

21

First Arvid Pardo Memorial Lecture
A Renewed Trusteeship Council-Guardian of Future
Generations:
Malta's Initiative at the United Nations
HE Prof. Guido De Marco – President of Malta

The University of the South Pacific, Fiji.
Tuesday 9th November 1999.

We islanders are born dreamers. We are touched by the magic of the sea. As we gaze at the horizon, we have a feeling of reaching out. Sometimes we feel the sea as a barrier keeping us away from the rest of the world. Sometimes we feel the protective nature of the sea holding us in a fold, creating a sense of inward-looking affection. But more often than not the sea is us; a sense of collective *mare nostrum* which inspires us, leads us to adventure, makes of us navigators, inquisitive and acquisitive. The hidden Ulysses in us waves through dangers and mishaps. For the sea is adventure, facing the unknown, meeting people, bearer of a 'people to people' approach.

And whether we daydreamers come from the Mediterranean or the Pacific, whether we face the Atlantic or pass through the Sea of Marmara or splash down the Indian Ocean, for us the sea is never the dead sea.

For the peace of the seas which we aim for – our *Pacem in Maribus* – is one which extends to seventy-one per cent of the earth's surface. Over eighty per cent of the world's trade involves transit via the ocean. Twelve of the twenty most highly populated urban areas in the world are located within one hundred miles of the coast; for the sea provides us with food through fishing, and through fishing the source of livelihood for many. For the oceans can no longer be considered as existing in isolation from the land. Technology in the hands of the few laid open the riches of the seas to the exploitation of dominant countries.

The *mare liberum* theory propounded by Grotius has enshrined the concept that 'any nation is free to travel to any other nation and to trade with it'. This has fostered international trade, tourism and recreation; it has encouraged international co-operation in maritime safety and environmental protection.

But as we of the Independent World Commission on the Oceans had occasion to observe in the chapter on peace and security in *The Oceans... Our Future*, 'the doctrine of the freedom of the seas has paved the way to power politics, gunboat diplomacy, and the colonial order; it has been used to

give legitimacy to the ambitions and priorities of the strong while adding to the vulnerabilities of the weak. In this situation, the principle of the freedom of the seas must be understood to imply a recognition of the legitimate need for effective security, a respect for international law and a new balance between the discretion of the strong and the vulnerability of the weak'.

We are still trying to define the concept behind the principle of 'peaceful uses of the sea'. Article 301 of the UN Convention on the Law of the Seas asserts that 'in exercising the right and performing their duties under this Convention, State Parties shall refrain from the threat or use of force against the territorial integrity or political independence of any State or in any manner inconsistent with the principles of international law embodied in the Charter of the United Nations'.

The right of innocent passage is queried by several states when this involves nuclear-powered ships or ships carrying nuclear or other inherently dangerous or noxious substances.

The percentage of off-shore oil and gas production of the world total, has grown to around twenty-six per cent.

The FAO, the IMO, the IOC, and the International Seabed Authority have provided a framework that has given the United Nations a determining role in ocean governance but we have not as yet created a global agency or institution for taking decisions at the global level in questions affecting the marine environment. Climate change is linked to the ocean processes.

This is the first Arvid Pardo Memorial Lecture. It is perhaps an act of historical justice that in Fiji at the *Pacem in Maribus* Conference, the first to be held since the death of Pardo, Malta's President should have been given the privilege to deliver this lecture.

For Arvid Pardo, in the words of Prof. Tony Koh, 'contributed two seminal ideas to our world: first that the resources of the deep seabed constitute the common heritage of mankind; and secondly, that all aspects of ocean space are inter-related and should be treated as an integral whole'.

We present here are all, to a greater or lesser extent, disciples of Arvid Pardo.

In chairing the study group on 'Peaceful uses of the Ocean, Security and Sovereignty', of the Independent World Com-

mission of the Oceans, I was certainly influenced by Pardo who warned that the traditional freedom of the high seas would be gravely endangered should a militarization of the ocean floor be allowed to take place.

The principles first expounded by Pardo were:

- a. the seabed and the ocean floor, underlying the seas beyond the limits of national jurisdiction as defined in the treaty are not subject to national appropriation in any manner whatsoever.
- b. the seabed and the ocean floor beyond the limits of national jurisdiction shall be reserved exclusively for peaceful purpose.
- c. scientific research with regard to the deep seas and ocean floor not directly connected with defence, shall be freely permissible and its result available to all.
- d. the resources of the seabed and ocean floor beyond the limit of national jurisdiction shall be exploited primarily in the interest of mankind with particular regard to the needs of poor countries.
- e. the exploration and exploitation of the seabed and ocean floor beyond the limits of national jurisdiction shall be conducted in a manner consistent with the principles and purposes of the UN Charter and in a manner not causing obstruction of the high seas or serious impairment of the marine environment.

Pardo revolutionized the thinking of politicians, jurists, and scientists alike when he proclaimed that the seabed and the ocean floor are a common heritage of mankind, and should be used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole.

Pardo's last appeal on that memorable 1st November 1967 was 'to moral concepts, to reason, and to well-understood national interests'. The language of diplomacy was used by Pardo in his logic of persuasion.

Thirty-two years, almost to the day, have passed since that rendezvous with history.

The expected riches from the deep have failed to materialize.

The need of poor countries to receive preferential consideration in the event of financial benefits being derived from the exploitation of the seabed and ocean floor for commercial purposes has remained a dead letter.

The general economic climate has been transformed as a result of the changing perception with respect to the role of the public and private sectors with a marked shift towards a more market-oriented economy.

But a beacon was lit not destined to be put off. The concept of common heritage of mankind has become a standard-bearer of an idealism which extends itself to other areas: the environment, climate change, the global commons, human rights, the rights of future generations. These we hold in trust.

It is this concept of trust which led me to propose in my concluding statement as President of the forty-fifth Session of the UN General Assembly on 16th September 1991 that 'in addition to its role under the Charter, the Trusteeship Council should hold in trust, for humanity its common heritage and its common concerns: the environment, the protection of the extra-territorial zones and of the resources of the sea and seabed, the climate and the right of future generations. These we have to hold in trust for humanity and the Trusteeship Council can be the right organ for this purpose'.

Since then, we have never let go of our initiative to have this radical transformation in the role of the Trusteeship Council. For we wanted to convey our philosophy that the Trusteeship Council should hold in trust not only territories but also peoples.

For we believe that the Trusteeship Council is acting for and on behalf of peoples in safeguarding the environment, in protecting the global commons, in monitoring the governance of the oceans. The Trusteeship Council shall ensure that 'the area' as defined in the convention, be open to use exclusively for peaceful purposes and that its exploration and the exploitation of resources be carried out for the benefit of mankind as a whole.

It is this concept of trust vested in the Council which shall ensure that the 'area' be not subjected by any means, by states or persons, natural or juridical, and that no state may claim or exercise sovereignty or sovereign rights over any part thereof.

As Minister of Foreign Affairs I ensured that Malta's proposal be raised in the appropriate fora with particular attention to the UN General Assembly.

I had the privilege of addressing the Special Commemorative Meeting of the UN General Assembly on the occasion of the 50th Anniversary of the United Nations on the 24th October 1995 and I observed that 'universality is the keystone of the United Nations. This notion of universality has consistently guided Malta's action within this organization, it inspires our role in the pursuit of global and regional peace and co-operation. It underpinned our effort to promote and develop the concept of the common heritage of mankind in the context of the Law of the Sea and the concerns over climate change. It continues to motivate us in our role as guardians and trustees of the rights and interests of future generations by giving the Trusteeship Council the role to co-ordinate international effort to maintain the legacy'.

This new global trusteeship also needs to encompass the responsibilities that each generation must accept towards future generations.

In a book which I co-authored with Ambassador Michael Bartolo, entitled *A Second Generation United Nations*, (published in 1997) a chapter is dedicated to the

Trusteeship Council: 'a Malta initiative whose time has come'.

We have expressed the view that the holding in trust shared values of humanity makes it imperative to reinterpret extensively the mandate of the Trusteeship Council. Apart from the areas already mentioned we envisaged in our study that the Trusteeship Council should hold in trust the rights of peoples in situations where there has been a complete breakdown of the state.

We resisted with determination the then prevailing view in the UN Secretariat and elsewhere to abolish the Trusteeship Council. We stated that 'abolition of a principal organ affects the balance which pervades the Charter. It is not mere institutional pruning'. The Maltese proposal was also adopted by the Commission on Global Governance which states in its report *Our Global Neighborhood* that 'meanwhile a new need has emerged for trusteeship to be exercised over the global commons in the collective interest of humanity including future generations.

The global commons include the atmosphere, outer space, the oceans beyond national jurisdiction and the related environment and life support system that contribute to the support of human life.'

On the 24th May 1996, the Ministry of Foreign Affairs of Malta distributed an *aide-mémoire* entitled *Review of the Role of the United Nations Trusteeship Council* to all member-states of the United Nations.

In this *aide-mémoire*, we observe that 'conflict potential is pre-empted when certain areas or sectors, rather than left open to unrestrained competition, become the responsibility of the international community as a whole. This awareness led to the recognition of such concepts as common heritage, global commons, and global concerns. Trust is their common denominator. These concepts now form the basis of a number of conventions considered indispensable to international peace and security. The agencies instituted by the conventions to manage and maintain these sectors are the administrators of these new trust territories. The body most appropriate to co-ordinate these intertwined activities of trust is the Trusteeship Council'.

It was for me and for Malta and for all who believe in Malta's initiative a measure of satisfaction when Kofi Annan took up our proposal in his report to the 55th Session of the General Assembly entitled *Renewing the United Nations: a Program for Reform*. Under the heading 'A new concept of trusteeship', he states that the 'Trusteeship Council be reconstituted as the forum through which member-states exercise their collective trusteeship for the integrity of the global environment and common areas such as the oceans, atmosphere, and outer space. At the same time, it should serve to link the United Nations and civil society in addressing these areas

of global concern which require the active contribution of public, private, and voluntary sectors.'

As recently as April 1999, the Commission on Sustainable Development in the Report of the Secretary General on Oceans and Seas, stated that 'the concept of integrated management of ocean space has been before the international community for more than three decades. Ideas of how to manage the 'common heritage of mankind' (the high seas beyond national jurisdiction) were put before the General Assembly back in 1967 by the Government of Malta and the issue was relaunched by Malta's subsequent Foreign Minister and President of the 45th General Assembly who in 1990 proposed that the Trusteeship Council be given the new mandate of coordinating the international protection including the oceans and seas, the atmosphere, and outer space. That new concept of trusteeship was endorsed by the Secretary General in his July 1997 Report on UN Reform (see A/51/950 para. 84 and 85).'

Our good friend Elizabeth Mann Borgese in her inspiring book *Ocean Governance and United Nations*, in applauding Malta's initiative has this to say in rewriting Article 88 of the UN Charter: 'The Trusteeship Council shall hold in sacred trust the principle of the common heritage of mankind. It shall monitor compliance with this principle in accordance with international law, international ocean space, outer space, the atmosphere as well as Antarctica and report any infringement thereof to the General Assembly. It shall deliberate in its wider application to matters of common concern affecting comprehensive security and sustainable development and the dignity of human life and make its recommendations to the authorities and institutions concerned. The Trusteeship Council shall act as the conscience of the United Nations and the guardian of the future generations.'

As she herself pointed out, within a few years, Malta's proposal moved from the realm of utopia, which could be conveniently ignored, to the realm of politics and it may be there to stay.

We have hitched our wagon to a star. Some at the time considered our proposal to be utopian. Others, perhaps more positively inclined, considered us as idealists, while subtly arguing that there is a wide gap between idealism and realism. I have always maintained that there is no incompatibility in being both an idealist and a realist at the same time.

A realist is an idealist who knows when the time is ripe for his ideas and ideals to become a reality. We believe that the Trusteeship Council must be the focal point for that co-ordination which pre-empts tensions while securing the commonwealth of present and future generations.

I started this lecture with the premise that we islanders are born dreamers, that we are touched by the magic of the

sea. But we are dreamers with determination: that of making a reality of our dreams.

In the villages of Kenya the wise men there may never have heard of the concept of trust which the common law jurists have built into an international institution, but they

have nourished the love for mother earth. An old Kenyan proverb encapsulates this concept boldly:

Treat the earth well. It was not given to you by your parents, but loaned to you by your children.

This, is our philosophy for a renewed Trusteeship Council.