

Public charges for the use of Inter-planetary resources

AN OPEN LETTER
to Kofi Annan, UN Secretary-General

Leslie Blake

THE TRANS-NATIONAL unions of the 21st century – political, military and commercial – need matching global institutions to enforce the laws of nations. But these law-making and enforcement agencies can be effective only if they are equipped with an independent source of revenue based on a philosophy that unites humanity, argues Leslie Blake. That source is the revenue from “the commons” – the rents that are generated by communities working with nature.

LESLIE BLAKE is a London barrister, lecturer on constitutional issues, and author of *The Prince and the Professor* (1995)

A reappraisal of both the guiding philosophy and the corresponding institutions are crucial if strategies are to be developed that can deliver the peaceful resolution of disputes. UN Secretary-General Kofi Annan has called for that radical debate to deliver the signposts that may direct the nations of the new millennium to the remedies for the tragedies that persist in afflicting the lives of hundreds of millions of people.

But to be fruitful, the discourse needs to develop an appreciation of morality and economics that reach beyond the conventional understanding of principles such as the right to work. The starting point is the re-examination of the constitution of the United Nations itself.

DEAR SECRETARY-GENERAL,

In this millennium year, I write to applaud and support your initiative in calling together the leaders of the world in September 2000 in New York to consider the fundamental aims and programmes of the United Nations. No doubt you will receive many suggestions, not only from politicians but also from ordinary "world citizens", such as myself. The whole of mankind is involved in the question, "What happens to the United Nations in the twenty-first century?" Already you have rightly identified issues such as poverty, education, provision of basic services and protecting the environment, for discussion. May I perhaps be allowed to add some comments to the agenda?

In the first place, it is the millennium year of one great religious teaching. Christ's Apostle, Paul, wrote to the Corinthians: "For what man knoweth the things of a man, save the spirit of man which is in him?"¹ I firmly believe that every man, woman and child on this planet has implanted within them the knowledge of Justice and Equity – even if, for the majority, these qualities are known by their absence. The spirit of man is full of the Justice and Equity provided by creation – that's how we know when in human affairs they seem to be lacking. But if world leaders could be reminded of these words, at the beginning of their deliberations, that Justice and Equity are the birthright of each and every individual, and are primary to the development of prosperity and freedom, what an auspicious commencement that would be!

THE PREAMBLE to the Charter of the United Nations states we should "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained" and, for these ends, "to practise tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security ..." So justice takes precedence over peace, and gives rise to peace, which is the right way round. It may sometimes be necessary to use the force of intervention to secure justice, in order to attain peace.

**Justice
gives rise
to peace**

But no good is done by undermining the authority in this regard of the United Nations. The Bishop of London, in a debate in the House of Lords concerning Kosovo, warned that "Cynicism about the UN is a luxury that we cannot afford".² Indeed, the attitude of NATO countries amounted to such cynicism, when it came to the Kosovo situation. NATO decided, without reference to the Security Council, to bomb Yugoslavian targets, in an intervention said to be on humanitarian grounds, because of the atrocities committed by Serbs against Kosovan Albanians. This was to ignore the reminder given by the Security Council in 1998³ that "primary responsibility for the maintenance of international peace and security is

conferred on the Security Council"; and Article 53 of the Charter: "But no enforcement action shall be taken under regional arrangements without the authorisation of the Security Council ..." Article 42 gives the Security Council alone the power to "take such action by air, sea or land forces as may be necessary to maintain or restore international peace or security".

Indeed, it would seem that, until recently, the British Foreign Office held the view that

... the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons:

first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right;

secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all;

and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation

... In essence, therefore the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law.⁴

You, Sir, will be well aware of all this and the failure to refer the matter to the Security Council. The reason was, no doubt, that the United States and the United Kingdom anticipated a Russian veto. Yet, if the Russians had been invited to consider the atrocities as an "act of aggression" within Article 39, and had decided to abstain from a positive vote, they would necessarily have had to meet and justify themselves before the court of world opinion. Not only that, but the Russians would have been involved from the start and could have exercised influence over President Milosevic – which, in the end, was what caused him to capitulate: but only after the Russians were appealed to when all the damage was done.

The International Court of Justice I WOULD LIKE to submit the following: if justice is paramount in human affairs, under truth (Disraeli once said, "justice is truth in action"), then the role and function of the International Court should be enhanced. By that is meant the opportunity should be taken in New York for general agreement to accept the *compulsory* jurisdiction of the World Court, as advocated in the 1994 report of the Commission on Global Governance.⁵ Membership of the UN should carry with it the obligation to submit to the jurisdiction of the court any dispute which is alleged to breach international law, or which threatens to breach

it. On the other hand, the Court must develop "fast track" procedures so as to keep pace with expectations.

At present the World Court has jurisdiction only where the states that are parties to a dispute have agreed to abide by its decision. Article 36 of the Statute of the International Court of Justice reads, in part, as follows:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties or conventions in force.
2. The States Parties to the present Statute may at any time declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - (a) the interpretation of a treaty;
 - (b) any question of international law;
 - (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
 - (d) the nature or extent of the reparation to be made for the breach of an international obligation.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time."

The report *Our Global Neighbourhood* says: "Of the UN's 184 member-states, 57 have accepted the Court's jurisdiction under the optional clause, and ad hoc consent is not forthcoming in nearly enough cases".⁶ It is all the more shameful, Mr. Secretary-General, that the UK, with its claimed "long attachment ... to the principle of the judicial settlement of international disputes",⁷ should have avoided participation in the World Court's hearing of the complaint of Yugoslavia concerning the NATO bombing which, according to The Economist Intelligence Unit, had caused a total economic cost or damage inflicted by the war of \$59.8 billion.⁸ The UK ducked behind the technicality that Yugoslavia made the complaint less than 12 months after accepting the Court's jurisdiction. The Court was bound to sustain this objection since, as Judge Rosalyn Higgins, the British judge at the World Court, put it: "... the jurisdiction of the Court – even if one might regret this state of affairs as we approach the 21st century – is based on consent".

It is all the more regrettable since the NATO countries, especially the US and the UK, claimed to be acting in accordance with international law, on the basis of a doctrine of "humanitarian intervention". A full hearing,

with the argument of the British government in favour of such a doctrine, would have clarified the nature and extent of such intervention permitted, if at all, under international law, in the judgment of the Court.

There are two corollaries to my submission that the UN should grant compulsory jurisdiction to the International Court of Justice. They are that the Security Council should take greater advantage of its power to refer to the Court for an advisory opinion on an emerging dispute; and that you, Sir, should also have the right to refer for advice such disputes in their early stages.

**Work as
the basic
human
right** THE COMMISSION on Global Governance, established under the auspices of Willy Brandt, which reported in 1994, was quite clear in its determination to avoid the pitfall of devising any form of global government that might displace the role of states working together under International Law. The report says: "We are not proposing movement towards world government, for were we to travel in that direction we could find ourselves in an even less democratic world than we have ..."⁹

The report justly concludes that "... a primary need is for the world community to make greater, more imaginative, more creative use of the existing provisions of the [United Nations] Charter".¹⁰

In my submission, nowhere is the potentiality for imaginative and creative endeavour shown more clearly than in the field of human rights. Here justice compels attention towards the most basic of those rights – the right to work. Without this fundamental human right being developed in each and every country, the other rights – however deserving – lose their significance. Indeed, one of the great scriptures of mankind, the Geeta, states: "But thou hast only the right to work; but none to the fruit thereof".¹¹

The Charter itself proclaims (Article 55): "the United Nations shall promote ... full employment". Article 56 provides: "All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55". Thus, there is a legal requirement placed on each and every Member State, however rich or however impoverished the State may be. Article 23 of the Universal Declaration of Human Rights says: "Everyone has the right to work ...". The International Covenant on Economic, Social and Cultural Rights includes as Article 6: "The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right".

High aims and objectives! Unemployment is rife around the world. What can creativity and imagination achieve in even the poorest of countries?

In my submission, there are two important requisites for full employment, no matter whereabouts one is on the globe. The first is to reduce or eliminate any tax burden placed on employment in marginal enterprises – mainly income tax, which operates to discourage employment in new businesses; and, secondly, that everyone should have access to land and its resources. We hear about outer space being “the common heritage of mankind”: but what about the land? Is that not also the common heritage of all mankind? The scriptures seem to think so.

**“Two
requisites
for full
employment
– remove
the tax
burden,
and
provide
access to
land”**

This has properly to be understood. It is not a call for nationalisation of the land, such as occurred in Soviet Russia in the early years of the last century, and which resulted in poor production and famine. Rather, it is a creative act of making resources available to those who can work them, at a price they can afford. Throughout the world there are vast areas of land which are unused or under-used – even in the affluent West there are thousands of acres of decayed docklands and rusting industrial premises which could be re-activated by small business with imagination and some financial stimulus. In South Africa there are miles of shanty towns, concerning which the first step has to be re-building with simple, well-made homes, and the provision of water and electricity. Human rights are really about giving self-respect to individuals. Once they have that self-respect there is no limit on what they can achieve.

That fact stands as the basis of the self-help and self-esteem which Muhammad Yunus has given to over two million borrowers through his Grameen Bank, making small loans to poor people to help them establish their economic ventures. It started when, in Bangladesh, Yunus saw a woman in a poor village “who made bamboo stools, and learned that she had to borrow the equivalent of 15p to buy raw bamboo for each stool made. After repaying the middleman, sometimes at rates as high as 10% a week, she was left with only a 1p profit margin ... Yunus took matters into his own hands and from his own pocket lent the equivalent of £17 to 42 basket-weavers. He found that it was possible with this tiny amount not only to help them survive but also to create the spark of personal initiative and enterprise necessary to pull themselves out of poverty ... In Bangladesh today, Grameen Bank has 1084 branches with 12,500 staff serving 2.1 million borrowers in 37,000 villages. On any working day, Grameen collects an average of \$1.5 million in weekly instalments. Of the borrowers, 94% are women and over 98% of the loans are paid back, a recovery rate higher than any other banking system”¹².

So it can be done, Mr. Secretary-General.

Charges for use of global commons THE REPUBLIC OF SOUTH AFRICA includes in its recent Constitution: *The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis* (Section 25 [5]). What is not meant by that is the alarming and chaotic state of affairs in neighbouring Zimbabwe, where bands of marauders have seized property from, mainly, white farmers, with every appearance of encouragement by the government. Not unnaturally, other African countries fear the spreading of this anarchy. The results speak for themselves, in a diminishing economy.

This is obviously no way to gain access to land (and the resources which come out of the land) on "an equitable basis". Article 17 (1) of the Universal Declaration of Human Rights states: "Every one has the right to own property alone as well as in association with others"; and 17 (2) requires that "No one shall be arbitrarily deprived of his property". But the Zimbabwe question does throw up for the 21st century an interesting possibility in relation to the use of land, which does not stop with the limits of this planet but extends to the universe.

In Outer Space international law prevails. According to the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, "The exploration and use of outer space ... shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind. Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies ..." (Article 1). The Treaty goes on to say, in Article 2, "Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means".

C.W. Jenks, in his seminal work *The Common Law of Mankind*, draws the following conclusion from this state of affairs: "It is most desirable that title to any natural resources of the moon or of other planets or satellites which may be capable of utilisation should be regarded as vested in the United Nations and that any exploitation of such resources which may be possible should be on the basis of *concessions, leases or licences from the United Nations ...*" [emphasis added].¹³

The notion of charging for the use of resources was also taken up by the Commission for Global Governance, which stated: "Charges for use of the global commons have broad appeal on grounds of conservation and economic efficiency as well as for political and revenue reasons. They would encourage efficient use and conservation, as well as finance

institutions of global governance required to police and maintain the commons in good order. We encourage consideration of several possibilities for user charges:

- a surcharge on airline tickets for use of increasingly congested flight lanes, with collection of a small charge for every international flight;
- a charge on ocean marine transport, reflecting the need for ocean pollution control and for keeping sea-lanes open to all legitimate users, with special fees (or auctions of licences) for maritime dumping of waste where the level of toxicity does not require outright prohibition;
- user fees for ocean, non-coastal fishing (or auctions of quotas) reflecting the pressures on many stocks and the costs of research and surveillance;
- special user fees for activities in Antarctica, such as fishing, so as to fund conservation on the basis that the continent is part of the common heritage of humanity;
- parking fees (or auction revenues) for geostationary satellites; and charges for user rights of the electromagnetic spectrum".¹⁴

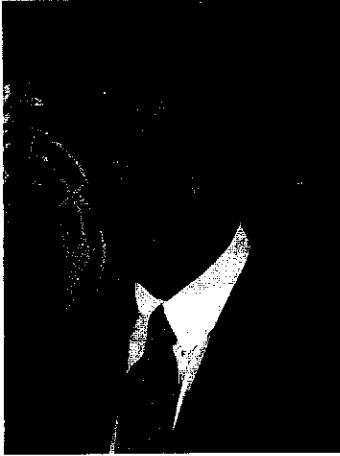
It is obvious from the foregoing that the UN faces a novel and challenging future in relation to these "common heritages" in which a whole change of attitude is required of the participating States. They will have to become accustomed to the fact that the UN is the original authority for the exaction of charges, by way of licences and leases, for the use of resources. Funds raised by these methods should be employed, in my submission, partly for the upkeep of world resources and partly for the common good of mankind, through provision of services such as roads, water and electricity in the poorer countries, through education and health facilities.

MR. SECRETARY-GENERAL, it is an exciting prospect, if the world leaders will only follow what has already been laid down for them, in the Charter and in the Treaties. But, if the idea of charging by the UN for the use of inter-planetary resources is acceptable to individual governments, what in principle stops them from implementing the same idea with regard to their internal resources – in particular, land? Can they not charge a rent for the use of land? Is this not the answer to the Zimbabwe problem (likely to spread throughout Africa, and perhaps elsewhere)?

The abrupt seizure of land from commercial interests is like killing the goose that lays the golden eggs. What is required is a levy on the prosperity which such commercial interests derive from the consent to occupy land granted by the community as a whole. The revenue from such

**Zimbabwe:
the threat
of
contagion**

rent or licence fees may be employed to replace other punitive systems of taxation and to acquire land and other facilities necessary to provide full employment. As you know, Mr. Secretary-General, the General Assembly adopted by a vote of 120 to 6, with 10 abstentions, a Resolution in 1974 proclaiming the Charter of Economic Rights and Duties of States, Article 2 (1) of which reads: "Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities".



The pity of it is that the UK voted against the Resolution, together with Belgium, Denmark, German Federal Republic, Luxembourg, and the US.

It is a pity because there is more than enough material in the Charter of Economic Rights and Duties of States to build recognition of the important fact that there is "one world, one wealth". The Charter's preamble says: "*Mindful* of the need to establish and maintain a just and equitable economic and social order ..."

It is worth visiting some of the Articles of this little-known Charter, which the Resolution of the General Assembly requires to be reviewed as to progress at every fifth session of the Assembly. Oppenheim's *International Law* (9th edition, p.338) states: "...at the present time [the Resolution] represents formally expressed aspirations of the international community rather than legally binding obligations".

Article 31: "All States have the duty to contribute to the balanced expansion of the world economy, taking duly into account the close interrelationship between the well-being of the developed countries and the growth and development of the developing countries, and the fact *that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts*" [emphasis added].

Article 24: "All States have the duty to conduct their mutual economic relations in a manner which takes into account the interests of other countries. In particular, all States should avoid prejudicing the interests of developing countries".

Article 25: "In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries ..."

Article 26: "International trade should be conducted without prejudice

to generalised non-discriminatory and non-reciprocal preferences in favour of developing countries, on the basis of mutual advantage, equitable benefits and the exchange of most-favoured-nation treatment."

Article 27: "(1): "Every State has the right to enjoy fully the benefits of world invisible trade and to engage in the expansion of such trade. (2): World invisible trade, based on efficiency and mutual and equitable benefit, furthering the expansion of the world economy, is the common goal of all States ..."

Article 29: "The sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind ..."

Article 30: "The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States ... The environmental policies of all States should enhance and not adversely affect the present and future development-potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction ..."

It may be, Mr. Secretary-General, that the World Court could be given jurisdiction over a new brand of tort, that of nuisance or mischief arising between States which pollute each other, or otherwise do not act in a neighbourly fashion. The penalties might be fines or exclusion from the world community. No State likes to think of itself as in breach of international law. Look at the efforts of Hitler and other despots to justify their aggressions in terms of the international order.

The quotations from the Charter of Economic Rights and Duties of States do not do justice to the complete Charter, which the world leaders should be invited to endorse, including those whose countries voted against the Resolution or abstained. It may, of course, be urged that the Charter is idealistic and high-sounding and that vested international business interests will simply scoff at it. The answer must be, that the words of the Charter indicate a trend, a movement, an underlying trust and confidence among the States of the world to realise the goals set out in the Resolution of the General Assembly. Those goals may not be achievable in the short-term; but the words indicate that there is a desire to achieve them in the course of this century. The developed States, which voted against the Charter, or abstained, should take careful note of a trend which may well be irresistible.

"One world, one wealth". It would be an important step, Mr. Secretary-General, if the world leaders in New York could see those words written up above the conference platform while they deliberate.

**The
spiritual
and ethical
dimensions**

THE CHARTER of Economic Rights and Duties of States also indicates an ethical path for the world to follow. All that has been referred to in this letter depends on a recognition of the basic unity of spiritual and ethical response among all the peoples of the world. The peoples are crying out for leadership that rises above the mundane and draws its strength from the "inner spirit" of mankind.

Here, too, the UN can play its part. The Dalai Lama wrote: "I see the UN as being the proper vehicle for carrying out the wishes of humanity as a whole. As yet it is not able to do this very effectively, but we are only just beginning to see the emergence of a global consciousness – which has been made possible by the communications revolution. In spite of tremendous difficulties, we have seen it in action in numerous parts of the world. Even though there are only one or two nations spearheading these initiatives at the moment, the fact that they are seeking the legitimacy conferred by a United Nations mandate suggests a felt need for justification through collective approbation. This, in turn, I believe to be indicative of a single, mutually dependent, human community".¹⁵

But is it not the case that the several great religions of the world divide rather than unite? The Dalai Lama goes on: "... followers of one tradition will find that, just as in the case of their own, the teachings of other faiths are a source both of spiritual inspiration and of ethical guidance to their followers. It will also become clear that, irrespective of doctrinal and other differences, all the major world religions are concerned with helping individuals to become good human beings. All emphasise love and compassion, patience, tolerance, forgiveness, humility and so on. And all are capable of helping individuals to develop these".¹⁶

Later in his book, he made an interesting suggestion: "... I find the concept of a world parliament of religions very appealing. To begin with, the word "parliament" conveys a sense of democracy while the plural "religions" underlines the importance of the principle of a multiplicity of faith traditions. The truly pluralistic perspective on religion, which the idea of such a parliament suggests, would, I believe, be beneficial. It would help avoid the extremes of religious bigotry on the one hand, and the urge towards unnecessary syncretism on the other".¹⁷

Mr. Secretary-General, there is no likelihood of such a parliament entering the scheme of organisation of the United Nations. But the UN could help to set it up, even to the extent of financing it. It was not so long ago that the rulers of the world kept company with their spiritual advisers, on all matters of state importance, even if only to draw comfort and strength from their wisdom. As to the ethical guidance of the world, would you not welcome a consensus of advice from such a body?

This has been a long letter – perhaps too long. But the opportunity in this millennium year to acknowledge Justice and Equity as the birthright

of all "world citizens", without distinction of colour, race or creed, ought not to be missed. The congregation of world leaders in New York offers such an opportunity. With all my heart, I wish it – and you, Mr. Secretary-General – every possible success in the endeavour.

Yours sincerely

L. L. BLAKE

References

- 1 1 Corinthians 2, v 11.
- 2 Hansard, H of L, 6 May 1999, col. 817.
- 3 SC Resolution 1203.
- 4 Foreign Policy Document 148 (1986).
- 5 *Our Global Neighbourhood*, OUP (1995), p. 333.
- 6 *Op. cit.*, p.311.
- 7 Sir Franklyn Berman, quoted in Mark Littman QC, *Kosovo: Law and Diplomacy*, p.7.
- 8 *Ibid.*, p.24.
- 9 *Our Global Neighbourhood, op. cit.*, p.xvi.
- 10 *Ibid.*, p.233.
- 11 Faber, (1935), p.16.
- 12 *Banker to the Poor*, Aurum Press, 1998.
- 13 Stevens, (1958), p.400.
- 14 *Our Global Neighbourhood, op. cit.*, pp. 220-1.
- 15 *Ancient Wisdom, Modern World*, Little Brown, 1999, pp. 201-2.
- 16 *Ibid.*, pp. 231-2.
- 17 *Ibid.*, p.237.