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PROTECTION OF THE COMMON HERITAGE OF MANKIND: LEGAL AND ETHICAL ASPECTS

Açar sözlər: ortaq irs, bəşəriyyət, bəşəriyyətin ortaq irsinin etik aspektləri, bəşəriyyətin ortaq irsinin etik və hüquqi aspektlərinin qarşılıqlı əlaqəsi.

Ключевые слова: общее наследие, человечество, этические аспекты общего наследия человечества, взаимодействие между этическими и правовыми аспектами общего наследия человечества.

Keywords: the common heritage, mankind, the ethical aspects of the common heritage of mankind, the interplay between ethical and legal aspects of the common heritage of mankind.

Introduction

Legal debates regarding the global commons began in the 1960 s. Competitions between opposing blocs were leading to initiate new projects to explore and exploit outer space and the deep seabed. In 1967, Maltese Ambassador Arvid Pardo proposed to the United Nations General Assembly (UNGA) that the deep seabed and ocean floor beyond the limits of national jurisdiction should be subject to a new international regime known as the 'common heritage of mankind' (CHM). Elements of the Concept of the Common Heritage of Mankind are non-appropriation, international joint management, sharing of benefits, peaceful use and preserva-

tion for the benefit of future generations. Does this imply that the concept of the CHM has an inherent ethical aspect? The subsequent sections of this research provide a detailed analysis of the ethical implications underlying the CHM principle [9; 6].

The International Seabed Authority is established to manage and supervise all mineral-resources-related activities in the area for the common good of all mankind. The International Seabed Authority (ISA) is an autonomous international organization established under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (1994 Agreement). The wide scope of the ISA's responsibilities necessitates a multifaceted institutional structure with authority distributed across distinct entities. A supermajority is applied and rights of objection are exercisable, enabling each chamber to preserve the authority of the interests recognised by the voting chambers—cementing a set of interests that were a priority of the Parties. Vague UNCLOS provisions regarding exploitation regulations necessitate the creation of a comprehensive "Mining Code". The ISA and various stakeholders engaged in the process of initiating the new regulations by exchanging their views. This is the part of the issue on partic-

ipation and transparency since its outset. The Legal and Technical Commission (LTC) originally planned to meet in private, but it faced pressure in order to guarantee individual scientists' participation, thereby fortifying the credibility and validity of the decision-making process. They resisted open discussions, using the risk of politicization and confidentiality of commercial data as excuses. Some meetings regarding the Mining Code were opened to a restricted number of monitors beginning in August 1997, but this evidently has been done reluctantly. It shows how the ISA's adoption of an individualist stakeholder orientation and its deference to commercial expectations of profitability, in the context of growing political attention to the oceans as a source of economic growth, are further transforming the notion of common heritage and benefit sharing and concomitantly undermine the regime's redistributive ambitions. Since pragmatic mechanisms for the protection of the common heritage of mankind are insufficient, an ethical approach becomes crucial [2, para. 1; 1, p. 603].

1.1. Ethical Foundations of the Common Heritage of Mankind.

Elements of the Concept of the Common Heritage of Mankind are non-appropriation, international joint management, sharing of benefits, peaceful use and preservation for the benefit of future generations. These elements themselves and some other related ethical matters are key pillars for ethic establishment of the Common Heritage of Mankind [6].

The non-appropriation principle. The principle is a fundamental tenet of international law asserting that specific global domains, notably Outer Space and the Deep Seabed, are not subject to national sovereignty claims by any state through assertion, occupation, or any other means. The non-appropriation principle ensures equal access for all states and restrains the monopolization of global commons [5].

The international joint management principle. The principle brings an effective new element into the law of the sea by giving control and management of the deep seabed to mankind as a whole. The Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area. Thus, States Parties act as a kind of trustee on behalf of mankind [7, art 157(1)].

The sharing of benefits principle. The principle ensures that benefits from the common heritage of mankind are divided equally among all states. There are six categories of benefits that are relevant to seabed mining. These are wealth generation and redistribution, advancement of developing States, security of mineral supply, ecosystem services, scientific knowledge, and other uses of the Area [3].

The peaceful use principle. In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations [8, art. 301].

The preservation for the benefit of future generations principle. The principle is profoundly linked to the concept of sustainable development. Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs [10].

1.2. The Integration of Ethics and Law in the Governance of Global Commons.

«As Georg Jellinek stated, law serves as the 'ethical minimum' of social behavior—a system that establishes the fundamental values that a community collectively agrees to avoid disorder.

For a legal system to function effectively, it first needs to be supported by a common ethical understanding within society [4, p. 35].

Changing ethical and legal aspects can be illustrated in a developmental process of slavery: an institution that was once legally permitted and socially accepted. Over time, a penetrating transformation in collective moral perception reconsidered slavery—from a socio-economic practice into a severe violation of human dignity and basic rights. As this ethical reorientation gradually spread, legal systems began to abolish the institution, leading to the Slavery Abolition Act in 1833 in the British Empire. After all, the Slavery Convention was adopted in 1926. In this regard, the law did not generate the moral value itself, but it formalized and institutionalized an already emerging societal consensus.

In the present era, the governance of the Common Heritage of Mankind (CHM) faces a comparable pre-ethical dilemma. The current limitations of practical legal mechanisms largely arise from the fact that the global community has not yet achieved a unified ethical agreement regarding the status and management of these shared resources. Just as the abolition of slavery followed a change in society's moral views, an

effective legal system for the global commons must also be based on a strong ethical commitment that treats these resources not as “spoils of power” but as a shared trust for present and future generations. Until such an ethical foundation becomes firmly established, legal ‘minimums’ will remain impractical to safeguard the long-term interests of humanity.

1.3. Conclusion.

The legal and ethical aspects of the common heritage of mankind are closely intertwined and indispensable. Their integration helps societies become more adaptable and contributes to the development of a civil society. The interaction between these two dimensions demonstrates that law alone is often insufficient; without ethical values it cannot produce long-term results. The emergence of new ethical standards serves as an indicator of future legal norms. In a rapidly changing world, it is essential to strengthen ethical awareness regarding the CHM to safeguard the interests of future generations. Such values may eventually evolve into binding rules. As humanity is responsible for its actions, the common heritage of mankind should be approached as one of the fundamental concerns of humanity.

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BƏŞƏRİYYƏTİN ORTAQ İRSİNİN QORUNMASI: HÜQUQİ VƏ ETİK ASPEKTLƏR

XÜLASƏ

Məqalə bəşəriyyətin ortaq irsinin hüquqi və etik aspektlərini araşdırır. Hüquqi çərçivə resursların idarə olunmasını təmin edir, lakin yalnız uzunmüddətli nəticələr əldə etmək üçün cəmiyyətə etik dəyərləri tanıması və onlara hörməti aşılamaq lazımdır. Bəşəriyyətin ortaq irsi prinsipləri – mülkiyyətin mənimsənilməməsi, beynəlxalq birgə idarəetmə, resurslardan əldə olunan faydaların ədalətli bölüşdürülməsi, sülh məqsədli istifadə və gələcək nəsillərin maraqlarının qorunması – həm hüquqi, həm etik əsaslarla resursların ədalətli istifadəsini təmin edir.

Etik və hüquqi integrasiya etik dəyərləri qanuniləşdirmək vasitəsilə beynəlxalq birliklər və insanların bu dəyərlərə hörmətini təmin edir. Bəşəriyyətin Ortaq İrsinin qorunması və idarə olunması kollektiv məsuliyyət tələb edir və bu bütün insanlığın borcudur.

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ОХРАНА ОБЩЕГО НАСЛЕДИЯ ЧЕЛОВЕЧЕСТВА: ПРАВОВЫЕ И ЭТИЧЕСКИЕ АСПЕКТЫ

РЕЗЮМЕ

В статье исследуются правовые и этические аспекты общего наследия человечества. Правовая база обеспечивает управление ресурсами, однако для достижения долгосрочных результатов необходимо, чтобы общество признавало этические ценности и прививало уважение к ним. Принципы общего наследия человечества – непризнание собственности, международное совместное управление, справедливое распределение выгод, использование ресурсов в мирных целях и защита интересов будущих поколений – обеспечивают справедливое использование ресурсов как на правовой, так и на этической основе.

Этическая и правовая интеграция через легализацию этических ценностей обеспечивает уважение международных сообществ и людей к этим ценностям. Охрана и управление общим наследием человечества требуют коллективной ответственности, и это является долгом всего человечества.

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