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BEYOND BORDERS
People, spaces, ideas

PARA ALÉM DAS FRONTEIRAS
Pessoas, espaços, ideias

ADVOCACY FOR GLOBAL COMMONS

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In the law treaties of medieval England we already find a definition of the concept of the global commons, which were those lands belonging to the community or to the municipality, that were exploited for common benefit, without belonging to anybody in particular. It is from this medieval legal criterion that the concept was extrapolated to modern times and, today, it is used to define those spaces subject to the interest of the international community.

We can point out that the high seas and the remaining sea and oceanic areas, as well as the polar territories, can be classified as such, making a clear distinction between the Arctic as an “icy” sea and Antarctica as a continent. Also the air space outside of the state’s sovereignty as well as outer space, noting that the common boundaries of both spaces have not yet been defined and, that recently, cyberspace has to be added, which is a virtual space that lacks a physical demarcation.

It is possible to reflect by making a kind of “*matrioska game*”, where one figure envelops the other, that the sea being the first link of this complex chain of free spaces, with the advances of technology and the development of aviation, airspace subsumed under itself to marine spaces not subject to state sovereignty. Which controlled not only the sea but also other common spaces such as polar spaces, has been subsumed by outer space. Which in turn covers the previous spaces by means of the control that supposes the advance of the techniques of remote sensing and observation of the earth from the orbits of the planet by satellite mechanisms and devices. Finally, all of them, have been encompassed by cyberspace that subsume the rest and which, at present, is developing at an exponential rate of very complex legal regulation

This phenomenon of interdependence of common spaces has raised the alarm about its necessary legal regulation by international law and its impact, in the domestic law of the States that make up the international community of the twenty-first century. Especially because of the eagerness of the states that, with support in technology, wish to subject these common spaces to their sovereign control.

Unfortunately, the technological advances that allow access to the natural resources of the global commons have not been sufficiently supported by the legal advances that precisely define the property rights over them. It is indicated that such spaces, without being subject to the sovereignty of any State, must find their legal support in the norms that regulates the public international law.

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It should be noted that the misuse of such spaces can have very negative consequences for the life of the planet and the deterioration of the living species that are in such spaces. Such as the plundering and disappearance of the mineral resources that have taken centuries to be shaped as such and the unsuccessful activity of state powers or private companies can become a danger to the ecological and environmental balance of the Earth and humanity as a whole

One wonders what the limits are in the use of these Spaces of International Interest, because the development of technology privileges those who have access to the appropriate instruments to use and exploit these spaces and take advantage of its natural resources.

We ask ourselves to what extent it is necessary to start safeguarding these common spaces by claiming the Common Heritage of Humanity. Studying the idea, contradictory and controversial of common heritage of humanity, is a complex task, insofar as it is a concept in constant development. If the international law has a contribution to make to the international community, is to strengthen a legal criterion on the notion of Humanity and recognizing that it is capable of enjoying a heritage that benefits the human being as a whole.

Important progress has been made. The notion of universality inspired by the common interest has been materialized in several legal instruments in which the Common Heritage of Humanity has been defined: The Treaty of Antarctica, whose Preamble recalls the “interests of science and humanity”. The 1967 Outer Space Treaty, which in its article 1 recalls that its use corresponds to “all Humanity” and the article 5, which regards astronauts as “envoys of humanity in extra-atmospheric space”. Treaty on the Moon and other celestial bodies of 1979, which in article 11 specifies that our satellite and its natural resources constitute the common heritage of Humanity. The article 136 of the 1982 Convention on the Law of the Sea which states that the International Seabed and Oceanic Zone and its resources are a common heritage of mankind. They have all been important steps.

This notion has been consolidated in international law, since in 1898 Albert de Lapradelle used the expression “patrimony of humanity” to refer to the legal status of the sea. Or when the Thai prince Wan Waithayakon before the General Assembly of the United Nations said that the “sea is common heritage of the Humanity”. Or the speech of the President of the United States, Lyndon B. Johnson in 1966 where he indicated that “Humanity must ensure that the seabed is the patrimony of all human beings.” Or the classic speech by Arvid Pardo, a representative of Malta who in 1967 on the First Committee of the General Assembly launches the idea that the resources of the Seabed should be exploited primarily in the interest of all humanity and that later years would be reflected in the Third Conference of Law of the sea. Let us not forget the efforts of the Argentine ambassador Aldo Armando Cocca so that in the Treaty on the Moon, this satellite and its resources would be considered as a common heritage of Humanity.

The statement by Georges Abi-Saab is inspiring when he points out that international law must be regarded as the “*internal law of mankind*”. For René-Jean Dupuy, the world has become an “*earth city*” that is to say an international community that encompasses the whole Humanity.

Faced with the challenge of new technologies, international law must confront the changes that are taking place in the international community, opening up new “spaces” susceptible to legal regulation. Because otherwise they become a legal no man’s land, without rules that limit the limits of its use.

Daniel Bardonnnet points out that one of the important tasks of contemporary international law has been to give a certain legal content to the notion of Humanity and to recognize a heritage. The idea of Humanity has become clearer, either as a consequence of recent developments in the law of the sea or in outer space law, or in the areas of human rights or humanitarian law, or those of the natural, cultural or genetic heritage.

The jurist cannot remain oblivious to the changes that are occurring in the Human Community and must be especially attentive to the new areas that are opening up, through scientific research and technological development.

The classic analysis has been to study the legal nature of these common “spaces” as a good that does not belong to any person, *res nullius*, and because it is susceptible of appropriation by a subject of law; Or as a common good to all, *res communis*, and therefore not appropriable by any particular subject.

Nowadays, the debate has focused on considering these “spaces” as a thing of all. Therefore they should be regulated with a regulation that guarantees the collective rights.

However, when it comes to deepening the scope of the concept of considering these “spaces” as a good of all, legal problems arise when we want to define the nature of a *res communis*. Alexandre Kiss wonders if the exact meaning of this concept would imply a common sovereignty, or a co-ownership or a condominium. It can be said that its legal nature has gone through different levels: Passing from the “anarchy of the *res nullius*, through the liberalism of the *res communis* and at present towards communitarian conceptions that take into account the interests of the whole Humanity”

In this sense it is important to emphasize an important nuance: The criterion “of the thing of all implied a free use of these common spaces not susceptible of appropriation, but leaving this use to the countries more developed technologically. On the contrary, at present the idea of “community use”, Involves the creation of rules regulating the coordination of their use, exploitation, exploration, conservation and management of these common spaces and goods; as we can observe in the Law of the sea or in the Law of outer space. It is therefore more consistent to speak of *res communis omnium* than simply of *res communis*. Because we are talking about a common thing of all, that is of all humanity as a whole.

To finish is very timely the reflection made by Hector Gros Espiell: “Humanity as an abstract and indivisible entity is something more than the sum of all the individuals that constitute the human species, is the human beings of today and tomorrow and ultimately the international community as a whole”. The problem that we face is the humanity as a legal entity does not have a holder who represents it, and that is why humanity is institutionalized through the United Nations Organization and it is thanks to International law how it protects and defends its interests and heritage.

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