

COMMUNICATION LAW AND NEW SPACES IN THE AGE OF GLOBALISATION

DIEGO MEDINA MORALES

The main consequence of globalization is the change in the concept of “space”. In the era of globalization, space tends to become “diaphanous”, so as to foster the meeting (the melting) of different cultures as much as possible. This process raises some crucial questions in the field of Human Rights. The most significant is: should the West force other civilizations to follow its own Human Rights conception?

“But the forms which enter into and go out of her are the likenesses of real existences modelled after their patterns in wonderful and inexplicable manner, which we will hereafter investigate” PLATO. Timaeus 50c.

Only a decade ago, the mere possibility (we shall not use the word ‘fact’) that in (practically) every home in the developed world there would be a window open onto the planet, and that through this window, we would be able to communicate in “real time” (by that I mean in a matter of seconds) with the other side of the world, and also conduct business, make purchases and payments via transfers that are complete in tenths of a second, would have seemed like pure science fiction. Yet this is now a fact. As I have commented on other occasions (MEDINA, d., 2000, 401 AND SS), I still remember how different everything was when I was a child. Phone conferences (which seemed to us to be incredibly advanced at the time) were made via the operator, and you had to wait an eternity to be able to speak for just a few minutes with a neighbouring county, battling through constant interference and likelihood of being cut off. The television was also taking its first steps in that era (the prodigious decade, the 1960s). Receiving images in your home (in black and white of course) was pure magic to us. Wealthier families had a

receiver apparatus, and folk would gather to enjoy special events, important football matches or watching the great maestros in the bullring. This really was a giant leap forward, since up until then, to see a football match or any such event, you would have to go to the actual location where this event was being held. The same could be said of the world news. Through that window we saw magnificent and terrible things, incredible displays of one sort or another. Those of us who have not lived through war, who, thank goodness, have not experienced war and conflict first-hand, have been able to see and comprehend its capacity for devastation and destruction on news programs and documentaries as television viewers. Undoubtedly, communication, and the technology that has "allowed" it to come into being, has changed the world, just as Guttenberg's printing press did in another age. "*Haven't times changed*" as the saying goes, how they have changed indeed! When I was studying in the University of Bologna, less than 20 years ago, I was once again surprised by technological advances and their capacity for progress. While I was there, I became familiar with the use of computers, and I must admit that I thought such a machine was extraordinary, and it was only one of the rudimentary 8086 that did not even have a hard drive. There I took my first steps in the world of computers, and naturally I could not even have dreamed of what was to come. Sure enough, in less than 15 years, we have witnessed enormous changes. The Net enables us to do our shopping without even leaving the house, we can gather at a meeting place without moving from our work desk, and to send mail we do not even have to take a stroll down to the nearest post-box. Soon we will be able to give classes, using the new model of European credit, directly from our homes. We may never actually meet our students in person, although we will know them from virtual images and cyber-tutorials. All of this has undoubtedly changed our habits, and keeps us, in one way or another, tied to our computer screen. However, while we are ostensibly rooted in one real concrete location, this technology actually allows us to travel at unimaginable speeds all around the world, giving instructions, making friends, or committing all manner of outrages and crimes. In this new space (which in turn has contributed decisively to the collapse of the traditional territorial-space paradigm), and with these new communication routes, it is easy to steal, you just need to know how to get around security measures and technological barriers of the banks' computer and

security systems. It is also easy to infringe the privacy of others' correspondence, destroy important information in companies and institutions, make statements etc, etc, etc.

So here we are, facing a new reality that is still not too familiar to us, by which I mean that the nature of it seems strange. What is crystal clear is that this new communicative reality (where in real time, and in a clear and diaphanous space, where we are sold happiness and social success as well as images of poverty and misfortune) offers us a fairly new concept of "space" that is naturally beyond the usual sources that until now made safe communication possible. Insecurity and danger (terrorism) seem to be the "new plagues" of the "new time" that approaches, as demonstrated in our everyday lives. For example, we could be sitting at home (where could you be safer?), and still receive all kinds of information, wanted or unwanted, just by opening up the 'window' that is our computer or clicking on an e-mail. We could suffer (and frequently do suffer) viral attacks that destroy the information held in our computer. But this is just a small example of what is beginning to happen on a global scale (mainly owing to the development of communication technology), since we are also aware that we could become victims of a terrorist attack in our local supermarket. Yet this is already a reality, or "virtual reality", which is still in some sense a contradiction in terms, since the use of the adjective "virtual" when applied to reality can lead to ambiguity. This is the new world in which we move, do business, and in short, communicate. The global world, the new "diaphanous" space. Furthermore, business and economic communication models are changing with the appearance of this brand new reality; just think of all the problem this new space is creating in the field of intellectual property and authorial rights, or in the large multinational corporations and their development outside the sphere of national rights (Andò, S. and Sbailò, C. 2000: 270 and ss.). Therefore, to understand where we are, what and where this new reality is, how to work with it, and endless other questions, we must begin with something as simple as understanding, defining and demarcating the new spatial concept in which we are already immersed. This new, and therefore to an extent unknown, concept is not exempt from dangers and difficulties, insofar as our everyday life (in the broadest sense) must take place there. Thus we must find solutions to avoid these dangers. The space needs to be organised, in other words we need a "spatial re-organisation".

1. The Concept Of Space

First and foremost we must define what we mean by space. For this definition, it is useful to start with a reality that came into being relatively recently, which I have discussed on other occasions, by which I mean “virtual reality”. Since this is a “new (immaterial) space”, it helps us to get a better grip on what we mean by this term. When we talk about “Virtual Reality” we are referring to a world of fiction that appeared throughout the last decade of the twentieth century. This reality currently allows us to satisfy certain needs, which would have demanded a much greater effort just a few years ago, as well as a higher human and economic cost. But what exactly are we referring to when we use this term? “Virtual” comes from the *virtus*, meaning “strength” or “potential” (COROMINAS, Vid voz *Viril.* 1976: 828), although the second meaning is more accurate for the sphere we are referring to, since virtual generally refers to something tacit or implied, in other words something that potentially exists, but which has not materialised and therefore needs to be materialised. In other words, “virtual” means something that “potentially *is*”, something that “could be”, a representation of reality and consequently has the power to exist, even if it does not yet (ARISTOTLE, 1050 a and b). What is “real” on the other hand, already “*is*”, already exists; it is tangible, explicit, which is why we use the term real to refer to what is current, contemporary, in the present.

However, it is possible that what “potentially *is*”, or what “represents being”, in some way also constitutes something “existing” that in some ways “*is*”. Therefore we can admit that “virtual being” is a special form of “being” or “existing”. In some ways, we could say that an image reflected in a mirror “*is*” a virtual image; although it is not the image it reflects, in one way or another it represents it. Thus, what is virtual, “virtual reality” is a world of fiction, an existing form, where things are naturally not what they appear to be, but they do represent (conventionally) what they “seem” and therefore are taken to be such. Virtual reality is similar to what Plato called “sensible reality”, in other words that which is not the idea but its representation. Although, in this case, and somewhat paradoxically, the representation can be more perfect than the reality represented. On the other hand, from an Aristotelian approach, virtual reality would certainly become the world of ideas that can be sensed or

captured by the mind after ample experience of knowledge, which engaged and obsessed the Greeks. In this regard, we should bear in mind Plato's words:

"And these you can touch and see and perceive with the senses, but the unchanging things you can only perceive with the mind-they are invisible and are not seen?" (PLATO, Phaedo 79^a).

Be that as it may, it seems beyond all doubt that what we now call "virtual reality" is a new contemporary space, commonly referred to as "cyberspace". The term "cyberspace" conceptually defines this new space better than the equally widespread term "Internet"; this "virtual reality" is a "space" that, as well as being supported by a telematic and communication network, is also supported by the latest generation electronic technology. This is why this space is evolving in giant leaps, and why this phenomenon is more important than merely the reticulated linking of computer equipment. Virtual reality is created outside the network (it is programmed), and then it is uploaded into a common space, as is the case with any simulation driving or piloting game which, once it is on the (communication) network, allows participants to interact and compete.

So, the Internet is a space which, like any other space, is vulnerable to occupation, and which, without doubt, has a role in facilitating communication between mankind.

In fact, our life is a "spatial life", since we need space in which to live and develop, which in turn also involves communication. Traditionally, our lives have evolved in a terrestrial space, of course, and therefore we could say that, without any doubt, earth is the living space of the human being. But what do we understand by space? Are there other types of space as well as terrestrial space? If so, what are they? Does cyberspace belong to this group of spaces? And finally, what exactly is cyberspace? We believe that all these questions, and certain others, must be answered in order to gain accurate knowledge of the reality we will face in the not too distant future. Solutions must be sought to the multiple problems that are being created in a space that, because it is *res nullius* (or possibly *res omnium*), is home to the pirates and corsairs, bandits and villains of this new space and time, in a quasi Hobbesian "state of nature" whose paradigm contaminates the "political space" of the present.

One of the definitions given by the Spanish Real Academia

dictionary for the term "*espacio*" (space) is: "territorial area that communities and peoples need to develop" (*Diccionario de la Real Academia de la Lengua*. Twenty-first edition. Word "*espacio*" (referring to living space). From this definition, and if we accept the ideas of continent and content as prior assumptions, terrestrial space could be understood as any continent where men and peoples "develop", and consequently, where those men and peoples develop all their activities, business or leisure. From a strictly philosophical point of view, there have been many complex doctrines that have dealt with the concept of "space". Logically, these theories are strongly tied in with the concept of the world, which has changed throughout history. For centuries, when we believed that the Earth was flat, scientists who ventured to assert that the world was round were considered more or less insane. Space, it seemed, only needed two variables or dimensions, and lacked depth (as attested by pre-Renaissance art and music). When the third dimension, depth, was confirmed, during the Age of Discovery, man understood that space needed at least three dimensions, and a new concept of that reality appeared.

Yet this is not the only meaning the term space has acquired throughout history. "Space" has also been discussed from other extremely diverse perspectives, and expressions such as "geometric space", "mathematical space", "temporal space" and "biological space" have acquired meaning. There are an indeterminate number of concepts of space. However, for the purposes of this paper, we will define space in accordance with Aristotle's classic definition which, according to FRAILE (FRAILE, G., 1976: 364-365), was previously Platonic: space is that which *in quo* all things are created, it is the substratum, the womb or matrix, the wet-nurse to all generations, the seat of all things created, the general receptacle that receives all bodies. While receiving all things, she never departs at all from her own nature, and never in any way, or at any time, assumes a form like that of any of the things which enter into her. All eternal beings enter and leave her. Space itself is eternal and indestructible. That which is to receive all forms should have no form; as in making perfumes they first contrive that the liquid substance which is to receive the scent shall be as inodorous as possible so as to receive the purity of the scent they wish to preserve. It is an invisible (*ἀόρατον*) and formless being which receives all things and in some mysterious way partakes of the intelligible, and is most

incomprehensible. If we understand space in this way, real space is the space occupied by bodies, a different concept to the one constructed by Suárez, centuries later, which he called mental space (F. SUAREZ. *Disputaciones Metafísicas*. LI.), which is much closer to what we now call “virtual space”. The mental space suggested by the Jesuit is nothing more than the ability to reproduce in a medium, which in the specific case of Suárez was identified with the intellect and intellectual abstraction, man’s ability for abstraction using the intellect (a concept which is undoubtedly linked to and indebted to Plato). Nowadays, this medium is magnetic or molecular, but who knows if this ability to reproduce ideal models (ideas) could (as current cinematography – “the literature of our time” – suggests in the film “Matrix”) one day directly come into being in the human brain, with all the inherent consequences. And so we could define virtual reality, in accordance with Suárez, as “an abstraction with a foundation in reality”.

2. Terrestrial Space

We have seen that the idea of “space” is plural, and therefore if we want to create a concrete definition that encompasses “human space”, we must start from a clear idea, that we are referring to the terrestrial nature of man. “Dry land” is the physical space *par excellence* that man occupies. As Schmitt so rightly stated, even when “*Man has a certain awareness of space, subject to great historical changes*”- (SCHMITT C., 1952: 56), the human space *par excellence* is terrestrial space.

Schmitt was undoubtedly right when he stated that man is the terrestrial being that stands walks and moves around on dry land, and the land, and man’s way of standing on her, determines his way of seeing the world, and consequently determines how he acts. Hence, mankind’s space is terrestrial space (SCHMITT C., 1952: 7):

“He (meaning man) called the heavenly body he inhabited “the Earth”, even though almost three quarters of the surface is water, and only one quarter dry land, and the great continents are like islands that rise up out of the water”.

Clearly, this statement does not mean that “dry land” is the only space capable of sustaining life, in fact dry land is not the only possible living space; indeed many other life forms develop in other

very different spaces (or we could call them media; water, air). Let us say, then, that land, terrestrial space, as opposed to other spaces, is man's "living space", a space where, according to Schmitt, man finds his home, his natural habitat, and the least hostile environment. "Just read the beginning of the Bible, how God created the World. The first chapter is the story of creation, Genesis, Moses, book 1, chapter 1. There the story is told of how God created the world using a series of separations. First he separated light from the darkness; then he separated the heavens, the firmament, into the upper and lower waters of the firmament; then he separated dry land from the sea, and indicated that man should live on dry land" (SCHMITT C., 1962: 18). For this reason, man, a fundamentally terrestrial being, has established since time immemorial the rules regarding how this space should be used, since it is his natural environment, enabling him to survive, offering him not only a habitat, but the means to sustain himself. These means or resources are limited in one way or another, hence man, to his regret even, has had to share the land, and since time immemorial has had to regulate its usage.

As a consequence, land is not only a natural space in which man, along with the other terrestrial species, has developed; it is also the first commodity, *par excellence*. As soon as it becomes valuable to those who enjoy it, it becomes the object of apprehension, detainer, and control. In general things become valuable when they are rare, and as a consequence, the Earth gained its maximum value following the Renaissance, when man discovered the finite nature of the world, and that there are no more areas to explore. Hence, the first commodity is an object of detainer and appropriation. Clearly we are referring to man, although undoubtedly other terrestrial animal species also have territorial instincts. Therefore, as well as detainer and appropriation, it is also subject to distribution between men. In a reference to the nutrition provided by the earth, Hobbes states that:

"This matter, commonly called commodities, is partly native and partly foreign",

adding further on:

"The distribution of the materials of this nourishment is the constitution of mine, and thine, and his; that is to

say, in one word, propriety" (*HOBBS T.*, Leviathan, Part II Chapter 24, 1979: 331 and 332).

Note the importance of the distribution of commodities between the subjects that occupy the space, especially when these same subjects are those that potentially agree on the rules (*nomoi*) for the distribution of commodities and subsequent transmission within this same space (or, as we shall see later, by using other spaces that are not ideal for the development of human life, which man has discovered how to use for his own purposes). The land was the first object of juridification, legal regulation or "standardisation". As Schmitt controversially stated, property and law in general are consequences of the division of the land (that is to say the human living space), thus law stems from an original act of possession (*Nemein*) (MEDINA, D., 1996: 333 AND SS.), followed by the division of commodities or goods ("*suum quique*") that are necessary for life (*Teilen*) in order to, eventually, exploit them and reproduce other commodities, that is to say in order to carry out the productive work that is normally done on the basis of property (*Weiden*). Take, divide and pasture, as Schmitt says: "Each of these three processes – appropriation, division, pasture – belong fully to the essence of what has appeared in history up until now as legal and social organisation. In any state of human co-existence, in any economic or working organisation, in any section of legal history, there has been some form of taking, dividing and producing". What is particularly striking is how Schmitt traces the appearance of property and the consequent need for rules to regulate it back to the desire of the human being to appropriate and divide the land (his means of subsistence, his natural space).

In this way "*the history of peoples, with their migrations, colonisations and conquests, is a history of the taking of land*" (spaces) (SCHMITT, C., 1955: 7), of the exploitation and transformation of that land, and of the transformation of the products obtained from it, of putting a value on it, and its commercial activity. As I have previously argued (MEDINA, D. 2000: 403), the history of peoples is the history of occupation that has either led to the economic wealth and glory of the peoples, or alternatively to their poverty and decadence. All peoples at all times, during their migrations to new spaces, settled in areas they took possession of, and subsequently organised and juridified these spaces. Schmitt tells us that there

are two ways of occupying new spaces: either by taking the space from within a pre-existing general order, and consequently being recognised by other peoples, or by overthrowing a spatial organisation and replacing it with another (SCHMITT, C., 1979: 68). This is a constant factor in the history of the world, either pertaining to borders, or the struggle to invade and loot new territories. In short, communication in its most extreme form, either for mutual understanding or destruction.

3. The Maritime Space

As opposed to the land, which as we were saying is the natural space for human life, the sea is naturally a space that is foreign to humans, man is not a “marine being” and the sea is therefore a hostile environment that is threatening to his life,

“it is a worrying monster at the edge of the inhabited world, a chaotic beast, a huge snake, a dragon, a Leviathan”
(SCHMITT, C., 1962: 20).

Although man’s vital and biological circumstances make him naturally terrestrial, man is a being that “is not absorbed by his surroundings”, in other words, he is free and therefore enjoys the possibility of choosing which element he wishes to control and explore. In fact, man has the possibility (to a certain extent) of adapting to his medium, or put another way, or adapting the medium to his needs, putting other spaces into his service. For this reason, the sea has always been the first point of reference for terrestrial life; on the one hand, it is the land’s antithesis, the negation of terrestrial existence, the space against which man confirmed his terrestrial existence (mythical literature has exposed this fact, using the poetic creation of fabulous maritime beings), and on the other hand, the sea has always been a challenge, a defiance, a space to control. The latter reason has doubtlessly made the sea a space – or medium – into which man has made continual incursions, trying to master it, either to loot it, obtaining provisions and other commodities, or as a medium or space for communication with other terrestrial territories. Man has not hesitated in adapting the sea to suit his needs, transferring his terrestrial concepts or categories to this other space. In other words, he has artificially and ingeniously created what we could call “dry land at sea”; the clear results of this

process are ships for example. Nevertheless, it seems obvious that when man ventures out to sea, it is not to live there, because as we said, he is not a "marine being", but rather to transform it or use it in the service of his needs and purposes to be able to use this space, to take control of it, and to cross it to communicate with other terrestrial spaces, for commerce or to make contact with other peoples. He has created a terrestrial microspace that is capable of moving on the sea, sustaining man as if he were on dry land.

There is an interesting point that supports our theory: for centuries, sea battles used terrestrial battle systems, since there was no other option; from artillery to boarding the other ship, with hand to hand combat. These were terrestrial fighting methods adapted to the sea environment. In the past, for centuries, naval battles were battles that occurred on small floating islands in the sea or oceans. These small islands (ships) represented dry land for their inhabitants (who were naturally terrestrial). The sovereignty of that land, or the "island's" link to a crown, was revealed by the flag flown on the ship. The law that operated on those ships, organisation (neimen, teilen, weiden), civil, penal etc., was the same as on the land of which the ship was an extension.

As García Arias has argued,

"the organisation of the ancient and medieval world was essentially land-based, although it did imply in some way sovereignty over the sea, and even some thalassocracies. However, this character undergoes a radical transformation in the Age of Discovery of the Spaniards, when for the first time they travelled around the world, a journey that was made necessarily by sea, since the ocean contains the continents. It is at this time that "the first Nomos of the earth" (Carl Schmitt),

arises, which lies in a certain relationship between the spatial organisation of dry land and the spatial organisation of the open sea, and which imposed the *ius publicum europaeum* for 400 years. And this co-ordination between both organisations emerged in doctrine, of the "Battle of the Books" provoked by Grotius, as well as in the positive side of English Naval domination. Herein lies the immense value of Grotius' *Mare Liberum*" (GARCÍA ARIAS, L. 1980: 40).

At the birth of the new States, man rushed into the oceans, and

the need to organise the use of the sea became an issue. The first steps were taken towards regulating the sea by Spanish Scholasticism (mainly Vitoria) and the Rationalist Iusnaturalism of Grotius, but still in a very incipient form, concentrating on discussions of whether the sea belonged to everyone or to no one, if it could be used and how, and who should exercise authority over this new space. These were the issues that chiefly concerned these authors. The then new space was considered a means of communication between terrestrial bases, and control over the sea did not yet involve its exploitation, or pasture, since it was only used for the purposes of communication and looting (somewhat similar to the current situation in virtual space).

The discussion around maritime organisation centred, in theory, on the freedom of navigation, and arose as a consequence of the use of the sea or maritime dominion/control. In this regard, the works by Grotius and Selden merit special consideration, along with works by other authors from the period. According to GARCIA ARIAS in his prologue, quoted above (GARCÍA ARIAS, L. 1980: 40), the “Mare Liberum”, gave rise to the “Battle or the Books” that carried on throughout the seventeenth century around the principle of the freedom of the seas. A great number of authors from all countries expressed their opinions on the subject, including Sir Walter Raleigh (*A Discourse of the Invention of Ships*, 1610), William Welwood (*An Abridgement of all the Sea Laws*, 1613), Gerard Malynes (*Consuetudo vel Lex Mercatoria*, 1622), Sir John Borough (*Dominium Maris Britannicis assertum ex Archiis Historiis et Municipalibus Regni Legibus*, 1633), and many more. There was a desire to control certain maritime spaces revealed by the new emergent States, for example Sweden exercised claims over the Baltic Sea, and Venice over the Adriatic. This latter debate was an exclusive contest between Spain and Venice, in which Spain defended the freedom of the Adriatic Sea (a position defended by jurists such as Juan Bautista Valenzuela Velázquez or Lorenzo Motino) and Venetian authors (including Angel Mattheacio, Cornelio Francipane and Pable Sarpi among many others) defended its legitimate right to dominion over this sea (GARCÍA ARIAS, L. 1980: 25 and ss). These claims and debates gave rise to an extensive accumulation of interests that became more concrete in the successive works published on the subject during this period, thereby giving body (object-material) to a space that, from then on, could be subject to appropriation, division and pasture.

In other words, until that period, the motivations that had moved man towards the sea were only relative, never in order to establish dominion or control over it. Perhaps they were sometimes moved by a sporadic desire for detainer of this space and its contents (insofar as the predatory facet of human beings always reached out towards that space), but not as material to be appropriated or subject to rights. It is only from the seventeenth century onwards that man started to draw boundaries on the sea, when he materialised or objectified it legally. As for “virtual space”, we can expect something similar to occur, since current debates are being formulated in very similar terms to those already described.

In the modern age, with a now clear sense of economics and exploitation, the sea began to be regulated as a physical space where different States could (and can) carry out “pasture” activities, thus turning certain areas into a source of wealth and privative exploitation. This is the situation today in the exclusive economic zone or the continental platform, and involves not only regulation for common use of a commodity, but also for the exclusive use and to a certain degree private use of this commodity.

The sea has finally become an area that has been conquered for man. Man has not adapted to the medium, but rather has been able to adapt the medium (the maritime space) to his specific needs. Man has never been a “marine being”, he is still a terrestrial being, but one capable of adapting the maritime space to his needs.

4. The Conquest Of The Aerial Space

Schmitt argues that with the invention of the aeroplane, a third dimension was conquered, a new space added to the already conquered spaces of the land and the sea (SCHMITT C., 1952: 110). When man lifted himself up, thanks to the technological advances of the twentieth century, over the land and the sea, he discovered a new means of communication, along with a new space to control, the air. This space includes the cosmos, as demonstrated by the ever increasing need to regulate the use of terrestrial orbits for the positioning of satellites, or new experimental journeys to Mars. As MacFuture said, “*the real Age of Discovery is starting now... the spaces opening up to us today are vast*” (SCHMITT, C., 1962: 51). In fact, aerial space (which has always captured man’s imagination, capable of creating imaginary winged beings and celestial worlds) has been,

to a certain degree, controlled, organised and regulated. Certain concepts, such as “air space” have a clear legal-political meaning, as demonstrated by the extensive regulation of sovereignty over this space. This concept of sovereignty is revealed in the regulation of the airlines, or the controversy over possible restrictions (stricter regulation) with regards flying over certain territories of the States. All these symptoms reveal our interest in creating a climate of security and safety in which we can exercise our right to communicate between peoples and to do business. By subjecting the use of this space to rules, we hope to eliminate the danger to peoples or States that can arise out of man’s indiscriminate use of this space, in other words, guarantee the safety and security of man in this space. This idea, as we have argued, is perfectly expressed by Francisco Vitoria, when, with the aim of promoting communication and preventing foreigners from causing damage to the nation, he said

“But all nations think it inhuman to treat and receive guests and pilgrims badly for no special reason; and on the contrary it is humane and polite to treat them well, unless the foreigners cause damage to the nation.” (VITORIA F., 1960: 706)

Despite the importance acquired today by communication using airships, this method is not the only type of communication of interest to the law when it comes to regulating the use of aerial space. This use demands more extensive regulation, since radiophonic waves travel freely through the air, as do telephonic microwaves and a whole series of means of communication that, without any doubt, also make it necessary to regulate these aspects of aerial space (think of communications satellites, property of states or multinational companies, and consequently the objects of control and subject to rights and law). They could also pose a threat to the integrity and safety of peoples, if used by terrorists (as unfortunately was the case with 9/11). This space, therefore, has also been the object of occupation, division and pasture, and man has been able to adapt aerial space to human needs, without obviously needing to become an aerial being.

5. The New Space

To recap then, space is “territorial area that communities and peoples need to develop”, or more precisely, “the real space that

peoples occupy in order to develop”, thus including all space capable of being controlled/dominated, organised and juridified, thus allowing peoples to live and communicate. As a consequence, this space is now made up of terrestrial, maritime and aerial space. However, these are not the only spaces that display these characteristics; so-called cyberspace or “virtual space”, recently discovered and pressed into service for human communication, can be, just like the rest, taken, divided and pastured. This is revealed by the fact that in cyberspace, you can register “domains” (their first occupation having acquired special importance), or as also by the fact that certain commercial brands, which did not register their domain at the time, have either had to renounce the web pages that appear in domains bearing their own commercial name, or have had to pay to recuperate them, thus making these “domains” the object of commerce, that is to say something that can be bought or sold. Cyberspace can undoubtedly be subject to divisions, from the moment that you can have exclusive possession of a domain and set up security systems to prevent unauthorised persons from gaining access to your domains (for example to databases that require a passport). No one doubts that business can be conducted in cyberspace (e-commerce is nowadays a massive fact), which proves that this space can be “pastured”.

Schmitt’s genius somehow sensed or foresaw this new space that technology (technological development) has provided for man: “Personally, I (Altmann) imagine that the new call will not come from beyond the stratosphere. I see that the technology unleashed, rather than opening up new spaces to man, actually closes him in. Modern technology is useful and necessary, but today it is far from being an answer to a call. It always satisfies new needs, partly caused by the technology itself. Furthermore, it is in itself a problem, and therefore cannot be an answer. (...) Hence new spaces must be found on our earth and not outside of it, in the cosmos. He who manages to capture unleashed technology, tame it and insert it into a concrete order, is closer to answering the current call than he who seeks to land on the Moon or Mars using unleashed technology. Taming unleashed technology: this is the feat of a new Hercules. I believe that the new call, the challenge of the present, will come from this direction” (SCHMITT, C., 1962: 55-56). As we have stated on other occasions, it is astounding that 1958, when SCHMITT wrote this piece, he had such insight into the future that the human itinerary

would have to follow to conquer new spaces. It is truly surprising that, at that time, at the dawn of the space race between the two great economic powers of the time (USA and USSR), he could state with such certainty that the new call would not come from the stratosphere, but from new spaces that had to be found on the earth, because of the domain of technology. We can now testify to just how accurate his assertion was.

6. The Global World

If we are facing a new spatial concept capable of being put into service for man (earth, air, water and fire), if fire – represented by electric impulses – is the new space, we must necessarily determine the essence of this space in order to be able to establish its special form of juridification or regulation. We must determine the influence that control over this “space” will have over the distribution and regulation of the other “spaces”. If, then, it is necessary, or even essential, to provide legal solutions to this novel spatial reality, and if we consider that such solutions will not be, in the end, so very different to those already revealed in the other spatial revolutions, we must acknowledge that many of the required solutions to the problems posed by the use of cyberspace may well lie in works by classic authors such as Vázquez de Menchaca or Vitoria, although this might seem strange. Spatial revolution, albeit a different space, was also a reality that was of real concern to them. The concept of Orbe in Vitoria’s work is none other than the same concept that today on the Net is referred to as the Global village. Could we not use Vitoria’s *Ius Communicationis* to justify the freedom of internavts to surf in the waters of the Net? We believe it is essential to bear in mind that this global revolution and the appearance (or conceptual transformation) of this “new space” is causing – or contributing to – a geopolitical crisis that in turn demands the revision of the “Nemein”, “Teilen”, “Weiden” of territorial spaces that up until now have prevailed. We are facing the collapse of the State-Nation paradigm and the appearance of a new concept of space-global (the end of *Ius Publicum Europeum*). It is therefore necessary (and we are in the process of doing so) that we concern ourselves with laying foundations to make the organisation of this new spatial concept possible, this new reality, which is propelled by the phenomenon of deterritorialisation that we are being subjected to (Andò, S. AND

Sbailò, C. 2000: 219 and ss.). We should seek a new geopolitical paradigm that allows for the “organisation” and exercise of sovereignty within a concept of “diaphanous space” or “borderless space”. The proof of our argument, and of the concern this issue is currently creating, is in the plethora of studies among the “scientific community”, which are aimed at studying political institutions, such as “citizenship”, that are in crisis (Cortina A. 1997; De Lucas, J. 2002; Fariñas Dulce, M^a J. 2000; Fernández García, E. 2001; Kymlicka, W. 1996; Nussbaum, M. 1999; Perez Luño, A. 2004; Sartori, G. 2001; Soriano, R. 2002). However, many of these studies are still clearly disoriented because they have not yet admitted that a new reality requires new analysis, and therefore new concepts (that do not necessarily coincide with those inherited from bourgeois and national political theory, which has dominated over the last two centuries).

7. Towards A New *Ius Gentium*?

If, as we have argued, cyberspace is simply one more space that man, thanks to technology, has recently gained knowledge of, and that, without any doubt, over the next few years will be subject to appropriation, division and pasture, the issue is not too complicated. In effect, we can expect times of great change; when reality changes – and geopolitical reality is changing – concepts also change, and we will have to adapt to the resulting reality. However, we believe that this new emergent reality can be understood in some respects by looking back to the past. Undoubtedly, we can call on the experiences of humanity to help us in the latest spatial revolution; it is not any different to the situation experienced by man and peoples when the maritime space was discovered, along with sea routes and ultramarine commerce. Just like then, today communication is what has led us to provoke this crisis for most of our spatial and geopolitical concepts. This equivalent situation, offers us a magnificent experience in which we can find solutions; the ideas defended at the time by classic Spanish authors of Natural Law (and in particular Vitoria), as well as other authors who followed their trail (including Grotius or Selden) once again step into the limelight, and should be revisited when we think about how to create the “new conceptual repertoire” that enables us to analyse the new reality.

When Vitoria was asked to give his opinion on the conquest of

America, he advised Charles V (against other more pious advisers such as Las Casas) that the conquest should carry on, since it promoted communication between peoples. Importantly, in his discourse, Vitoria spoke of the emperor's authority not in terms of his being a Spaniard, and of Papal authority not in terms of his being a Christian; his argument was based on practical principles (derived from Thomist thought). He made a clear distinction between worldly order and divine order. Once he had done this, and based on the dignity of the human being (ALBERT MARQUEZ, M. 1998: 174 and 1999: 528-529), he set forth the natural rights inherent in man, differentiating them from simple rights that emanated from his belonging to a specific political community. He linked civil power with the idea of "common good" (which could be extremely useful today) (ANDÒ, S. AND SBAILÒ, C. 2000: 249). Vitoria determined the principles of the "*totus orbis*", based on an extremely futuristic conception that, as Titos Lomas demonstrated (TITOS LOMAS, F., 1993: 79), served the common good of the *orbe*, in other words the common good of all peoples and all men. Vitoria's political system, as Fraile argued (FRAILE, G. 1991: 327), "entails a measured balanced between individual, society and authority. Anarchy is excluded, in which the individual predominates until the existence of society and the State is impossible, as is absolutism and 'statolotry', in which the State absorbs the rights of the individual until they are nullified."

Today, because of the old "*ius communicationis*" it seems advisable to give continuity to the theory of the "*totus orbis*", despite the significant number of disadvantages that using this theory in modern times could present. We could thus regulate the new space and of course allow Vitoria's idea that *totus orbis aliquo modo est una respublica* to find room in the more modern and perhaps less well thought out idea of a "global village" or globalisation. So what can we make use of from those ideas?

Vitoria made extremely positive contributions to the regulation and solution of the new legal-political reality of his time, a time when the idea of the universal empire had disappeared, and where new national realities, and even new territories, were appearing everywhere. Faced with this situation, Vitoria suggested a political system with a measured balance between individual, society and authority (FRAILE, G., 1991: 327), a concept of universal community to which all men belong because of their social nature, which exists

before and above the division into nations. This community would be governed by Natural Law and by the Law of People(s), and would have a unitary body capable of exercising its guiding authority towards the common good. There is clear universalism in Vitoria's writings, but in no way is his theory uniformitarian, quite the opposite, it appears to strongly favour multiculturalism. His political idea of *Orbe* confirms this, since it talks about a community (a moral person) not only made up of peoples but also of individuals (a planetary people). Furthermore, it establishes that a central planetary authority is chosen and emerges from legitimate pacts, so that the authority to govern this universal community resides in the community itself (*ipsa res pública*). The principle of the common planetary good (over and above the national common good) is what governs commutative justice and eventually the distributive justice in the *Orbe*.

At the time, Vitoria's theories helped to configure the premises for International Law and the new international order, whose reality and importance today nobody questions. Therefore, perhaps we could acknowledge the probability that the same principles that inspired the new international order of the classic Spanish authors might also be used to regulate the new global space (which is not at all national but rather international). In other words, if, in the sixteenth and seventeenth century, the spatial revolution was undoubtedly closely linked to progress in communications technology, and if that revolution was ordered and organised using basic categories that today are somehow being reproduced, then why not seek elements in that order and organisation that could help to give certain logic to the new reality of our times? Why not abandon the old and faded bourgeois institutions and seek enlightenment in tradition, in the (old but not stale) concept of "Empire"?

New Law needs to be created (which seems to be what all the experts are demanding); Law that, by transcending national law, can contribute to regulating and organising co-existence in the global space; Law capable of bestowing sovereignty on supranational or infranational bodies (which are considered legitimate); Law capable of uniting the cultural diversity that characterises this new era without falling into simple uniformitarianism. It was this exact same worry that led Vitoria to take on the difficult task of building the "*Ius Gentium*", of creating a plural legal order, respectful of the singularity of human nature and that, on the edge of national laws, could lay claim to universal validity. Law that admits plurality and casuistry,

capable of acquiring a reticulated structure that respects the autonomy and individual idiosyncrasies of peoples. Law that, like the law of people(s), has its origin (and why not?) in Natural Law, but is still subject to the consensus of the majority (and respectful of the minorities). Law that has a certain systematic uniformity, and which is the product of the ability to form pacts between nations.

Vitoria's words on this subject are significant:

“And certainly many things seem to stem from the law of people(s), which, since much of it derived from natural law, has the power to oblige. And given that it is not always derived from natural law, it seems that the consensus of the majority of the orbe is enough, especially if it is for the common good of everyone” (VITORIA, F., 1960: 710).

Ramón Hernández argues that Vitoria's doctrine enables us to conceive of an international society with common legislation for every country, in other words a positive Law of People(s) that has a clear internationalist meaning (HERNANDEZ, R., 1984: 131). Perhaps the biggest disadvantage to Vitoria's creation was its scant coactive and imperative power; although Vitoria argued for its obligatory nature, that it was morally binding, because of the *law of conscience*, the fact remains that as long as Rationalist Cartesian paradigms prevail in our legal culture, of a world organised from the centre towards the periphery, this coactive operativeness will be difficult to put into effect.

This explains the pressing need to put an end to centralist (uniformitarian) systems and to promote a new reticulated political reality; the need to abandon theoretical-political categories that, because they are indebted to a system that has been transcended, continue to enslave the theories of those who resort to them. As Vitoria himself suggested, this effort must be rooted in a different model to that of nations (which are also subject to it), this order responds to a reticulated political concept (orbe), maintained by the human capacity for transaction, as he makes clear: “The law of people(s), not only has power because of the pacts and agreements of men, but as a true force of law. The orbe, which in some ways is a republic, has the power to grant just laws that are fit for all, such as those encompassed by the law of people(s). Thus, those who violate laws of people(s) either in peace or wartime, in serious matters and in the intangibility of the legates, are committing a deadly sin. And no nation is less obliged to follow the law of people(s), because it is granted by the

authority of the entire orbe" (VITORIA, F., 1960 B: 191).

Vitoria created a theory, according to which, transcendence was given to a supranational system of law, the *Ius Gentium*, and he did so in the face of a political and economic reality that had clearly exceeded the prevalent Medieval reality, as well as the appearance of new marine and ultramarine spaces. In order to justify this new international order, one of the main legal rights on which it was founded was the *ius communicationis* (or the right to communicate freely with men from other countries of the world, the only limitation being that they must not harm the natives, a broad and complex right that comprises other now very fashionable ideas such as freedom of commerce, of movement, emigration, culture etc, a right that is based on custom, in what Vitoria considered an historic tradition, whose origin is to be found in the beginning of the world and which had not been damaged by the creation of nations (VITORIA, F. 1960 A: 710), a right that is consolidated with the friendship that makes company and association between men possible and necessary). It therefore seems logical to think that nowadays, facing a situation that is, up to a certain point, similar, that involves the Copernican turn (the product of the appearance of this new space and the right to communicate) the solution must be sought along the same path as the old "Ius Gentium". This would be preferable to the more modern but outdated route of "International Law of the nations", "International Law of the West" that works towards normative uniformity and legal absolutism which, apparently founded in the ethical relativism of the Lay State (product of the Enlightenment) leads us inexorably towards legal absolutism that holds little respect for cultural pluralism.

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