



Common Heritage of Mankind - A Detailed Study

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Abstract

The principle of *Common Heritage of Mankind (CHM)* is a foundational concept in public international law that seeks to establish a collective ownership framework for certain global commons, ensuring their equitable use for the current and future generations.

The Common Heritage of Mankind (CHM) has become a dominant principle adopted globally and in international treaties, which have the subject matter of governing resources beyond national jurisdictions. However, despite this widespread acceptance and adoption by the nations globally, it is still often debated whether it constitutes something more than a mere treaty provision that only binds state parties, per se, an international law?

This research paper explores the origins, framework, basis, application and controversies surrounding the CHM doctrine, with a focus on the **United Nations Convention on the Law of the Sea (UNCLOS)** as well. This paper also seeks to explore whether international courts can consider CHM as a valid law in adjudicating disputes of parties that aren't part of the specific treaties adopting CHM per se.

Keywords: Common Heritage of Mankind, International Law, UN, UNCLOS, Law of the Sea, Sources of Law.

Introduction

In recent years, the issue of countries trying to gain control over the oceans and its resources has gained a lot of attention globally. Further, in addition to the traditional conflicts relating to the ocean and seabed like over, fishing rights and the continental shelf of the territorial sea, gradual technological advancements have opened access to more resources being extracted and hence, further exploitation of the seabed.

In 1970, the General Assembly of the UN decided to convene a conference on the laws of the sea. This was mainly because the developing nations had increasingly started fearing that the technologically advanced and developed nations would soon gain control of and exploit the seabed to the core for national appropriation, which in turn would leave the developing countries with nothing to utilize and lead to exploitation of the sea resources.

This issue led Ambassador Pardo of Malta's Permanent Mission to the UN to propose

that the seabed and its resources, lying beyond national jurisdiction, should be recognized as the “*common heritage of mankind*” and be preserved and for peaceful purposes only.

Pardo’s proposal was accepted and then embodied in Article 1 of United Nations General Assembly Resolution 2749¹, Declaration of Principles Governing the Seabed and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, stating that the seabed’s resources are the common heritage of mankind².

Subject to certain reservations and clarifications, this declaration was unanimously adopted (108 in favour, none opposed, and 14 abstentions) as a set of principles intended to form the foundation for the international framework expected to be further established by the Law of the Sea Conference. The legislative history of the declaration indicates that there was no explicit meaning given to the phrase, common heritage of mankind.’

Definition of the Principle of CHM:

Scholars and legal experts have provided various definitions of the CHM doctrine:

- **Arvid Pardo (1967):** The Maltese diplomat and UN Ambassador, often credited as the “*father of CHM*,” described it as a principle that ensures the **equitable sharing** of natural resources beyond national jurisdiction.
- **International Law Commission (ILC):** Defines CHM as a principle that prohibits individual or national appropriation of designated global commons and mandates their **peaceful use** and **shared management**.
- **Black’s Law Dictionary:** Defines CHM as “*a legal principle in international*

law that states that certain resources belong to all of humanity and should be preserved for future generations.”

Going by the literal definition:

The term “*common*” refers to something that is shared in terms of title, use, or enjoyment, without being divided into separate portions.

The term “*heritage*” refers to property or interests that are inherited due to one’s birth, passed down from ancestors or from earlier times.

In defining “*mankind*”, individual human rights are those rights that people have simply because they are human, while the rights of mankind pertain to the group as a whole.

Thus, the use of the phrase common heritage of mankind denotes *worldwide common ownership of the seabed and its resources beyond the limits of national jurisdiction*³.

Some features often associated with the CHM principle include⁴:

- a prohibition of acquisition of, or exercise of sovereignty over, the area or resources in question;
- the vesting of rights to the resources in question in humankind as a whole; * reservation of the area in question for peaceful purposes;
- protection of the natural environment;
- an equitable sharing of benefits associated with the exploitation of the resources in question, paying particular attention to the interests and needs of developing states; and
- governance via a common management regime.

Background and History of The Principle of CHM:

The historical discussion on the principle of CHM traces its origin to the speech **Pardo** gave to the UN in 1967. In this speech, he proposed that the seabed beyond national jurisdiction be considered the CHM. This was an important moment that later led to negotiations of the 1982 Law of the Sea Convention (UNCLOS III). It was due to these that he earned the title “**father of the law of the sea.**”

But CHM has practically had a much longer and elaborate history. Other people have also shared their views on CHM and contributed to its existence. Like, **Elisabeth Mann Borgese**⁵ (1918 – 2002) considered CHM as an ethical concept central to a new global order, based on newer forms of cooperation, economic theory and philosophy. This history is important to understand the ethical basis of CHM, which is the inherent responsibility of humans to care for and protect the environment, for the present and future generations.

A 1948 draft of the World Constitution proposed that the Earth and all of its resources belong to all of humanity, and it should be for everyone’s benefit. Further, the growing concerns over nuclear technology and resources, also sparked an early suggestion that nuclear resources should be managed collectively, instead of a single nation.

Traces of the principle of CHM are also found in the U.N. Outer Space Treaty (1967), which governs the use of outer space, the moon, and other celestial bodies. CHM, however, achieved more prominence in the context of the law of the sea.

The 1967 World Peace through Law Conference referred to the high seas as “the common heritage of mankind” and stated that the seabed should be subject solely to the

U.N. jurisdiction and control⁶. Eventually, the **United Nations Convention on the Law of the Sea, 1982** (UNCLOS) formally enshrined CHM in Part XI, governing deep-seabed mineral resources.

Basis of The Principle of CHM

The principle of CHM is rooted and based in the ancient Roman Law. According to Roman law, some things were considered *res communes*, meaning they belonged to everyone and couldn’t be owned privately i.e. be subject to private rights. These items typically include the air, rainwater, river water, the sea, and its shores⁷.

In international law, the term *res communes* generally tends to refer to the high seas, outer space, and celestial bodies, all of which shall not be subject to the sovereignty of any individual state, and states are bound to refrain from taking any actions which might adversely affect their use by other states⁸. This expression in the declaration, which states that the seabed shall be the common heritage of mankind and not subject to state appropriation, conforms to the inherent basis and values of the concept of *res communes*.

Therefore, the term “*common heritage of mankind*” can be understood as a legal principle that establishes shared ownership of the seabed and its resources among nations, which further implies that without the prior consensus and agreement of all joint owners i.e. the global nations, no individual state could exercise its individual right to the property held jointly with the other states of the world.

Therefore, the seabed can be viewed as a subset falling within *res communes humanities*, i.e. belonging to all of humanity.

Application of The Principle of CHM

The traditional Roman law rules provided that when one owner held a piece of property in common with others, he could not build or engage in any activity affecting the property without the consent of all the joint owners.

In the past, similar rules were followed in traditional land laws across different regions of Africa. For example, among the Ashanti people in Ghana, it was thought that individuals could use land for their benefit, but the ownership belonged to the whole community. No one could make decisions about the shared land without the agreement of all the co-owners.

Among the Ashanti, there was a deep-seated idea that all the land belonged only to the ancestors. This concept has also been eloquently expressed in the following statement. “[L] and belongs to a vast family of whom many are dead, a few are living and countless hosts are still unborn.”¹¹ This principle and underlying value of ownership of land could also be applied to the seabed and its resources in reference to the principle of CHM.

Clearly, one can see how these practices were prevalent and not just in Africa or Ashanti but other parts around the world as well. After a thorough analysis and understanding of these land law principles, one can also correlate how these can also fall under article 38.1.c of the Statute of the International Court of Justice as general principles of law recognised by civilised nations. These rules do not restrict an individual’s ability to act, but rather require that their use of the land, as common property, be done with the consent of everyone, with a portion of the benefits shared among all members of the community⁹.

This principle would be useful in preventing the exploitation of the seabed and its resources, allowing individual states to mine the seabed,

only under the terms of consent outlined in an international treaty and with a system for sharing the benefits with the other nations.

Over the years, CHM has been applied on various resources such as fisheries, Antarctica, the Arctic region, geostationary orbit, genetic resources (which include the genetic material from plants, animals, and other life forms that are valuable), and basic food resources.

In recent years, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has been in strong support of and has strongly backed the concept of CHM through various initiatives, such as declarations, conventions, and protocols, which recognize both natural and cultural heritages as a part of the CHM¹⁰. While complicated to define, “*natural and cultural heritage*” encompasses both tangible and intangible aspects, from archaeological sites and historic landmarks to cultural elements like literature, language, and traditional practices, as well as natural systems like islands, biosphere reserves, and deserts.

Outside of the context of international law of the sea, the CHM principle has also been declared explicitly to apply in the utilization of outer space and implicitly in the utilization of Antarctica¹¹.

In an ecological and generational context, it is possible to argue that the Earth itself is a global common shared by each generation and that CHM should “*extend to all natural and cultural resources, wherever located, that are internationally important for the well-being of future generations*”¹²

The United Nations Convention on The Law of The Sea (UNCLOS) and The Principle of CHM

The CHM was initially intended to be a concept that would completely revolutionise

the law of the sea and its resources by applying to all ocean space. In 1967, Arvid Pardo realized that strong nations would likely reject this idea since they were trying to expand their individual claim and control over more ocean space and resources. He believed that by concentrating on the legal status of the much more limited entity of the “seabed” beyond national jurisdiction, it was thought that CHM could gain an important foothold within the U.N. system.

The Maltese proposal resulted in several key developments, including the 1970 U.N. General Assembly Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, Beyond the Limits of National Jurisdiction. This declaration outlined the legal rules necessary to support the idea that the seabed and its resources are the Common Heritage of Mankind (CHM), leading to agreement on negotiating a new law of the sea convention: UNCLOS III (U.N. Convention on the Law of the Sea). However, the final result was a much narrower use of CHM than its original supporters had hoped for.

Part XI of UNCLOS III deals with the seabed and ocean floor and subsoil thereof (the “Area”) beyond the limits of national jurisdiction. Article 136 declares the Area and its resources (only) to be the “common heritage of mankind.” The Area and its resources cannot be claimed, appropriated, or owned by any state or person (Article 137). All rights to resources belong to mankind as a whole, with the International Seabed Authority (ISA) acting on mankind’s behalf (Article 140).

The ISA must ensure the equitable distribution of financial and other benefits arising from activities in the Area, taking into particular account the needs and interests

of developing states and others. Promotion of research, transfer of technology to developing states and protection of the marine environment’s ecological balance are all important functions of the ISA (Articles 143–145)¹⁷.

The provisions of Part XI establish an international administration system for only a small portion of the international commons (the Area and its resources). It doesn’t replace the general freedom of the high seas (Part VII), meaning the anticipated transformation of the law of the sea was not fully realized. In the 1970s, the most commercially valuable mineral resources in the area were believed to be manganese nodules, which led Pardo to argue that CHM’s scope was reduced to “ugly little rocks lying in the darkest depths of all creation.” Despite this significant limitation, the use of CHM was still groundbreaking enough to be one of the reasons the US chose not to join UNCLOS III.

Legal Frameworks Mentioning The Principle of CHM

One of the earliest influential documents was the Declaration of Principles, adopted by the U.N. General Assembly in 1970¹³. Paragraph 1 provides that “[t]he sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.”

Another mention of CHM is Article 136 of the widely adopted 1982 LOS Convention explicitly provides that “[t]he Area and its resources are the common heritage of mankind¹⁴”; The Convention further defines the “Area” as “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction,” and “resources” are limited to “solid, liquid or gaseous mineral resources in situ in the Area at

or beneath the seabed, including polymetallic nodules.”

Another example is Article 11 of the 1979 Moon Treaty, now in force for thirteen states (albeit none of the space powers), which explicitly incorporates the CH principle¹⁵.

Further, the principle has also been discussed in connection with Antarctica¹⁶. Further, some commentators have also advised applying the principle to other common space resources, including geostationary orbit and high seas fisheries.

In 1995, Malta had invoked the CH principle in proposing that the U.N. Trusteeship Council be transformed “*from a guardian of dependent territories to a body that acts as guardian and trustee of the global commons and the common concerns in the interest of present and future generations*,¹⁷” A proposal aimed to lead the conservation of the environment globally.

Is The Principle of CHM A Source of Law?

There has never been any dispute relating to the implementation of CHM, resulting in the lack of international courts providing their views regarding the position of CHM in the sources of international law. Ultimately, it is the judges of international tribunals who would have the authority to determine where the CHM lies in the sources of international law when a dispute related to the CHM finally arises.

The question is whether the use of the phrase common heritage of mankind be given any legal backing i.e. authority to be used? And what is the legal status of the CHM principle?

Some people argue that it sets out a fundamental and non-derogable norm, constituting an

obligation like *jus cogens*¹⁸. Whereas, some people have argued that CHM has attained the status of customary international law. The International Law Association’s 1986 Seoul Declaration, for example, provides that “[t]he concept of the common heritage of mankind as a general legal principle has entered into the corpus of public international law¹⁹.”

A remark made by a jurist, who has stated that: “*Common heritage of mankind, no matter how well motivated, in a legally binding document... carries no clear judicial connotation but belongs to the realm of politics, philosophy or morality and not law*²⁰.”

Writing in 2009, Wolfrum was of and elucidated on the opinion that “[t]he common heritage principle, as far as the use of common spaces is concerned, is a part of customary international law,” constituting “a distinct basic principle providing general . . . legal obligations with respect to the utilization of areas beyond national jurisdiction²¹.”

Others have found the assertion rather bold that the CHM principle is established within customary international law. For example, Joyner concludes that the CH principle is too indeterminate and lacks too much in being accompanied by state practice and *opinio juris* to have gained acceptance in customary international law²². Even if one believed and conforms to the assertion that the principle is a customary international law, they would also have to be open to the possibility that some states may have persistently objected to applying the principle in particular settings throughout time.

And if one goes by these arguments and agrees that CHM, if not a principle of international law, then it’s left to the realm of political or moral concept or non-binding soft law, which very often does not imply greater enforceability

and importance.

Further, Professors **Ved Nanda** and **George Pring** accurately but cautiously reported that the CH concept “*has received very favourable support from many expert commentators*” and refrain from giving an opinion on its exact legal status and standing²³.

The near-global acceptance of the LOS Convention and the 1994 Implementation Agreement, along with the practice of states and international organisations concerned with the deep-seabed minerals, provides evidence backing and supporting customary international law status of CHM.

To investigate and conclude the existence of CHM as a customary law or a general principle of international law, it is necessary to first identify the existing views regarding where CHM lies in the source of international law. The variations of views regarding the location of CHM can be grouped into the following groups:

CHM AS JUS COGENS

The view that considers CHM as a jus cogens norm existed during the negotiation process of UNCLOS 1982. There were several countries that viewed CHM constitute as a jus cogens norm, namely India, Trinidad & Tobago, Argentina, Iran, Chile, Jamaica, and Niger.

In 1979, the Republic of Chile put forward a proposal to recognize the CHM provision in Article 136 as a peremptory norm of general international law, which would prevent any deviation from it. However, the attempts by developing countries to establish CHM as a jus cogens norm lacked evidence to support this claim. The proposal by the Republic of Chile was not followed by the argument establishing the history of CHM as a jus cogens norm²⁴.

This effort was based on mere political desire and not on historical evidence supporting such recognition. The view that considers CHM as a jus cogens norm was presented by developing countries that had political interest to reinforce the obligation by developed countries to redistribute the exploitation results from mining the deep seabed²⁵.

In the end, UNCLOS 1982 does not expressly recognize CHM to have a peremptory nature. Despite this, there is a provision that prohibits the modification of Article 136. UNCLOS 1982 in Article 311 (6) stipulates that *the state parties have agreed to never amend Article 136, in which CHM is expressly adopted, nor to take part in any subsequent agreements that seek to undermine such principle*²⁶. Given that UNCLOS 1982 prohibits the derogation against Article 136, one may consider that CHM is a jus cogens norm, to which no derogation is allowed. However, the prohibition under Article 311 is only relating to the adoption of CHM in Article 136 and not the prohibition to make amendments against the rest of the operational provisions under Part XI.

This would mean that the drafters did not intend to declare CHM itself as a peremptory international norm. Hence, CHM is adopted as the basis for governing the activities in the Area, therefore it should not be altered as it would affect the rest of the provisions in Part XI.

The provision of Article 311 should also be understood to only prohibit the modification of Article 136 to ensure the conformity with the treaty’s object and purpose. Therefore, the prohibition under Article 311 is the same as the prohibition of reservation that is common to be found in international treaties as an attempt to ensure that the treaty’s object and purpose is preserved.

A treaty cannot simply create or declare a jus cogens norm. Since a treaty only binds states that have consented to it, it cannot declare certain provisions to apply to any other party outside those who have consented to be bound. A jus cogens norm must be accepted and recognized by the international community as a whole as a law regardless of their involvement in a particular treaty. Furthermore, the failure of Chile's proposal also signifies the lack of support from the international community to consider CHM as jus cogens norm.

A jus cogens norm must be widespread, it must be accepted and recognized by the international community as a whole as a law, regardless of their involvement in a particular treaty. Furthermore, the failure of Chile's proposal also signifies the lack of support from the international community to consider CHM as jus cogens norm.

According to the International Law Commission (ILC), for a norm to be considered as a jus cogens, it must be

accepted and recognized as a norm to which no derogation is allowed and can only be modified by a subsequent jus cogens norm²⁷. For a principle or norm to be considered a jus cogens, it has to be accepted and recognized by a large majority of the international community. However, the acceptance and recognition by every single nation is not required.

In the context of CHM, the failure to expressly recognize it as a jus cogens norm during UNCLOS III demonstrates the rejection from a substantial part of the international community. Therefore, we can conclude that CHM is not a jus cogens norm.

CHM AS A NON-BINDING LEGAL CONCEPT

Some scholars share the view that CHM has no binding power (beyond treaties) and is merely a legal concept. In 1975, **R.P. Arnold** was

one of the scholars who doubted the binding nature of CHM. He argued that the lack of a definite legal definition of CHM made it impossible to consider it to have a binding force. Arnold contended that CHM is only a form of political, philosophical, or moral commitment that is not a law. Arnold's view does not look at the contents of the CHM, but rather on its legal status. In 1975, R.P. Arnold was one of the scholars who doubted the binding nature of CHM. He argued that the lack of a definite legal definition of CHM made it impossible to consider it to have a binding force. Arnold contended that CHM is only a form of political, philosophical, or moral commitment that is not a law. Arnold's view does not look at the contents of the CHM, but rather on its legal status.

A similar view was also expressed by **Kemal Baslar** in 1998, who argued that the CHM principle was only a philosophical concept rooted in the philosophy of natural law.

Prior to Arnold, **Stephen Gorove** conveyed a similar view in 1972, which was rejecting CHM as a legal norm based on the absence of a definite legal definition²⁸. According to Gorove, CHM in the context of regulating the seabed beyond national jurisdiction is not a legal principle, but only a reflection of political aspirations and moral commitment.

The absence of a definition of CHM in the Declaration of Principle (UNGA Resolution 2749) indicates that the original intention of the declaration was to position CHM as a legal concept. As a concept, several developed countries (especially the US) are of the opinion that CHM does not have binding power²⁹. Developed countries rejected the binding nature of the Declaration of Principle resolution, as well as the Moratorium Resolution on the grounds that resolutions are recommendatory and not mandatory.

Another view that questions the binding force of CHM was presented by **Alexandre C. Kiss** in 1986, who argued that CHM is a soft law. Kiss argued that the transformation of the CHM from a utopia into a reality depended on the willingness of states to relinquish their rights and claims for the common good of mankind³⁰. Kiss' view placed CHM as a soft law, where its operation depends on the willingness of the state to recognize and implement it³¹.

The views that placed CHM as merely as a legal concept are time and context sensitive. Over time, it is possible that a source of material law (including legal concepts) gains binding power and becomes a source of formal law.

CHMAS CUSTOMARY INTERNATIONAL LAW

There are several scholars who hold the view that CHM is a customary international law norm, including **Rudiger Wolfrum**, **L.F.E. Goldie**, and **John Noyes**. Wolfrum argues that the CHM fulfills the requirements of customary international law, which is having a distinct content that allows it to become part of the corpus of international law and supported with state practice accompanied by *opinio juris*³². He argues that although the implementation in each sector is different, there are the same basic principles that underlie the regulation.

Noyes also considers that CHM has the character of a customary law by looking at its acceptance status in the context of UNCLOS 1982. Noyes views that the nearly universal acceptance of UNCLOS 1982 can be interpreted as a form of recognition of CHM as a customary law³³.

L.F.E. Goldie is of the view that CHM is a customary law based on the existence of the Declaration of Principles (Resolution 2749

XXV) in 1970 by the UN General Assembly³⁴. The Declaration of Principles was supported by 108 countries (in favor), with 14 countries abstaining and no country voting against. This fact shows the acceptance of the international community towards CHM. Goldie argues that this fact reflects CHM as customary international law which has binding legal force.

Adding to this fact, the Group of Legal Experts on the Question of Unilateral Legislation are of the view that even though 14 countries abstained, this attitude shows explicit and implicit acceptance of the principles contained in the Declaration of Principles and recognize them as customary law.

So, for the principle of CHM to be considered as a customary international law, it must, without a fail satisfy the requirements of a customary law, which are- the existence of consistent state practice with *opinio juris*.

State practice can be shown from various sectors of international law that apply CHM to govern the utilisation of objects beyond national jurisdiction (Antarctica, outer space, deep seabed) which follow the same basic principles (core elements), namely the prohibition of acquisition (of the object), utilization reserved only for peaceful purposes, redistribution of the utilization results, and international management. The ratification of these instruments is a form of recognition of the application of CHM to each subject which lies beyond states' jurisdiction. The tendency of the international community to apply CHM as the basis for the regulatory regime governing the utilization activities beyond national jurisdiction also shows the existence of state practice that CHM has been recognised as customary law.

Recently, efforts have also been made to expand the range of application of Common Heritage of Mankind (CHM) in international

law to oversee the use of biodiversity in areas beyond national control (BBNJ). The draft regulation for BBNJ usage includes CHM as a fundamental principle. The adoption of CHM indicates the existence of *opinio juris* in the international community at large. It may be worth noting that the provisions of Article 136 of UNCLOS 1982 only adopt CHM in the context of deep seabed mining in the Area. Therefore, there is no legal provision that binds state parties to participate in adopting CHM in the context of BBNJ utilization³⁵. However, the international community has still chosen to embrace CHM as a guiding principle for regulating BBNJ, as if it were a duty under international maritime law. This may indicate that there exists *opinio juris* in which the international community considers it obligatory to adopt the CHM in any regulatory regime related to natural resources located beyond national jurisdiction.

The absence of objections to the application of CHM is also an indication that *opinio juris* exists. Hence, based on the analysis above, we can conclude that CHM as a legal norm has met the requirements of a customary norm.

Therefore, as a customary law, CHM can be considered to have binding power over all countries.

CHM AS A GENERAL PRINCIPLE OF INTERNATIONAL LAW

Resorting to the general principles of international law is only necessary when there is no relevant provision in international treaties or customary international law (filling the gap).

The recognition of collective ownership can be found in traditional communities in relation to land ownership. The Ashanti tribe in Ghana, for one, recognizes joint ownership of land, which requires the approval of all group members in its use. Indonesia recognizes

tanah ulayat, or lands, in which the ownership belongs to local traditional communities who are entitled the autonomy to decide land management and to gain benefits from the land or forest products from tanah ulayat³⁶. The recognition of traditional land ownership in various countries may indicate the widespread practice in the international community.

According to Bassiouni, a general principle of international law must exist (be practised) in several countries, but it does not require it to exist universally³⁷. This view is consistent with the view of ICJ judges in the South West Africa case in 1966, in which Judge Tanaka was of the view that the recognition of general principles by civilized nations does not mean recognition by all nations.

The commitment of countries to recognise the seabed as CHM through the UNGA resolution may indicate the position of CHM as a general principle of international law that is recognized by the international community. The recognition of CHM in the context of the regulation of outer space, Antarctica, and more recently, BBNJ, indicates a strong recognition from the international community recognising CHM as a general principle³⁸.

Bassiouni argues that although there may be differences in interpretation among academics regarding the parameters of a general principle of international law, there is a consensus in general for the existence of objectively identifiable core legal principles³⁹.

From the above facts coupled with the view from Bassiouni, the author concludes that CHM is a general principle of international law. Despite the absence of a concrete definition of CHM, the practice of the international community shows such absence does not diminish the significance of CHM as a general principle.

Based on the analysis so far, the author may

conclude that CHM is also a general principle of international law that can be used as a source of law by international courts in resolving disputes. If the judges of the international court do not subscribe to the view that CHM is a customary law, it would still be legitimate to view CHM as a general principle.

Controversies Surrounding CHM:

Controversies have been surrounding virtually all constituents of the CHM principle. This is because it essentially questions the regimes that apply to resources of global significance, irrespective of where they are situated. It therefore challenges traditional international law concepts such as acquisition of territory, sovereignty, sovereign equality, and international personality, as well as the allocation of planetary resources and consent-based sources of international law (Baslar 1997).

One overriding issue is essentially the extent to which CHM can prevent further fragmentation and privatisation of the commons (or enclosure) and replace this trend with more communitarian values and legal protection of the common good. There is a wide range of views and opinions on whether the core element of non-appropriation prevents CHM from applying to globally significant spaces and resources that exist within the sovereign territory of states, e.g., rainforests and their flora and fauna. The 1992 U.N. Framework on Climate Change refers to the problem of climate change as being the “common concern of humankind⁴⁰.”

Developing states tend to view this element of CHM as pivotal to achieving distributive justice, while developed states would rather retain the most for themselves to strengthen their political global standing. They further see this element as a potential impediment to investment and the use of market incentives,

e.g., property rights, to achieve economic and environmental benefits. They favour, for example, exploitation by private enterprise conducted under licensing arrangements.

The original Maltese proposal was for a treaty announcing the global climate system as a part of the CHM, but this was rejected. The developing states rejected the use of CHM in the 1992 U.N. Convention on Biological Diversity, perceiving it as a potential threat to their sovereign rights to use and benefit from biological resources within their territories⁴¹. They were suspicious of interference under the guise of environmental protection or via the acquisition of intellectual property rights.

Conclusion

The doctrine of the *Common Heritage of Mankind* is an extremely crucial concept in international law that seeks to prevent the monopolization of the global commons by a few powerful states. While CHM promotes **equity, environmental sustainability, and long-term conservation**, its position in the sources of international law is still a subject of debate.

The lack of uniformity of views on this matter can be attributed to the absence of a universal definition of CHM, as well as the tendency of international legal instruments to avoid giving a definition and only framing it as a declaration⁴². However, the absence of an authoritative definition does not prevent scholars from debating the position of CHM in international law sources.

Each view has followers with its own rationalization and can be associated with a specific timeline when the view was opined. Several views on this matter were put forward even before CHM was officially adopted in the final draft of UNCLOS 1982⁴³. Therefore, it is necessary to review the relevance of these views, including considering the latest developments.

Given that the CHM is concerned with the interests of all of mankind, it will only be appropriate if it can be treated as a law that can be applied to all cases involving any country. After thorough research and concluding this

paper, the author finds that CHM can be regarded as both a customary norm and a general principle of international law.

References

- Agustina Merdekawati, Marsudi Triatmodjo, and Irkham Afnan Trisandi Hasibuan, “Common Heritage of Mankind Beyond Treaty Provisions: Customary or General Principle?” *Indonesian Journal of International Law*, vol. 21, no. 3 (2024), Article 5.
- R.P. Arnold, “The Common Heritage of Mankind as a Legal Concept”, *International Lawyer*, vol. 9 (1975), pp. 153–166.
- Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (Kluwer Law International, The Hague, 1997).
- Elisabeth Mann Borgese et al. (eds.), *Ocean Yearbook*, 14th edn. (University of Chicago Press, Chicago, 2000).
- Committee to Frame a World Constitution, *Preliminary Draft of a World Constitution* (The University of Chicago Press, Chicago, 1948).
- W. Buckland and A.D. McNair, *Roman Law and Common Law* (Cambridge University Press, Cambridge, 1936), pp. 103–110.
- John E. Noyes, “The Common Heritage of Mankind: Past, Present, and Future”, *Denver Journal of International Law and Policy*, vol. 40 (2011), pp. 447–471.
- Arvid Pardo, “Address to the 22nd Session of the General Assembly of the United Nations”, UN Doc. A/6695, 18 August 1967.
- Arvid Pardo, *The Common Heritage: Selected Papers on Oceans and World Order 1967–1974* (Malta University Press, Malta, 1975).
- Peter H. Sand, “Sovereignty Bounded: Public Trusteeship for Common Pool Resources?” *Global Environmental Politics*, vol. 4, no. 1 (2004), pp. 47–71.
- Prue Taylor, *An Ecological Approach to International Law: Responding to Challenges of Climate Change* (Routledge, London, 1998).
- Prue Taylor, “Common Heritage of Mankind Principle”, in Klaus Bosselmann, Daniel Fogel and J.B. Ruhl (eds.), *The Encyclopedia of Sustainability: The Law and Politics of Sustainability*, vol. 3 (Sage, London, 2011).
- Helmut Tuerk, “The Idea of Common Heritage of Mankind”, in Norman A. Martínez Gutiérrez (ed.), *Serving the Rule of International Maritime Law: Essays in Honour of Professor David Joseph Attard* (Routledge, Oxfordshire, 2010), pp. 157–175.
- Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University / Transnational Publishers, Tokyo / Dobbs Ferry, NY, 1989).

- “The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries”, *The Wealth of the Commons*, available at: <https://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries> accessed on 20 June 2025.
- Rudolph Preston Arnold, “The Common Heritage of Mankind as a Legal Concept”, *International Lawyer*, vol. 9 (1975), pp. 153–171.
- Interest in Land in the Customary Law of Ghana, *Yale Law Journal*, vol. 74 (1965).

Endnotes

- 1 A/RES/2749(XXV)
- 2 Report of the Committee on the Peaceful Uses of the Seabed on the Ocean Floor Beyond Limits of National Jurisdiction, 24 U.N.
- 3 R.P. Arnold, “The Common Heritage of Mankind as a Legal Concept”, *International Lawyer*, vol. 9 (1975), pp. 153–166.
- 4 John E. Noyes, “The Common Heritage of Mankind: Past, Present, and Future”, *Denver Journal of International Law and Policy*, vol. 40 (2011), pp. 447–471.
- 5 The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries, The Wealth of the Commons <https://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries>.
- 6 Prue Taylor, “Common Heritage of Mankind Principle”, in Klaus Bosselmann, Daniel Fogel and J.B. Ruhl (eds.), *The Encyclopedia of Sustainability: The Law and Politics of Sustainability*, vol. 3 (Sage, London, 2011).
- 7 M. KASER, Roman Private Law
- 8 I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW.
- 9 Supra note.
- 10 R.P. Arnold, “The Common Heritage of Mankind as a Legal Concept”, *International Lawyer*, vol. 9 (1975), pp. 153–166.
- 11 John E. Noyes, “The Common Heritage of Mankind: Past, Present, and Future”, *Denver Journal of International Law and Policy*, vol. 40 (2011), pp. 447–471.
- 12 Prue Taylor, *An Ecological Approach to International Law: Responding to Challenges of Climate Change* (Routledge, London, 1998).
- 13 Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, G.A. Res. 2749,
- 14 LOS Convention, art. 136.
- 15 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies art. 11
- 16 R.P. Arnold, “The Common Heritage of Mankind as a Legal Concept”, *International Lawyer*, vol. 9 (1975), pp. 153–166.
- 17 Letter from the Permanent Rep. of Malta to the Secretary General (June 2, 1995), U.N. Doc
- 18 Prue Taylor, “Common Heritage of Mankind Principle”, in Klaus Bosselmann, Daniel Fogel and J.B. Ruhl (eds.), *The Encyclopedia of Sustainability: The Law and Politics of Sustainability*, vol. 3 (Sage, London, 2011).
- 19 ILA Seoul Declaration
- 20 S. Gorove, “The Concept of Common Heritage of Mankind: A Political, Moral, or Legal Innovation?”, *San Diego Law Review*, vol. 9 (1972)
- 21 Wolfrum, The Common Heritage of Mankind
- 22 John E. Noyes, “The Common Heritage of Mankind: Past, Present, and Future”, *Denver Journal of International Law and Policy*, vol. 40 (2011), pp. 447–471.
- 23 NANDA & PRING
- 24 Alexandre C. Kiss, “The Common Heritage of Mankind: Utopia or Reality?”, *Canada’s Journal of Global Policy Analysis*, vol. 40, no. 3 (1986)
- 25 Erik Franckx, “The International Seabed Authority and the Common Heritage of Mankind: The Need for States to Establish the Outer Limits of Their Continental Shelf”, *The International Journal of Marine and Coastal Law*, vol. 25 (2010), pp. 543–567
- 26 Supra note 30
- 27 ILC, “Report of the 71st Session,”
- 28 Gorove, “The Concept of ‘Common Heritage’

- 29 The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries, *The Wealth of the Commons* <https://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries>.
- 30 Alexander C. Kiss, "The Common Heritage of Mankind: Utopia or Reality?" *Canada's Journal of Global Policy Analysis* 40, no. 3
- 31 Supra note.
- 32 Wolfrum, "The Principle of the Common Heritage,
- 33 Noyes, "The Common Heritage of Mankind," 456.
- 34 LFE Goldie, "A Note on Some Diverse Meanings of the Common Heritage of Mankind," *Syracuse Journal of International Law and Commerce* 10, no. 1 (1983): 72–73.
- 35 "The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries", *The Wealth of the Commons*, available at: <https://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries>
- 36 Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, rev. edn. (Djambatan, Jakarta
- 37 Bassiouni, "A Functional Approach," 788
- 38 Wolfrum, Rüdiger. 2008. *Common Heritage of Mankind*.
- 39 Supra note.
- 40 "The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries", *The Wealth of the Commons*, available at: <https://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries>
- 41 Supra note 45
- 42 Alexandre C. Kiss, "The Common Heritage of Mankind: Utopia or Reality?", *Canada's Journal of Global Policy Analysis*, vol. 40, no. 3 (1986)
- 43 Wolfrum, Rüdiger. 2008. *Common Heritage of Mankind*.

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