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An analysis on the Status of Common Heritage of Mankind in the Governance of the Moon and other Celestial Bodies- A glimpse

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Abstract:

The 20th Century is remarkable in the world history. The first half saw the advent of atomic energy and the second half saw the pleasant event of space exploration. The launching of Sputnik by the former Soviet Union in 1957 has signaled the beginning of space race between two super powers. Since then the outer space activities increased tremendously with the passage of time. The race that began as bilateral has now become multilateral with the entry of several other states to the field of outer space. The states have also started to carry on specific missions directed towards various celestial bodies existing in the solar system. The concept of CHM is a novel concept based on some idealistic principles. Despite its idealistic roots, the concept is very significant as it represents the voice of great majority of the developing countries. CHM advocates for a well-balanced development while avoiding the monopoly of few over the resources outside the national jurisdiction.

Index Terms: **Common heritage of mankind, Background, territorial sovereignty,Moon Treaty**

INTRODUCTION

The Common Heritage of Mankind principle was introduced in international law to internationalize certain common spaces beyond national jurisdiction. It has found a certain application in outer space as well as in the Antarctic, but it is with respect to the oceans that it has so far found its fullest exposition. Since the principle is very much tied to the Area in the United Nations Convention on the Law of the Sea (UNCLOS), i.e., the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, it can be said to have triggered that convention, but time consumption also almost responsible for its demise. As a consequence, its content has changed over the years. A key objective of the United Nations Convention on the Law of the Sea (UNCLOS) as stated in its Preamble, is to contribute to the realisation of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries. This paper analyse the availability of authorities or forums, at domestic or international level to cope with the multitude of questions relating to the moon and other celestial bodies.

COMMON HERITAGE OF MANKIND

The Concept of 'Common Heritage of Mankind'[1] has originated and developed in the light of the exploration and exploitation of deep seabed and subsoil. The concept, being the brainchild of Malta's representative Arvid Pardo[2], advocates for the joint ownership and sharing of benefits derived from the resources. The concept propagates a system of management of resources which upholds the best interest of all the people of the world. Though, the concept cannot be defined in precise terms, components as elaborated by Arvid Pardo[3] and enshrined in the Law of the Sea Convention, 1982[4] can be used to understand the meaning of the principle. They are as follows: (i)The areas and resources designated as CHM shall not be subjected to individual appropriation. (ii) The management of the area and resources which fall under CHM shall be carried out at the international level by a common management system. (iii) There shall be active and equitable sharing of benefits derived from the exploitation of the common heritage area and resources. (iv) Necessary measures shall be taken to protect and preserve CHM for future generations.(Sustainable development principle) (v)The CHM shall be used for peaceful purposes[5]. In addition to these major elements, we may also see references to freedom of access and scientific investigation, transfer of technology, international cooperation and peaceful settlement of disputes as elements of CHM. However the researcher would like to clarify that these elements are part and parcel of the five major elements mentioned above.

[1]Hereinafter referred as CHM

[2]The concept first found its place in the memorandum submitted by the Government of Malta to the United Nat ions Secretary General on 17 August 1967. Further in November 1967, the Ambassador Arvid Pardo, permanent representative of Malta to the United Nations, urged the delegates of First Committee of the General Assembly to consider the resources of oceans beyond national jurisdiction as the 'common heritage of mankind'.

[3]Arvid Pardo, 'An International Regime for the Deep Seabed: Developing Law o r Developing Anarchy?', Texas International Law Forum, Vo l. 5, No. 2, W inter 1969, pp. 204 - 217 at p. 211. Also in Arvid Pardo, 'The Emerging Law of the Sea', in Don Walsh (ed .), The Law of the Sea - Issues in Ocean Resource Management, (New York: Praeger, 1977) pp. 33 - 76 at p. 62.

[4]Articles 137, 140, 141, 143 and 145 of the United Nations Convention on the Law of the Sea, 1982.

[5]Nicolas Mateesco Matte, 'The Co mmon Heritage of Mankind and Outer Spac e: Toward a New International Order for Survival', Annals of Air and Space Law, Vol. XII, 1987, pp. 313 - 335 at pp. 320 & 321.

Therefore the discussion as to these subsidiary elements are made within the major elements. The above-mentioned five elements are also identified by other authorities in the field of space law[6].

BACKGROUND OF STUDY

The common heritage principle derived for the internationalization of common spaces outside national jurisdiction. Three such areas normally enter the picture if one tries to focus on the concrete application of this principle, namely the Antarctic, outer space, and the deep seabed[7]. However, this concept is not applied in a uniform manner in all of these areas. It will suffice to compare the 1959 Antarctic Treaty, which does not even mention the common heritage principle in its founding document, the so-called Moon Treaty of 1979, which does mention the principle but leaves the establishment of an international regime for later, and the 1982 United Nations Convention on the Law of the Sea, which does both, to understand that the given enumeration follows a crescendo pattern, not only in time, but also in the robustness of the regime so established[8]. It is thus with respect to the 1982 Convention that the common heritage principle has found its fullest exposition so far.

TERRITORIAL SOVEREIGNTY

Territorial sovereignty has in large part defined both international relations and international law since the 1648 Treaty of Westphalia. The primary exception to this principle is the international commons. In these areas, which include the deep international seabed, the Arctic, Antarctica, and outerspace[9], concerns over free passage outweighed the great Western powers' territorial ambitions and Grotius's mare liberum triumphed. As a result, these regions were gradually regulated to a greater or lesser extent by the Common Heritage of Mankind (CHM) principle, in which theoretically all of humanity became the sovereign over the international commons. Yet there remains not commonly agreed-to definition of the CHM amongst legal scholars or policymakers. Developing and developed nations disagree over the extent of international regulation required to equitably manage commons resources. These disagreements have played out in the diverse legal regimes of the Antarctic, deep seabed, Arctic, and outer space, each with its own version of the CHM principle.

SPECIAL SOVEREIGNTY AREAS

As resource competition intensifies at the extreme of human civilization, "special sovereignty areas" (SSAs) and in particular the communal property principle of the CHM are under pressure with the need for greater private economic development. With resources becoming increasingly scarce and technology advancing to meet surging demand, longstanding principles of communal property in the international commons will either be reinterpreted or rewritten outright. The only question is whether this redrafting will occur proactively with the international community laying out a multilateral legal regime to govern these areas, or retroactively, formalizing a sub-optimal status quo.

RE-CONCEPTION OF SPACE LAW

A historical examination of sovereignty coupled with case studies of new territorial claims on the deep Arctic seabed and the re-conception of space law to favor private property rights will demonstrate this process. By exploring the development and interconnected nature of these branches of international law, we can understand how the regulatory frameworks and theoretical justifications for these areas are evolving and in turn impacting the commons[10]. Existing comparative case studies on commons territories focus on the similarities and differences of commons regimes while neglecting the co-evolution and converging fate of the CHM regions, specifically that all components of the international commons are either now being challenged or already shrinking. The international commons must thus evolve to survive. This fact necessitates a review analyzing how the CHM principle has developed both theoretically and in practice.

MOON TREATY

Although the common heritage of mankind has been a legal norm, its application and implementation are far from satisfactory. In the sphere of outer space, despite the enforcement of the 1979 Moon Treaty, there are few States acceding and not one which represents a major power in outer space[11]. Since there is no possibility of exploiting lunar resources at the present time, it is impossible to predict how equitably and reasonably these resources would be distributed. As to other uses of outer space, such as the geostationary orbit, the 'first come, first served' rule still holds true[12]. Although the International Telecommunication Union adopted a resolution in 1979, declaring that the geostationary orbit is the common natural resource of mankind, all States have the right to enter the orbit and to use the spectrum, a reality demonstrated by the fact that of all the satellites operating in the geostationary orbit, two-thirds belong to the US and USSR; most of the developing countries do not and could not share the benefits from such a common resource. In addition, an important element in the concept of CHM - i.e., the principle of use exclusively for peaceful purposes, has not been maintained. The most obvious example of this was the arms race in outer space between the two superpowers in the last decade[13].

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[6]See D. Goedhuis, 'The Conflicts in the Interpretation of the Leading Princip les of the Moon Treaty of 1979', Report of the Sixtieth Conference of the International Law Association, 29 August - 4 September 1982, Published in 1983, pp. 479 - 509 at pp. 480 - 487.

[7]Jose Monserrat Filho, 'Total Militarization of Space and Space Law: The Future of the Article IV of the 67' Outer Space Treaty', Proceedings of the Fortieth Colloquium on the Law of Outer Space, 6 - 10 October 1997, Published in 1998, pp. 358 - 369

[8]Daniel A. Porras, 'The "Common Heritage" of Outer Space: Equal Benefits for Most of Mankind', California Western International Law Journal, Vol. 37, No. 1, Fall 2006, pp. 143 - 176 at p. 145.

[9]Jose Monserrat Filho, 'Total Militarization of Space and Space Law: The Future of the Article IV of the 67' Outer Space Treaty', Proceedings of the Fortieth Colloquium on the Law of Outer Space, 6 - 10 October 1997, Published in 1998, pp. 358 - 369

[10]Daniel A. Porras, 'The "Common Heritage" of Outer Space: Equal Benefits for Most of Mankind', California Western International Law Journal, Vol. 37, No. 1, Fall 2006, pp. 143 - 176 at p. 145.

[11]The Agreement came into force on 11 July 1984 when mere were only five treaty parties: Austria, Chile, the Netherlands, the Philippines and Uruguay.

[12]Jose Monserrat Filho, 'Total Militarization of Space and Space Law: The Future of the Article IV of the 67' Outer Space Treaty', Proceedings of the Fortieth Colloquium on the Law of Outer Space, 6 - 10 October 1997, Published in 1998, pp. 358 - 369

[13]Kiss noted in 1985 that 'the present outer space regime is in general thus very much like that of the high seas: it can be considered a res communis, but does not fulfil the criteria of the concept of the common heritage of mankind'. See A. Kiss, "The Common Heritage of Mankind: Utopia or Reality', 40 Int. J. (1985) at p 430.

CONCLUSION

An emerging issue of special significance, consequent to the modern phenomenon of private space activities, is the extent of preparedness of the states to cope with the problems associated with the space activities at the domestic level. The space law, as a result of various commercial activities, is moving into the areas of law which were previously remote, including private international law, insurance law, contract law, intellectual property law, trade law, finance and investment law and criminal law. This means, outer space activities are regulated not only by public international law but also by domestic laws of the states. While very few states, at present, have some rudimentary norms at the domestic level, most others are still in search of domestic law for supplementing the international space law. Even in case of those states, which have national space laws, the difference in their laws has created problem of harmonization. In addition, the problem of harmonization of public international law and domestic law often arises as they operate at two different levels. It also seems that there is no special body at domestic or international level to cope with the multitude of questions relating to the moon and other celestial bodies. For solving this issue, all states shoud give attention to issue by way of enacting treaties by forming conventions and other countries will be a signatory as binding nature otherwise it could not be concluded.