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INTERNATIONAL LEGAL REGULATION OF THE COMMON HERITAGE OF MANKIND AND HUMAN RIGHTS NORMS

Açar sözlər: ortaq irs, bəşəriyyət, beynəlxalq birgə idarəetmə, faydanın bölüşdürülməsi, davamlı inkişaf, gələcək nəsillərin mənafeyi naminə.

Ключевые слова: общее наследие, человечество, международное совместное управление, распределение благ, устойчивое развитие, в интересах будущих поколений.

Keywords: the common heritage, mankind, international joint management, sharing of benefits, sustainable development, benefit of future generations.

Introduction

Desiring, by this Convention, to develop the principles embodied in Resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that area of the seabed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States. The Moon and its natural resources, the area of the seabed, the ocean floor and the subsoil are subject to the principle 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 [9, p. 25; 4].

In the mid-20th century, seven countries had territorial claims over the Antarctic continent. These states are Argentina, Australia, the United Kingdom, France, Norway, Chile, and New Zealand. The United States and the Soviet Union reserved the right to claim sovereignty over the continent. The Antarctic Treaty, consisting of fourteen articles, was signed at the Antarctic Conference held in 1959, by the claimant states and by states reserving the right to do so, as well as Belgium, Japan, and South Africa. Sovereignty claims under the Antarctic Treaty are frozen, but the existence of the claims is not denied. A comprehensive treaty regime for Antarctica has been established within the framework of international instruments adopted by the parties to the Antarctic Treaty and it is called the Antarctic Treaty System (ATS). ATS is based on three core values: peace, science, and environmental protection [6, p. 2].

The legal debates regarding the global commons started since 1960. Rivalry between the opposing blocs (US and USSR) resulted in a surge

of scientific developments that led to an increasing interest in the exploration and exploitation of outer space and the deep seabed. Consequently, the need for the regulation of legal relations regarding outer space and the deep seabed emerged. 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). However, the concept of the common heritage of mankind (CHM) did not originate from the Maltese Ambassador’s proposal rather, it contributed to the concept’s development and led to its rapid adoption in scholarly literature [11].

Human rights and the common heritage of mankind have some common aspects. Equality, a fundamental principle of human rights, is reflected in the common heritage of mankind. All states have access to the common heritage without discrimination. States can use the common heritage of mankind without compromising the needs of future generations. To conclude, sustainable development is a cornerstone of the common heritage of mankind. Some lawyers consider that the common heritage of mankind forms part of the third generation of human rights.

1.1. The international legal foundations of the concept of Common Heritage of Mankind

“Res nullius” and “Res communis” are ancient Latin concepts that derive from Roman law and contains some peculiarities of the common heritage of mankind. “Res nullius” refers to “things belonging to no one”. This can happen when a person abandons their property, thereby making it available for anyone to claim. The first person who takes possession of such property becomes its new owner. This concept also applies to wild animals and discarded objects. This concept contradicts the common heritage of mankind. Article 137 of UNCLOS stands against

“Res nullius”, which forbids the claim or exercise sovereignty or sovereign rights over any part of the common heritage or its resources.

By the law of nature, these things are common to mankind, the air, running water, the sea, and consequently the shores of the sea. To be characterized as *res communes*, those spaces that are free and open to all, should fulfil at least three criteria: the absence of territorial sovereignty and the non-recognition of sovereign claims and the freedom of access and exploitation of resources by those capable of doing so [7, art. 1; 5].

Article 136 of UNCLOS states that the area and its resources are the common heritage of mankind. This provision is significant, because of its explicit reference to the common heritage of mankind [9, art. 136].

According to the Moon Agreement, the Moon and its resources belong to humankind, states must not claim sovereignty over them and states must not claim sovereignty over them and an international regime must be established to regulate the exploitation of the natural resources of the moon. The main purposes of the international regime to be established shall include:

- (a) The orderly and safe development of the natural resources of the moon;
- (b) The rational management of those resources;
- (c) The expansion of opportunities in the use of those resources;
- (d) An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration [10, p. 5, art. 11(7)].

Whilst fully respecting the sovereignty of the States on whose territory the cultural (monuments, groups of buildings, sites) and natural

heritage (natural features, geological and physiographical formations, natural sites) is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. The importance of this provision lies in providing a legal interpretation of the “world heritage” and promoting cooperation among countries as a whole [8, art. 6(1)].

1.2. The relationship between the Common Heritage concept and human rights

The common heritage of mankind is governed by international law and human rights principles. Human rights and the common heritage of mankind have some common aspects. The link between the common heritage of mankind and human rights is deep-rooted. Fundamental principles of human rights are reflected in the common heritage of mankind.

All states have access to the common heritage without discrimination. States can use the common heritage of mankind without compromising the needs of future generations. To conclude, sustainable development is a cornerstone of the common heritage of mankind.

According to some scholars, the common heritage of mankind is included in the third generation of human rights. The third generation of human rights, also called solidarity rights or collective rights, refers to rights that go beyond individual freedoms and focus on groups, peoples and humanity as a whole. Right to self-determination, right to development, right to a healthy environment, right to peace and security, right to cultural heritage, right to humanitarian assistance belong to the third generation of human rights. The objectives set out in the Right to Development and the Common Heritage of Mankind are intended to ensure the interests of individuals, communities, and future generations.

The common heritage of mankind and human rights have the same kind of tensions. These discrepancies push human rights and the common heritage of mankind to require a choice to be made. Which must be prioritized, individual or collective rights, the needs of the present generation or future generations.

Summing up these observations, it seems safe to say that the connections between heritage and human rights are fundamentally concerned with protecting the sources of the individual and collective self-understandings in which we live and recreate ourselves. It was this understanding of culture as relational, as a meaning-creating medium rather than as any ‘thing’ in particular, that was relayed from the researchers to the practitioners at the seminar in Estonia [3].

1.3. Current legal issues and shortcomings

The lack of a definition regarding the concept of humanity’s common heritage leads to the failure to draw a conceptual framework, to a complete legal determination, and to problems in implementation. Some of the legal conventions regarding the common heritage of mankind are non-binding, which means states cannot be obliged or punished when they fail to comply [2, p. 6].

The fundamental purposes of international law include promoting the peaceful resolution of disputes between states, fostering cooperation and mutual understanding, establishing a world order based on universal values, and addressing common challenges such as human rights, economic development, and environmental protection. One of the main issues is enforce compliance by states [12, p. 73].

The standards of human rights, while authoritatively defined in international and regional treaties and customary international law, can be applied in practice only through national constitutions, legal systems, and institutions. States can implement provisions on the Common Heri-

tage of Mankind into their national legal systems [1, p. 84].

1.4. Conclusion

The common heritage of mankind has only recently emerged, it is focused on solving the most important issues for humanity. It is based on the principles of international joint management, equitable sharing of benefits, peaceful use and protection for future generations of areas and resources beyond the limits of national jurisdiction, such as the seabeds, the ocean floor, the Moon and its natural resources. The main documents regarding the common heritage of mankind are UNGA Resolution 2749 (XXV), UNCLOS, The Moon Agreement, Outer Space Treaty, World Heritage Convention and Antarctic Treaty.

It further affirms the deep connection between common heritage of mankind and human rights, as it belongs to the 3rd generation of human rights. They share the same basic principles that are essential for their realization, such as the principles of equality, non-discrimination and sustainable development.

The problems of the common heritage of mankind include the lack of a specific legal understanding of it, the fact that most conventions are non-binding, and the fact that countries prioritize their own interests and do not cooperate in sharing the common heritage of mankind. States can solve these problems in cooperation with other states and promote the right to share the common heritage of mankind.

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**BƏŞƏRİYYƏTİN ORTAQ İRS KONSEPSİYASININ BEYNƏLXALQ HÜQUQİ
TƏNZİMLƏNMƏSİ VƏ İNSAN HÜQUQLARI NORMALARI**

XÜLASƏ

Bu məqalədə beynəlxalq hüquqi tənzimləmə çərçivəsində Bəşəriyyətin Ümumi İrsinin (BÜİ) təkamülünü, hüquqi əsaslarını və problemlərini araşdırılır. BÜİ ilə bağlı hüquqi tənzimləmələr UNCLOS, Ay Müqaviləsi, Ümumdünya İrs Konvensiyası və Antarktika Müqaviləsi Sistemidir. BÜİ konsepsiyası dövlətlərin milli yurisdiksiyasından kənarda olan müəyyən əraziləri və onların resurslarını – dərin dənizin dibi, kosmos, Ay, dünya mədəni və təbii irsini əhatə edir. BÜİ-in əsas elementləri mənimsəməmək, beynəlxalq idarəçilik, mənfəətin ədalətli bölüşdürülməsi, dinc məqsədlər üçün istifadə və gələcək nəsillər üçün qorunmadır.

Əhəmiyyətinə baxmayaraq, BÜİ-nin hüquqi tərfi mövcud deyil, müvafiq konvensiyalar məcburi xarakter daşımır və icra mexanizmləri zəif inkişaf edib, bu da hüquqi boşluqlar yaradır. Nəticə etibarilə, BÜİ konsepsiyası Bəşəriyyətin Ümumi İrsindən ədalətli istifadə üçün çərçivə təmin edir və qlobal miqyasda paylaşılan sahələrin və resursların davamlılığını təmin edir. Bu məqsədlərə nail olmaq üçün daha sıx beynəlxalq əməkdaşlıq və bütün dövlətlərin öz yurisdiksiyaları daxilində öhdəliklərinin həyata keçirilməsi tələb olunur.

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**МЕЖДУНАРОДНО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ КОНЦЕПЦИИ
ОБЩЕГО НАСЛЕДИЯ ЧЕЛОВЕЧЕСТВА И НОРМЫ ПРАВ ЧЕЛОВЕКА**

РЕЗЮМЕ

В данной статье рассматриваются эволюция, правовые основы и проблемы общего наследия человечества (ОНЧ) в рамках международно-правового регулирования. К ОНЧ относятся Конвенция ООН по морскому праву, Договор о Луне, Конвенция о всемирном наследии и Система Договора об Антарктике. Концепция ОНЧ охватывает определённые районы и их ресурсы, находящиеся за пределами национальной юрисдикции государств – глубоководное морское дно, космическое пространство, Луну, мировое культурное и природное наследие. Основными элементами ОНЧ являются неиспользование, международное управление, справедливое распределение выгод, мирное использование и защита для будущих поколений.

Несмотря на свою значимость, концепция МСОП сталкивается с рядом правовых пробелов, включая отсутствие юридического определения, необязательный характер международных конвенций и недостаточно эффективные механизмы обеспечения соблюдения. В то же время она создаёт основу для справедливого использования МСОП и способствует формированию глобальных территорий и устойчивому управлению ресурсами. Достижение этих целей требует более тесного международного сотрудничества и последовательного выполнения обязательств всеми государствами в пределах их национальной юрисдикции.

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