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I

Semantics,¹ which means making unpleasant things more palatable to the general public by using certain words and ideas, or by embellishing, concealing or exaggerating facts, is as old as time or language itself. Being a vehicle for social communication, language always contains elements capable of intensifying feelings and emotions.²

The calculated use of language is widespread in the field of politics, economics and culture. It is impossible to obtain a comprehensive picture or to enumerate all the penetrating advertisement campaigns, information policies, electoral campaigns, propaganda efforts and other manipulations to which the simple citizen is being exposed nowadays by opinionmakers, whether organized or not.³

It has been generally recognized that it is the capacity of a language to systematize and accentuate that which has turned statements or commentaries of a certain point of view into battles to find *better* words. This has brought into being all sorts of organizations such as advertising, press agencies, and public relations departments, which by using words cunningly, like daggers hidden under a cloak, attempt to surprise their opponents with new expressions and ideas, or to make generally accepted language serve their own specific purposes by skillful manipulation.⁴ It is hardly surprising that the science of linguistics has been devoted increasingly to these phenomena in recent days.

II

Of course, semantics has also found its way into the legal language, especially in the border area between the political and the legal domain. This is noticeable in particular when political matters almost touch the legal domain, when political decisions are given a legal expression, or when the appropriate legal form (article, treaty or law) is still being

+The original German title of this article is "Semantische Lenkungsstrategien und die Menschheitsklauseln des Weltraumvertrages."

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¹ *Comp. Betz, Sprachlenkung und Metaphernstrategie, Sprache im technischen Zeitalter* 304 (1977).

² *Comp. Zimmer, Wörter und Waffen, Die Zeit*, Oct. 21, 1977.

³ Lenz, *Werden und Wesen der öffentlichen Meinung* 97 (1956).

⁴ *Comp. Zimmer, op. cit. supra* note 2.

searched for. It should be noted, however, that in the legal language manipulations with words and ideas are generally less evident to the eye than in the more colloquial expressions. This relates to the fact that the legal language, like any other technical language with standard terms is more precise and at the same time more lacking in meaning and substance than the colloquial language.⁵ At any rate, it is conditioned largely by the terminology of statutory and common law. The words and concepts of the legal language provide definitions and make distinctions. They define where in common parlance no distinctions are made.⁶ In doing so the legal language becomes standardized and cannot be manipulated to the same extent as more common words and ideas. The legal language is more foolproof, as it were, because its armor of standardized terms and concepts makes penetration by opinionmakers more difficult.

As the legal language increasingly moves away from clear definitions and closer to the vague and ill-defined expressions of common parlance, in other words the more it borrows from the colloquial, the more it becomes exposed to the influence of semantics. This "rule" applies for instance to such general legal terms as *bona fides*, *suum cuique*, and so on. In this instance legal terms and concepts are coming under the impact of semantics.

These observations are also valid in international public law. Dealings and communications between States increasingly turn into contests to find better words. Propaganda campaigns and wars of words, in particular those fought between States with different constitutional systems and/or opposing interests in international politics, have long since become a common occurrence in international relations. The deterioration of these relations has not left the linguistic domain untouched.⁷

Ingo von Münch has given a clear definition of the sharp contrast with former days: in the Middle Ages a famous legal authority like Gentilis could raise the point whether insulting behavior towards a citizen of a foreign State could constitute a *casus belli*.⁸ In modern international law offense between States has almost become socially acceptable.⁹

Semantic manipulations in international law are increasingly to be found where wide-ranging doctrines are pursued to produce the illusion of establishing rules in international treaties governing areas hitherto uncovered by legal provisions, in particular when their aim is to produce a semblance of political success. Pseudo-

⁵ *Comp.* Duerenmatt, Das Volk ist nicht das Volk, Die Zeit, Dec. 12, 1975.

⁶ *Comp.* Schrey, Juristenspiegel 26 (H. M. Schmidt ed., 1959).

⁷ Ingo von Münch, Das völkerrechtliche Delikt 74 (1963).

⁸ Gentilis, De jure belli, L.I.C. XXI, quoted by Ingo von Münch, *op. cit.*, *supra* note 7.

⁹ *Comp.* Ingo von Münch, *op. cit.*, *supra* note 7 at 75.

normative doctrines lacking adequate definitions and delimitations abound. More often than not these doctrines are purely statements of fact containing platitudes which always ring true, but at the same time lacking any sense or substance, like: "tomorrow there will be rain, or no rain".¹⁰

III

Let us now examine more closely the semantic tendencies which have nestled themselves in space law, the youngest branch of international law. Space law in its present codification tries to give rules for the behavior of States in space in the form of generalized formulas. Time and again it becomes apparent how difficult it is to provide adequately phrased rules for, and to systematize in legal language the extremely complicated subject matter created by the technological explorations in outer space and the resulting multitude of conflicting interest.¹¹ Therefore, when in the search of a compromise, generalized formulas are resorted to in order to accommodate such basic principles as the exploration and use of outer space. . . "for the benefit and in the interests of all countries;¹² . . . "for peaceful purposes;"¹³ . . . "without discrimination of any kind, on a basis of equality;"¹⁴ . . . and in the interest of . . . "promoting international cooperation and understanding;"¹⁵ . . . "with due regard to the corresponding interests of all other States Parties to the Treaty",¹⁶ it becomes evident that the law is bound to go off-course on the ocean of facts. Legal accuracy in the sense of the most precise application of legal concepts to existing facts threatens to become arbitrary or a matter of coincidence, like in the sentence "tomorrow there will be rain, or no rain". This is all the more inevitable since, given the poor and inadequate substance of the generalized formulas used in space law, their interpretation has largely been attributed to individual States. As a result, offenses against the provisions of the Treaty, inasmuch as they can be objectively determined as such in the first place, remain

¹⁰ *Comp.* Topitsch, *Die Menschenrechte*, *Juristenzeitung* 3 (1963).

¹¹ *Comp.* Bueckling, *Bemerkungen zur Deutung der Kommunklauseln des Weltraumvertrages*, 25 *Zeitschrift f. Luft- und Weltraumrecht* 94 (1976).

¹²The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (hereinafter referred to as the Space Treaty) was signed on January 27, 1967 and entered into force October 10, 1967, [1967] 18 U.S.T. 2411, T.I.A.S. 6347, 610 U.N.T.S. 205, Art. I.

¹³ *Id.* Art. IV.

¹⁴ *Id.* Art. I.

¹⁵ *Id.* Art. III.

¹⁶ *Id.* Art. IX.

unpunished. Consequently, in the field of international law, space law has been largely conceived as international "Softlaw".¹⁷

Attempts to develop and establish legal rules governing a vast and extremely complex subject matter like space exploration are rather like trying to hack down Mount Everest with a blunt kitchen knife. To begin with, the generalized formulas of the Space Treaty show a clear tendency to conceal reality in that they speak of a harmonious world, while leaving the numerous conflicts of interest largely unsolved ("their words are softer than oil, yet they are drawn swords": Psalm 55, v.22).

Furthermore, the Space Treaty immerses the entire scene of outer space in the ethereal light of a lofty humanity. Its preamble speaks of "concluding the Treaty in recognition of the common interest of *mankind* in the progress of the exploration and use of outer space for peaceful purposes". The provisions of the Treaty (Art. I) declare the exploration and use of outer space to be *the province of all mankind*. While Art. V prescribes that States Parties to the Treaty shall regard astronauts as *envoys of mankind* in outer space, drafts of the Moon Treaty, which the UN has been working at for a number of years,¹⁸ contain a provision stipulating that the natural resources of the moon are the *common heritage of all mankind*.

The Soviet delegation, in a working paper, denied the concept of "common heritage of all mankind" all legal significance, and warned against applying concepts of civil law to international situations.¹⁹ Zhukov adds that the term "a province of all mankind" could not have any wider significance than "a common heritage of all mankind".²⁰ Kopal is of the opinion that "a province of all mankind" needs clarification by means of special additional provisions.²¹

Admittedly, voices have also been raised in favor of attributing legal significance to the "mankind" provisions. Fasan,²² for instance, relying on Gorove's line of

¹⁷ *Comp.* Wengler, Rechtsvertrag, Konsensus und Absichtserklärung, Juristenzeitung 193 (1976); Bueckling, Weltraumrecht - ein System aus völkerrechtlichem Softrecht?, Deutsche Richterzeitung 76 (1977).

¹⁸ *Comp.* Knoerich, Direktfernsehen - Fernerkundung-Mondvertrag, Vereinte Nationen 173 (1977); Dausès, Zur Rechtslage des Mondes und anderer Himmelskörper, 24 Zeitschrift f. Luft- und Weltraumrecht 281 (1975).

¹⁹ *Comp.* Dausès, *op. cit.* supra note 18.

²⁰ *Comp.* Heymer, Bericht über die Tagung der International Astronautical Federation (IAF), vom 29.9. bis 5.10.1974, in Amsterdam, 24 Zeitschrift f. Luft- und Weltraumrecht 31, 35 (1975).

²¹ *Comp.* Heymer, *op. cit.* supra note 20.

²²Fasan, The Meaning of the Term "Mankind" in Space Legal Language, 2 J. Space L. 125 (1974).

argument²³ regards the prominent place occupied by the term "mankind" in the Space Treaty as a step towards allowing "mankind" to become a new subject of international law. Marcoff²⁴ clearly tends to regard "mankind" within the scope of space law as a subject of international law. Cocca²⁵ attributes a purely normative significance to "common heritage of mankind", this concept having more substance than "province of all mankind" because it reflects the basic notion of justice of all peoples. Kuchenhoff links the concept of "mankind" to the idea of a State acting in space as a trustee for mankind (trustee theory).²⁶

It is debatable whether these interpretations will provide guidance in attempting to clarify the "mankind" provisions of the Space Treaty. The opinion of the Soviet delegation that these provisions have no precise significance cannot be dismissed out of hand.²⁷

The basic tenets of the Enlightenment, attributing rational powers to mankind and regarding it as endowed with a legal conscience, have become unreal since the objective spirit of international law has found its expression in the State ("*jus inter gentes*," instead of "*jus gentium*").²⁸

It should also be noted that "mankind" may be perceived as either a social and legal system with the individual at the center, or as a common interest of peoples, states or groups of states, or as a politically - ideologically oriented composite body.²⁹ These differing perceptions of mankind will further complicate the interpretation of the "mankind" provisions. In addition, the fact remains that concepts like State or people

²³Gorove, The Concept of Common Heritage of Mankind. A Political, Moral or Legal Innovation? 9 San Diego L. Rev. 390 at 393 (1972).

²⁴Marcoff, *Traité de droit international public de l'espace* 272 (1973); also Marcoff, *Sur l'interprétation juridique de l'article 4 du traité régissant les activités des états*, *Revue Général de l'Air et de l'Espace* 4 (Nr. 1, 1968).

²⁵Cocca, The Principle of the "Common Heritage of All Mankind" as Applied to Natural Resources from Outer Space and Celestial Bodies, *Proc. 16th Colloquium on the Law of Outer Space* 172 (1973).

²⁶Gunther Kuchenhoff, *Naturrecht und Liebesrecht* 30 (1962); see also Kuchenhoff, *Rechtsphilosophische Grundlagen des kosmischen Rechts*, *Archiv für Rechts und Sozialphilosophie* 467 (1965); Wollenschlager/Habitzel, *Der Weltraumvertrag vom 27. Januar 1967*, *Festschrift für G. Kuchenhoff*, 2 *Recht und Staat* 877, 883 (1972).

²⁷*Comp. Dausés*, *Neuere Fragen des Weltraumrechtes*, 17 *Archiv f. Völkerrecht* 69 (1976) and also UN Working Paper: Question of the Common Heritage of Mankind, U.N. Doc. PUOS/C.2 (XII), WG I/ Working Paper 7 (March 28, 1973).

²⁸Binder, *Philosophie des Rechts* 559 (1925).

²⁹*Comp. Geck*, *Menschenrechte - Schein und Wirklichkeit*, *Frankfurter Allgemeine Zeitung*, Nov. 21, 1977.

always are, and always will be, a source of errors leading to political abuse.³⁰ As a result, the "mankind" concept is not a juridical cathedral built in a uniform style and capable of transferring its creative characteristics to the juridical edifice of our time. It is rather like a body of a cathedral with many spires, countless facades and the most diverse altars. The question may therefore be raised whether "mankind", which at present is not a subject of international law, will ever become one, or even whether it seems desirable for it to become one. In other words, the "mankind" provisions of the Space Treaty can be regarded as positive evaluation clauses containing on the one hand ideas concerning a state of affairs in the community of nations yet to be attained, while on the other hand designed to conceal under a flow of fine words the imperfections of the Space Treaty provisions, in particular those regarding the largely uncovered and unsolved conflicts of interest.

Underneath the "mankind" syndrome the relevant clauses of the Space Treaty offer little guidance as to what rights States may derive from them. Neither can it be satisfactorily established what rights a State not involved in space exploration might have in the achievements of the space powers. Here also, the veneer in the generalized provisions stating that the exploration and use of outer space is the *province of all mankind*, is of little or no avail. The failure of the "mankind" provisions to further the development of law is evidenced by the fact that the lengthy United Nations efforts to draft substantial follow-up treaties dealing with direct television and remote sensing devices in space, as well as the legal situation on the moon, are threatened increasingly with deterioration by the special interests of individual States.

In the concept, *common heritage of all mankind*, the semantic element is even more manifest. This term has been used in the UN Resolution No. 2949 (XXV) of Dec. 17, 1970 regarding the legal status of the ocean floor.³¹ Space law could evidently borrow this expression from maritime law for the benefit of the Moon Treaty. The much debated Art. X para. 4 of this Draft Treaty³² provides for the moon and its resources to be declared "a common heritage of all mankind". Quite a number of States, such as Argentina, Brazil, Chile, Ecuador, Indonesia, Sweden and Turkey have pronounced themselves in favor of this term.³³ The discussions surrounding the question of how to define the real substance of the term have led to nothing but generalized interpretations. One school of thought suggested for instance that "common heritage of all mankind" precluded any exploitation of resources extending beyond (scientific) exploration without the consent of an international authority, while the benefits were to

³⁰Kirminich, *Völkerrecht und internationale Beziehungen*, 16 *Archiv f. Völkerrecht* 133 (1974-75).

³¹ *Comp. Dauses*, *op. cit. supra* note 18; also *Dauses*, *op. cit. supra* note 27.

³²U.N. Doc. A/AC.105/115 (1973).

³³ *Comp. inter alia*; UN Docs. A/AC.105/C.2/SR 285 (March 15, 1978); A/AC.105/C.2/SR 287 (March 16, 1978); A/AC.105/C.2/SR 288 (March 20, 1978); A/AC.105/C.2/SR 289 (March 21, 1978).

be shared among all States.³⁴ How this "sharing among all States" was to be put into actual practice has remained basically an unsolved problem. Other States have shown more restraint with regard to incorporating the relevant term in the Moon Treaty. The German Democratic Republic sees at present no point in defining the legal status of the moon and its natural resources.³⁵ The Australian delegate wonders whether there is any point in giving priority to further clarification of the complex problems connected with the concept of "common heritage of all mankind".³⁶ The Belgian delegate is apprehensive of semantic discussions regarding the real substance of this term.³⁷

In its original meaning the term "common heritage of mankind" signifies positive values such as jointly acquiring, fostering and increasing what has been inherited. What remains hidden under the glamor of such lofty principles, when one attempts to translate them into actual international practice, is shown clearly by the development of the law of the sea. There one perceives a struggle for every square meter of the ocean floor in order to legalize an *exploitation system* and a progressive limitation of the open sea in favor of ever larger coastal zones of national sovereignty and larger economic zones under the motto, *The Land dominates the Sea!*

There is no denying that "common heritage of mankind" comprises elements of juridical, mythical and ancient thought deeply rooted in men's consciousness.³⁸ The very notion of heritage, taken in relation to the concept of mankind, marks the birth of an ancient human norm. At the same time the notion of "common heritage of mankind" is not sufficiently precise to be put into legal practice because it is *purely declaratory*, in the sense that it is open to *all* interpretations - acquiring, fostering or increasing an inheritance - *but also* exploiting an inheritance, because an heir is entitled to both. No wonder that until now no agreement could be reached as to the way in which the exploitation of lunar resources is to be given a legal basis. The conflicting opinions and interests of the industrial nations and the developing countries regarding the exploitation of lunar resources are as yet too divergent to be reconcilable.³⁹

IV

Only in the event of a supranational legal framework governing the international community as it reaches maturity will the mankind provisions be able to gain real

³⁴ E.g.: Indonesia, U.N. Doc. A/AC.105/C.2/SR 288 (March 20, 1978).

³⁵ U. N. Doc. A/AC. 105/C.2/SR 289 (March 21, 1978).

³⁶ U. N. Doc. A/AC. 105/C.2/SR 289 (March 21, 1978).

³⁷ U. N. Doc. A/AC. 105/C.2/SR 289 (March 21, 1978).

³⁸ *Comp. Topitsch, op. cit. supra* note 10 at 2.

³⁹ *Comp. Knoerich, op. cit. supra* note 18 at 177.

substance. This would, however, imply a permanent limitation of national sovereignty. But an effective limitation of national sovereignty is still far away, and the strategies of foreign policy result time and again in crisis-management carrying built-in hazards.⁴⁰ It is no use pointing out that in other spheres regional and global organizations and the need for cooperation for different purposes are already imposing marked limitations on the sovereign rights of States, and are leading to a kind of international decision-making process already becoming apparent in world politics.⁴¹ More weight in this context seems to be attributable to Tenbruck's observation - also valid in international law - that the legal structures of our time are no longer adequate, that generally speaking they are less adequate than they used to be.⁴²

The characteristic features of the international legal system of our time are:

remorseless exploitation of our planet and the resulting battle for the dwindling resources of the earth, which turn the pursuit of the interests of national sovereignty into political virtue;⁴³
equally remorseless laceration of the face of our earth in the shape of worldwide pollution and destruction of scenery;
instability in the international community, in particular in the Third World, characterized by frequent changes of governments and constitutions, which gives rise to ever-changing love-hate relationships with incalculable consequences;
lack of homogeneity in the international legal system, resulting from integration on a regional basis (re-shaping international relations into a system of alliances), and furthered by the emergence of a large number of new sovereign nations in the Third World which usually guard their sovereignty with extreme jealousy.⁴⁴

Who could therefore foster any serious doubt, in such a state of affairs, that the concept of "mankind" does not at present represent a workable legal term? As long as there is no supranational constitution one can only hope that the tendency to conceal unsolved legal problems under beautiful legal phrases will be put to an end, and that the generalized concepts will be replaced by more specific and substantial legislation which might gradually coalesce into a practicable body of rules.

⁴⁰Tenbruck, *Friede durch Friedensforschung*, *Frankfurter allgemeine Zeitung*, Dec. 22, 1973.

⁴¹*Comp. Kimminich, op. cit. supra* note 30, at 147.

⁴²Tenbruck, *op. cit. supra* note 40.

⁴³Kimminich, *Der internationale Schutz des Einzelnen*, 15 *Archiv f. Völkerrecht* 413 (1971-2).

⁴⁴*Ibid.*; see also Ingo von Münch, *op. cit. supra* note 7 at 6.