co-operation between scientists, politicians, civic society organisations and all those concerned for ensuring harmony in this region and in the whole world.

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