University of Glasgow | School of Social & Political Sciences

Human Rights Considerations of the Common Heritage of Mankind Principle

September, 2015

Student ID: 2150404

Word count: 12 418

Turnitin ID:

Turnitin Grade (%):

Presented in partial fulfilment of the requirements for the Degree of

M.Sc. in Human Rights and International Politics.

ABSTRACT

This dissertation looks into the connection between collective human rights and the common heritage of mankind principle. With the common heritage principle linked to human rights, the concept of formal equity could be surpassed in favour of material equity. The principle would have the possibility of prescribing human right obligations and help spreading human rights into fields of international law it haven't entered before. For this purpose the paper examines the elements of the principle for possible human rights considerations. The second part analyses the legal subjectivity of mankind, to determine the possibility of legal realization of the principle prescribing human rights obligations. The dissertation lays some of the groundwork for future studies, establishing the link between collective human rights and the common heritage of mankind principle and identifying issues for further research.

TABLE OF CONTENTS

INTRODUCTION

"How do we explain this dramatic and universal shift in perception about human rights as rights belonging to human beings wherever they may live: rights that are their because they are common heritage of mankind?"

/T. Buergenthal/

The idea of the common heritage of mankind concept arose in the 1950s-1960s, when the realization came that the prevailing regimes regarding areas outside of national jurisdiction were becoming outdated by the changes in politics and in the field of science and technology.[1] Although the term has been used by Oscar Schachter and Ambassador Cocca, among others, in the 1950s, Arvid Pardo, former United Nations (UN) Ambassador of Malta, is called the progenitor of the common heritage of mankind because the earlier references did not elaborate on the legal components of the concept.[2] In his speech at the United Nations General Assembly (UNGA) in 1967 he called for an "effective international regime over the seabed and ocean floor,"[3] which he titled the common heritage of mankind.

The common heritage of mankind is currently included in three international treaties: the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty), and the African Charter on Human and People's rights

[1] G.J.H. Van Hoof: "The Legal Status of the Concept of the Common Heritage of Mankind" In: *Grotiana*, Vol. 7, at 52.
[2] Kemal Baslar: "The Concept of the Common Heritage of Mankind in International Law" In: *Developments in International Law* Vol 30. Martinus Nijhoff Publishers, The Hague 1998, at 80-81
[3] Avrid Pardo's speech, 22nd session of theUN General Assembly, 1516 meeting, Agenda item 92, *A/6695 AC. 1/956*, 1. November 1967, available at http://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967.pdf accessed 07.07. 2015, at paragraph 3

(African Charter of Human Rights).[4] The principle is also mentioned in other international documents, but these three are the one that have a binding force in international law.[5]

The expression of the common heritage of mankind with all its merits and limitations expresses a new model for the international community which has gradually emerged since 1945.[6] There is no universal agreement reached on the definition, legal status or legal value of the principle. Despite this many attempted to apply it in fields of international law outside of the law of the sea and space law. Taylor argued that the principle has a potentially wider application than common areas and their resources because the intergenerational justice and the notion of trust as elements make it possible to apply it in other branches of international law.[7] For instance several countries appealed to the international community to recognize the Antarctic as a common heritage of mankind.[8] The principle also arose in the context of geostationary orbits and radio spectrum as a resource that could be considered a common heritage of mankind, according to Jacobs.[9] There has also been an attempt to apply the common heritage of mankind to art objects and cultural property. Monden

[4] UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982, available at: http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm Accessed 15.06.2015, Article 136 [hereafter UNCLOS]; UN General Assembly, *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, 5 December 1979, UNGA Res. 34/68, available at: http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html , accessed 15.06.2015, at Article 11 [hereafter Moon Treaty]; Organization of African Unity, *African Charter on Human and Peoples' Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: http://www.refworld.org/docid/3ae6b3630.html accessed 15.06.2015, Article 22. (2) [hereafter African Charter Human and Peoples' Rights]

[5] E.g.: UN General Assembly, *Declaration of Principles governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of Nations Jurisdiction*, 17 December 1970, A/RES/2749(XXV), available at: http://www.refworld.org/docid/3b00f1cec.html accessed 17.05.2015 [hereinafter 1970 Declaration]

[6] Antonio Cassese: *International Law in a Divided World*, Clarendon Press, Oxford 1986, at 391.

[7] Prue Taylor: *An Ecological Approach to International Law: Responding to Challenges of climate change*, Routledge, 1998 London, at 269

[8] Milan Bulajic: *Principles of International Development Law, Progressive Development of the Principles of International Law Relating to the New International Economic Order*, Martinus Nijhoff Publishers, 1986 Dordrecht at 320-322.

[9] Benjamin Jacobs: „Future Energy: Lunar Resource Management and the Common Heritage of Mankind" In: 24 *Georgetown International Environmental Law Review* 221, at 235

and Wils argued that the correct interpretation of the principle applied to art subjects is consistent with the same concept applied outside of cultural field.[10] Apart from the Antarctica, the most frequently area discussed in relation to the common heritage principle is the environment. Environmental protection is considered to be one of the elements of the principle by some; their argument being based on for example the UNCLOS, which mentions the protection of the marine environment as one of the obligations regarding the seabed.[11] Taylor, among other authors whose theories will be used in this dissertation, argues that environmental protection is an important part of the common heritage of mankind principle.[12]

This paper will attempt to link the common heritage of mankind to human rights. Other than the law of the sea and space law, human rights law is the only field in international law where the common heritage of mankind is included in a binding treaty. Article 22 (2) of the African Charter of Human Rights proclaims that "all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the *equal enjoyment of the common heritage of mankind*,"[13] although it did not elaborate on the exact obligations deriving from this right.

Karel Vasak is considered to be the first scholar who included the right to property over the common heritage of mankind in his argument when discussing the idea of a third generation of human rights. He is therefore the most quoted author related to this topic, but his idea is not the one that will be elaborated on in this paper. A Drzewicki points out, the wording of Vasak is imprecise and unjustified, as it should not be

[10] Anneliese Monden, Geert Wils: "Art objects as common heritage of mankind" In: *Belgian Review of International Law,* Vol. 19. No.2. (1986), at 329
[11] UNCLOS (see above 4) at Articles 192 – 237
[12] Taylor (see above 7) at 269
[13] African Charter on Human and Peoples' Rights (see above 4) Article 22. (2) (emphasis added)

limited to a question of property, but to a more comprehensive set of public law principles concerning the use of areas qualified as common heritage.[14] He establishes three ways to link human rights to the common heritage of mankind: (1) putting emphasis on the interdependence between the realisation of the two, (2) attempting to entail the common heritage by the substantive notion of the right to development, with certain indirect reference to the right to peace and to environment, (3) establishing a separate human right to the common heritage of mankind. [15]

This paper will take the direction of establishing a link between the common heritage of mankind and human rights. First, the dissertation will draft a working notion of an autonomous, general common heritage of mankind, establishing the elements of it. Then the essay will examine the before mentioned elements and look for links to human rights considerations. The aim is to prove that the idea of protecting human rights influenced the creation of the common heritage of mankind, and thus the principle could be a useful instrument in promoting human rights. Because of the limits of the dissertation it will focus only on collective human rights, which will also be defined in the first chapter.

The link between human rights and the common heritage of mankind has been made by scholars several times and in several ways, and yet, other than the African Charter of Human Rights, it has not been included in other legally binding international human rights documents. The reason is most likely the before mentioned lack of universal definition. However, just because of the difficulties it would be foolish to dismiss the notion of pursuing this line of development. It is not justified to underestimate at least the promotional significance for emphasizing the close links

[14] Krzysztof Drzewicki: "The Rights of Solidarity – The Third Revolution of human Rights" In: *Columbia Journal of transnational Law,* Vol. 36. Issues 1&2, at 37
[15] Ibid at 38

between human rights and modern demands represented by the concept of the common heritage of mankind.[16] With the common heritage principle, the concept of formal equity could be surpassed in favour of material equity. After all, in its ultimate sense, the common heritage of mankind is said to strive for global fairness.[17]

[16] Ibid. at 39

[17] Marjoleine Y. A. Zieck: "The Concept of "Generations" of Human Rights and the Right to Benefit from the Common Heritage of Mankind with Reference to Extra-terrestrial Realms" In: *Verfasssung und Recht im Übersee/ Law and Politics in Africa, Asia, and Latin America,* Vol. 25. No.2. (1992) at 162-188

CHAPTER ONE

A general notion of the Common Heritage of Mankind

As mentioned before, one of the major problems regarding the common heritage of mankind principle is the difficulty of arriving at a clear and generally accepted definition. Although it has received normative recognition in legal instruments, none of them provide a clear interpretation of the principle.[18] For the purpose of this dissertation the common heritage of mankind is viewed as an autonomous, general principle.

In the last few decades many things have been declared as a heritage of some sort, for example a cultural and natural heritage[19], a heritage of humanity[20] etc. All these regimes have more similarities with the common heritage of mankind principle than the use of 'heritage' in the terminology. Each were created with the same idea in mind, to protect something that is important for mankind together and to advance the common interest, which in some cases has established regimes. Kiss argues that the common heritage of mankind is the materialization of the common interest of mankind.[21] In agreement, Holmila similarly claims that the main characteristic of the common heritage of mankind is the common interest.[22] This important feature is the reason why the concept has a potentially wider application than resources of the deep

[18] Fabio Tronchetti: *The Exploitation of Natural Resources of the Moon and Other Celestial Bodies, A Proposal for a Legal Regime* 2009 Martinus Nijhoff Publishers, at 86.
[19] General Conference of the United Nations Educational, Scientific and Cultural Organization, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, available at: http://whc.unesco.org/en/conventiontext/ accessed: 23.06.2015
[20] General Conference of the United Nations Educational, Scientific and Cultural Organization, *Universal Declaration on the Human Genome and Human Rights, 11 November 1997, available at: http://unesdoc.unesco.org/images/0012/001229/122990eo.pdf, accessed 23.06.2015*
[21] Alexandre Kiss: "Common Heritage of Mankind: Utopia or Reality?" In: *International Journal,* Vol 40. No. 3, Law in the International Community, 1985, at 4278
[22] Erkki Holmila: "Common Heritage of Mankind in the Law of the Sea" In: *Acta Societatis Martensis* Vol. 187. (2005) at 193.

seabed and ocean floor or of the moon and other celestial bodies.[23] Originally Pardo created the principle with economic resources in mind. He only proposed to use it for the management of the resources in the deep sea-bed. This formerly exclusive use of the term led to regimes over cultural objects and human genome appearing reluctant to use the term 'common heritage of mankind' because they are not economic resources, even if these regimes were also created to promote the interest of mankind. However, if we accept that the main characteristic of the common heritage is to advance on the common interest, then it should not be restricted to only economic resources. This paper shares the view of Taylor, who argues that full benefits of the common heritage of mankind will not be realized until it is freed from its restricted resource focused interpretation.[24]

The reason so many objects of international law can in some way be described as a common heritage of mankind is because many of the elements of the principle show up in relation to other objects. A wide range of features is attributed to the principle, and many of them are used in other areas of international law as well. For example, although the Atlantic is not expressively named as a 'common heritage of mankind,' the regulation about it includes several of the elements attributed to the common heritage principle, namely the use for peaceful purposes, the freedom of scientific research, and the prohibition of sovereign claims. The generality of the elements also makes it possible to think of the common heritage as an autonomous notion of international law.

If the common heritage of mankind is regarded as an autonomous principle in international law, then its examination is not limited to the UNCLOS, Moon Treaty,

[23] Taylor (see above 7) at 269.
[24] Ibid.

the African Charter of Human Rights, and other declarations of the law of the sea and space law. If it is not only a treaty principle, then the meaning and definition is not deriving only from these treaties. Therefore the following discussion of the elements of the principle will draw on not only the UNCLOS, the Moon Treaty and the African Charter of Human Rights, but on other international documents and writings of scholars as well.

As of yet, there is no definition of the common heritage of mankind that applies to all regimes collectively in a uniform matter. However, as mentioned before, the regimes have several features in common.[25] Thus, this paper will not attempt to create a general definition, but it will form an understanding of the concept by identifying the common, general features and elements, presenting the common heritage of mankind as an anthropocentric concept, whose object is reserved for humanity's use and benefit.[26]

The mere words: 'common,' 'heritage' and 'mankind' do not have intrinsic value.[27] Therefore when identifying the elements, authors usually turn to the international documents it is included in and to political philosophy. Some elements are universally agreed upon, mostly the ones incorporated in the UNCLOS and the Moon Treaty. These are, as Jacobs calls them, the "undisputed elements;" (1) the non-appropriation of the resources, (2) equitable sharing of benefits, (3) reservation for peaceful purposes, (4) international management of the area, (5) freedom of scientific investigation.[28] There are also a number of peripheral components suggested by writers, for example the reservation for future generations, rational and non-wasteful

[25] Holmila (see above 22) at 195.
[26] Taylor (see above 7) at 292.
[27] Baslar (see above 2) at 80.
[28] Jacobs (see above 9) at 230-232; Bulajic (see above 7) at 331, Van Hoof (see above 1) at 56.

utilization and exploitation.[29] Some argue that the exploited benefits have to be shared with developing states regardless of the level of their participation.[30] This element is sometimes considered to a part of the 'equitable sharing' feature, but sometimes stands on its own.

Baslar argues that the common heritage of mankind should be freed from being equated solely with the exploitation of natural resources beyond natural jurisdiction and should become a functional principle applied to other objects as well.[31] He claims that without the inclusion of development and environments dimension in the principle it becomes dangerously under-defined.[32]

In this paper, not all of the elements will be discussed, as not all of them can be linked to collective human rights. In the second chapter the following features will be examined: equitable sharing and the benefits of developing countries, environmental protection and development, freedom of scientific research, reservation for peaceful purposes, and reservation for future generations.

Collective Human Rights

The paper is seeking to link the common heritage of mankind to collective human rights. Collective rights were chosen for a reason. The use of 'mankind' in the term 'common heritage of mankind' refers to the collective group of humans; therefore the rights of mankind are of collective nature. Thus, the paper will focus on collective human rights. But first, what is meant by collective human rights needs to be cleared up. In order to determine the meaning of collective rights the first step is to give a meaning to human rights in general.

[29] Baslar (see above 2) at 84.
[30] Tronchetti (see above 18) at 89.
[31] Baslar (see above 2) at 85-91.
[32] Ibid at 105.

The idea of human rights is founded on the notion that every human being, by virtue of his or her humanity, should have the freedom to define, pursue and realize his or her conception of the good life.[33] Ingram, among others, views human rights as individual claims raised against institutions that are supposed to guarantee them the conditions of the before mentioned 'good life'.[34] Thus, traditionally only the rights of the individual were regarded as human rights. But no individual lives in a vacuum - they belong to social groups and to the society as whole, therefore the rights of the social group is an essential feature of the realisation of the individuals human rights.[35] Slowly, the notion of collective rights or the human rights of groups was born. The liberal approach that drove the first human rights agreements was overtaken as individual rights became entangled with collective rights whenever the rights of an individual have been violated because of him or her belonging to a group.[36] At the present, not many human rights treaties include rights of a collective nature.[37] It is still argued that it is unnecessary to give rights to a group when the rights of the member of said group are already guaranteed. There is no universal agreement on this issue, although in the last few decades more and more attention is payed to collective rights, which is a promising sign.

---

[33] Jennifer Jackson-Preece: „Human Rights and Cultural Pluralism, The 'Problem' of Minorities" In: *International Human Rights in the 21st Century, Protecting the Rights of Groups,* eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc, 2003 Boston, at 49.

[34] David Ingram: "Group Rights, a defense" In: *The International Dimension of Human Rights,* Volume 1, ed. Karel Vasak, Greenwood Press, 1982 Westport, at 278.

[35] Danila Türk: "Introduction: Group Rights and Human Rights" In: *The Tension Between Group Rights and Human Rights, A multidisciplinary approach,* eds. Koen De Feyter, George Pavlakos, Hart Publishing, 2008 Portland, at 2.

[36] Gene M. Lyons and James Mayall: „Stating the Problem of Group Rights" In: *International Human Rights in the 21st Century, Protecting the Rights of Groups,* eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc, 2003 Boston, at 3.

[37] The treaties about the protection of refugees or indigenous people can be used as an example for human rights treaties that include collective rights. See generally: UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.unhcr.org/3b66c2aa10.html accessed 16.08.2015; UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf accessed 16.08.2015

There are many questions and problems about collective rights. For one, how do we identify the groups that should have rights? A general definition by Van Boven declares groups as "a collectivity of persons which has special and distinct characteristics and/or which finds itself in specific situations or conditions. Those special characteristics may be of a racial, ethnological, national linguistic or religious nature. The specific situations or conditions could be determined by political, economic, cultural or social factors."[38] Sometimes these criteria create groups with a large number of participants.

The question of who exercises the rights of a group also presents itself. Rights work not simply by being voluntarily respected, by also by being claimed or exercised by the right holders.[39] In the case of individual rights, the individual himself or herself exercises the rights, but in case of groups the actor is not so clear. Usually a representative agency of the group is suggested, but it is problematic in case of large and heterogeneous groups.[40] In regards to the present topic the holder of the rights is 'mankind,' which is indeed a large and heterogeneous group. This question will be looked at in details in chapter three, focusing on the legal personality of mankind.

Because of the wide diversity of groups, collective rights also come in many varieties. Some serve to protect the rights of the individuals in the group, some make sure that no discriminative treatment will target the group, some protect the cultural identity of the group, and so on.[41] The distinction between group and individual rights should not be thought as contradictory. There are rights that are of individualistic nature, such as

[38] Theodoor C. Van Boven: "Distinguishing criteria of Human Rights" In: *The International Dimension of Human Rights,* Volume 1, ed. Karel Vasak, Greenwood Press, 1982 Westport, at 55.
[39] Jack Donelly: „In defense of the Universal Declaration" In: *International Human Rights in the 21st Century, Protecting the Rights of Groups,* eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc, 2003 Boston, at 33.
[40] Ibid.
[41] Ingram (see above 34) at 278-278

the right to freedom of thought, the right to liberty of the person, and there are rights of collective nature, such as economic and social rights, the right to self-determination, and the right to development, but there are also rights which have both aspects, for example the freedom of religion and expression.[42] They complement each other, therefore there is no use in giving either of them priority. In the following chapter, some of the collective rights will be traced back to the right of life - traditionally considered to be an individual right - to show how individual and collective rights balance each other.

However, the right to life will be highlighted for another reason as well. It is the most widely recognised human right, its first recognition dates back to the Middle Ages, centuries before the Enlightenment, in a time when human life did not have much value. The first document to mention it is the Statute of Poljica, which is dated 1440 and refers to a small province in the territory of today's Croatia for which it was named.[43] This right is incorporated in several modern treaties as well; the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights, the International Covenant on Civil and Political Rights etc.[44] The UDHR proclaims that "everyone has the right to life, liberty and security of the person."[45] The right to life, as understood presently, is more than just a protective clause prohibiting the taking of a life. It is also a duty, as everyone is to actively assist others to enjoy their

[42] Van Boven (see above 38) at 54-55.
[43] "The Statute of Poljica" translated by Alan Ferguson, In: *The Autonomous Principality of Poljica*, Edo Pivcevic**,** available at: http://www.cuvalo.net/?p=49 accessed 23.08.2015, at Article 59b.
[44] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.un.org/en/documents/udhr/ accessed 23.08.2015 at Article 3 [hereafter UDHR]; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf accessed 23.08.2015, at Article 2; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx accessed 23.08.2015, at Article 6 (1).
[45] UNDHR (see above 43) at Article 3.

right to life. The UDHR also links the right to life to peace, arguing that human rights are the foundation of freedom, justice and peace in the world.[46] Thus, the right to life becomes as essential in order to fulfil the primary goal of the UN, international peace and security. The right to life is one right of individualistic character that will be used in the argument of the following chapter. Almost all human rights can be understood in way that their realization is to support the right to a quality life. Thus in some cases it will be examined how a particular element is contributing to a quality life.

As for collective rights, there are many more questions that could be discussed, but the two mentioned in this chapter were the most important related to the topic is this paper, therefore the essay will only examine these problems.

The chapter has given a working notion of the common heritage of mankind and explained the use of collective human rights. The following chapter will examine the elements of the common heritage of mankind looking for collective human rights considerations, to see if the common heritage of mankind can be a tool to promote human rights.

[46] Ibid. at the Preamble.

CHAPTER TWO

Reservation for peaceful purposes

Article 141 of the UNCLOS declares that the deep seabed, ocean floor and sub-soil thereof (the Area) "shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part."[47] Originally no meaning was given to the term 'peaceful purposes.' To clear up disagreements the Emplacement Treaty presented a compromise between the disagreeing parties, and stated what was prohibited in the Area: the installation, storage and launching of nuclear weapons and other weapons of mass destruction.[48] There was no mention of any other kind of weapon or military act. The Moon Treaty on the other hand, included a much more comprehensive and clear definition of 'non-peaceful' acts: threat or use of force, any other hostile act or threat of hostile act, the use the moon in order to commit any such act or to engage in any such threat in relation to the earth, moon, spacecraft, and personnel of spacecraft or man-made space object.[49] The placement of nuclear weapons or any other kind of weapons of mass destruction in orbit around or other trajectory to or around the moon is also prohibited.[50] The treaty also forbids the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on the moon.[51]

The aim of both documents was to prohibit dangerous military acts on their regulated area, to contribute to the maintenance of international peace and security, a goal

[47] UNCLOS (see above 4) at Article 141.
[48] Edward Guntrip: "The Common Heritage of Mankind: An adequate regime for managing the deep seabed?" *Melbourne Journal of International Law,* Vol.4. (2003) at 380
[49] Moon Treaty (see above 4) at Article 3.
[50] Ibid.
[51] Ibid.

prescribed by the UN Charter. The Preamble of the UN Charter declared international peace and security as one of the main reasons as to why the United Nations was created.[52] Unfortunately, it did not elaborate on what peace exactly means. Despite this, over the last few decades peace became a priority in the international community. The UNGA released the Declaration on the Right of People to Peace in 1984, claiming that "life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations," and that "a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind."[53] Thus, the right to peace was described as a human right. A working group of the United Nations Human Rights Council (UNHRC) argued that "the right to peace is not only a basic and necessary right, but is in fact inseparable from the most fundamental right, which is the right to life."[54]

But, as many argued, including Helmut Kohl, Henry S. Truman and Albert Einstein, peace is more than just the absence of war.[55] It requires an active pursuit for the preconditions and prerequisites of peace and the elimination of economic disparities that cause war. In this sense, the common heritage of mankind is an important

[52] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: http://www.un.org/en/documents/charter/preamble.shtml, accessed 14 August 2015, at Preamble
[53] UN General Assembly, *Declaration on the Right of Peoples to Peace*, A/RES/39/11, adopted 12 Nov. 1984, Meeting No. 57. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightOfPeoplesToPeace.aspx accessed 07.07.2015
[54] "What does the right of peace mean?" *Testimony before the UN Human Rights Council 22nd Session,*
delivered by Hillel Neuer under Agenda Item 5, March 13, 2013.
http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=13021147 accessed: 07.07.2015
[55] E.g.: "With the stroke of a pen, peace comes to Bosnia", *CNN*, 14 December 1995, available at: http://edition.cnn.com/WORLD/Bosnia/updates/dec95/12-14/bosnia_am/ accessed 07.07.2015; "Quotes by Albert Einstein", *Goodreads*, available at: https://www.goodreads.com/quotes/729410-peace-is-not-merely-the-absence-of-war-but-the accessed 07.07.2015; "Quotes by Henry S. Truman", *Note a Quote*, available at: http://www.noteaquote.com/quote/3038 accessed 07.07.2015

precondition to the right of peace, as it can prevent military acts and it can preclude the monopolization of strategic resources that could be used to achieve foreign policy ends.[56] Therefore it can be said that human rights thinking definitely influenced the element of 'reservation for peaceful purposes' of the common heritage of mankind, as it is a precondition for the fulfilment of the right to peace.

Environmental Protection and Development

The 'Our Common Future' Report of the World Commission on Environment and Development identified three interlocking components necessary for sustainable development; (1) environmental protection, the conservation and preservation of natural resources, (2) economic growth without damage to the environment, (3) and social equity, achieving equitable share of benefits of economic activities.[57] The report also linked development and environmental protection to human rights, stating that an "environment adequate for health and well-being is essential for all human beings."[58] The common heritage of mankind can promote all three of these goals and therefore advances sustainable development.

The formerly mentioned common interest feature of the common heritage of mankind principle is what makes the principle suited to global environmental and development problems.[59] Part of the development issue is the equitable sharing of benefits, which will be discussed in the following section of this chapter, as it is viewed as an element on its own. Before the common heritage of mankind, the doctrine of freedom of the

[56] Baslar (see above 2) at 324-325.
[57] Hildebrandt Frey, Paul Yaneske: *Visions of sustainability, Cities and regions,* Routledge, 2007 Abingdon, at 11; UN General Assembly: *Our Common Future: Report of the World Commission on Environment and Development,* A/42/427 Annex, 1987, available at: http://www.un-documents.net/wced-ocf.htm accessed: 07.07.2015, See generally Chapter 2 (pp. 41-59)
[58] Report of the United Nations World Commission on Environment and Development: Our Common Future, 20 March 1987, available at : http://www.un-documents.net/our-common-future.pdf accessed 09.07.2015, at 56.
[59] Taylor (see above 7) at 278.

seas only benefitted the rich and technologically advanced. In actual operation, the doctrine was reduced to the rule of 'survival of the fittest.'[60] The common heritage of mankind, by constituting an area exclusively for humanity, called for a plan for the regulation of exploitation and exploration with the main goal being the growth and stability of these resources.[61] At the time of its creation, developing countries tended to pin their hopes on the new principle for their future economic development.[62] The concept was seen as the materialization of the common interest of mankind part of development towards international solidarity.[63] Mohammed Bedjaoui, when arguing that essential food resource should also be accepted as an aspect of the common heritage principle, argued for developmental benefits. He claimed that it would make it possible to overcome the reservations between east and west, north and south.[64]

As in the previous section, the right to environment and to development – both of which are collective human rights – can be traced back to the most fundamental human right, the right to life. Without the right to life the other human rights do not have much meaning. It is therefore important to link the currently examined right to it. The right to life is meaningless without access to the basic and minimum material goods essential to sustain life.[65] Thus, denying the common heritage of mankind is the denial of life and human dignity manifested in the right to environment and

[60] R. Jaganmohan Rao, R. Venkata Rao: "Freedom of the Seas, Common Heritage of Mankind and the New International Economic Order" In: *The New International Economic Order Perspectives (Towards a Global Concern)*, eds. K. C. Reddy, M. Jagdeswara Rao, S. Chandra Sekhar, Ashish Publishing House, New Delhi 1991, p. 168-171.
[61] Ibid. at 168.
[62] Ibid.
[63] Baslar (see above 2) at 47.
[64] Statement by Judge Mohammed Bedjaoui at RAWOO Seminar „International Dimension of the Development Problem" on Amsterdam, 05.10.1984 as quoted in: Milan Bulajic: *Principles of International Development Law, Progressive Development of the Principles of International Law Relating to the New International Economic Order*, Martinus Nijhoff Publishers, 1986 Dordrecht, at 328.
[65] Baslar (see above 2) at 324.

development.[66] Bedjaoui gives the right to development an outstanding importance, arguing that man is the first and foremost common heritage, and therefore the right to development is the most fundamental and absolute.[67]

Equitable share of benefits

This element also presents environmental development considerations, but because the economic development also plays an important role in it, it seemed right to discuss it briefly, separately from the previous section.

Before the common heritage of mankind, the notion of 'open access to common goods' ruled in the international community, deriving from Roman law traditions, *res communis omniums* and *res communis humanitatis.*[68] Global economic growth caused the international community to re-evaluate this governing principle. Technology helped to defeat natural obstacles to access the common spaces, but it also caused the existing gap between rich and poor countries to widen. Although common goods were accessible for all, poor countries could not benefit from them as they did not have the technology.[69] The increasing world population also made many resources scarce, which only increased the gap between developed and developing states.[70] Many of the under-developed countries have been deprived their dues share in the wealth and hidden resources of earth, and so they pleaded for equitable distribution.[71] The

[66] Ibid at 323.
[67] Ibid.
[68] L.F. E. Goldie: "A Note on Some Diverse Meanings of the Common Heritage of Mankind" *Syracuse Journal of International Law and Commerce*, Vol. 10. No.1. (1983) at 84.
[69] Baslar (see above 2) at 43-44.
[70] Ibid. at 46.
[71] R. Jaganmohan Rao, R. Venkata Rao (see above 60) at 165-166.

imbalance was noticed not only in resources, but in biodiversity as well, and was a great motivation for benefit sharing.[72]

Pardo presented two alternatives for the international community: face chaos and disorder in the world with the increasing number of state conflicts, or create rational management and orderly, equitable distribution of resources.[73] He argued that it is impossible to reduce the existing inequalities without significant changes in the international order.[74]

The common heritage of mankind is party based on economic objectives with the aim to achieve equitable sharing of the common heritage. It aims to ensure that the resources shall only be used in the interest of mankind as a whole.[75] It represents a fundamental break from the former *res communis,* as it aims at substantive equality, not only a formal one.[76] This element is what makes the principle the 'representative' of a new international law of co-operation, instead of the traditional law of co-existence.[77] What is more, this ideology is fit not only for resources. Sharing benefits of our whole environment is an important step to realize the right to development and the right to environment. The common heritage concept, like other human rights tools, hopes to eliminate situations which may endanger life and aims to create conditions for a better life for everyone.[78] Denying the common heritage of mankind "is to let

[72] Bram De Jonge: "What is Fair and Equitable Benefit-sharing?" In: *Journal of Agricultural and Environmental Ethics,* Vol 24. No.2. (2011) at 129.
[73] R. Jaganmohan Rao, R. Venkata Rao (see above 60) at 166.
[74] Ibid. at 168.
[75] Sudhir K. Chopra: "Antarctica as a Commons Regime: A Conceptual Framework for Cooperation and Coexistence" In: *The Antarctic Legal Regime,* eds. Christopher C. Joyner, Sudhir K. Chopra, Martinus Nijhoff Publishers, Dordecht 1988, at 172.
[76] Van Hoof (see above 1) at 55.
[77] Ibid.
[78] Kiss (see above 21) at 427.

billions wallow in poverty, malnutrition, disease, despair and lack of food." In its ultimate sense, as mentioned before, the principle strives for global fairness.[79]

Freedom of scientific research

The UNCLOS promotes scientific research in the deep seabed and ocean floor, with the authorization of the Seabed Authority and preferably in cooperation of states party to the treaty. Is shall also be carried out for peaceful purposes and for the benefit of the mankind only, and the interest of less-developed states is one of the most important conditions for the approval of the Seabed Authority.[80] Therefore although the treaty reflects the notion of freedom of scientific research, other elements of the common heritage of mankind do place some limits on it. The Moon Treaty and the Antarctic Treaty similarly allows only peaceful scientific research and exploration.[81] Both documents pays due attention to include developing nations in the research projects as much as possible.[82] This sentiment demonstrates an attempt to solve the problems of the past in which benefits of the research may in some way benefit all mankind but the immediate benefits flowed to the technologically advanced countries which could best use the information gathered.[83]

Science clearly provides useful information for mankind. For example, ocean research provides the scientific community with information which can lead to more accurate weather forecasting, better control of marine pollution, reduction of navigational hazard, and other unforeseen benefits.[84] It increases humanity's capacity to adapt to

[79] Zieck (see above 17) at 187-188.
[80] UNCLOS (see above 4) at Article 143.
[81] Moon Treaty (see above 4) Articles 3,6, Conference on Antarctica: *The Antarctic Treaty*, 1 December 1959, available at: http://www.ats.aq/documents/ats/treaty_original.pdf accessed 23.08.2015, at Articles 1-2.
[82] Ibid.
[83] Linda A. Caruso: "The Impact of the Law of the Sea Conference on the International Law of Freedom of Marine Scientific Research" In: *Lawyers of the Americas*, Vol. 10. No.3. (1976), at 934.
[84] Ibid.

the future's needs and modify its environment and its own characteristics.[85] The regimes before the common heritage of mankind widened the divide between developing and developed countries and also between different levels of society. Products deriving from plant genetic resources became a major source of potential wealth, but many countries could not afford to invest in it and fell even more behind the technologically advanced states.[86] Therefore for developing states the common heritage of mankind was a huge legal step forward. The principle promoted not only the sharing of benefits from the explorations, but an effective participation in all aspects of the management. It made a basis upon which developing countries could argue in order to participate in all activities of the research.[87]

Freedom of scientific research can be linked to the right to development and to sharing of benefits, but it has direct influence over human rights development itself as well. The growth of knowledge based industries assumes a greater vitality in assuring the development of human rights in developing countries. [88] The proper balance between conservation and reasonable exploitation allows opportunities for economic development that influences the development of human rights.[89] Taking human rights into consideration in regard to development raises economic and social rights to an equal ranking with political and civil rights.[90] The importance of this cannot be downplayed, as it proves that the common heritage of mankind, through its element, has direct effect over the positive development of human rights.

---

[85] Paul Freedman: "Principles of Scientific Research" In: *Journal of the Royal Society of Arts*, Vol. 98. No. 4814 (1950), at 308.
[86] George P. Smith: "Re-evaluating the Freedom of Scientific Inquiry Through Biotechnology and Human Rights" In: *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 96 (2002), at 115.
[87] Caruso (see above 83) at 945.
[88] Smith (see above 86) at 115.
[89] Ibid.
[90] Ibid.

Reservation for future generations

To see how the common heritage of mankind protects the rights of future generations first it needs to be explained what the threats are for future generations, and why and how do we create those threats? It is unquestionable that we consume and damage our natural resources or provide access to them on a discriminative basis.[91] But why do we do it? The reasons are twofold. First, it is a common mistake of both political and everyday thinking that we regard the present as more valuable compared to the future. We are not willing to invest in the hopes of distant returns.[92] The second reason is what is called the 'tragedy of commons' where individually reasonable actions altogether can lead to disastrous results. Boldizsár Nagy demonstrated it with a simple example: Imagine a crowded event, when everyone is trying to see their favourite celebrity on stage. You stand on your tiptoes to be taller and see better, which is a reasonable action for an individual. But when eventually everyone stands on their tiptoes the results are negative: nobody can see anything, and it causes discomfort in their legs.[93]

It is a logical next question to ask why we should protect the interest of the future generations. There are different ways to argue about it. Almost all human traditions (religions, cultures) recognize that the people of the present hold the planet in common with other species, other people, and with generations of the past and future. Therefore, as the present generation, we are both trustees and beneficiaries of the

[91] Boldizsár Nagy: "The Background Of The 'Rights Of Future Generations' In Hungarian and International Law" In: *A jövő nemzedékek jogai,* ed. Benedek Jávor, Védegylet, 2000 Budapest, at 58.
[92] Ibid. At 58-59.
[93] Ibid. At 59.

planet, and we are responsible for its integrity while we also have the right to use and benefit from it.[94]

A similar sentiment is mirrored in the good stewardship doctrine of natural law thinking. According to it, the present generation (the steward) does not own the property (our planet) and the property cannot be used solely for the benefit of the steward. The steward has to manage the property wisely and give a good account to those who come later.[95]

If we look at the duty of protecting the interest of future generations from a practical point of view, it can be argued that a countless number of law norms prescribe it. The Stockholm Declaration states that "man has (…) a solemn responsibility to protect and improve the environment for present and future generations."[96] The World Charter for Nature declares that man "must ensure the preservation of the species and ecosystem for the benefit of present and future generations."[97] The Rio Declaration mentions that "the right to development must be fulfilled so as to equitably meet developmental and environmental need of present and future generations."[98] The UN Convention on Biological Diversity affirms the dedication to the future generations in its preamble.[99] But it is not only documents of international law that mention the

[94] Edith Brown Weiss: "In Fairness To Future Generations and Sustainable Development" In: *American University International Law Review*, Vol.8. No.1, at 20.
[95] Baslar (see above 2) at 68.
[96] UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994, available at: http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503 Accessed 14.08.2015, at Principle 1,
[97] UN General Assembly, *World Charter for Nature.*, 28 October 1982, A/RES/37/7, available at: http://www.un.org/documents/ga/res/37/a37r007.htm Accessed 14.08.2015
[98] UN General Assembly, *Report of the United Nations Conference on Environment and Development*, 12 August 1992, A/CONF.151/26, available at: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm Accessed 14.08.2015 At Principle 3.
[99] Intergovernmental Negotiating Committee for a Convention on Biological Diversity, *Convention on Biological Diversity*, adopted on 05.06.1992, C.N.29.1996, available at: https://www.cbd.int/doc/legal/cbd-en.pdf Accessed: 14.08.2015.

rights of future generations, national governmental declarations[100] and national courts[101] also discuss it.

As for the common heritage of mankind, unlike the other elements, whether the documents in which the concept is included mentions this element or not isn't the subject of examination here. Not because they do not – Article 4 of the Moon Treaty does, for example[102] – but because the examination of the words 'common,' 'heritage', and 'mankind' will also lead to the conclusion that the protection of the right of future generations is part of the principle.

The term heritage can be defined as property that has been or may be inherited.[103] Therefore it is assumed that common areas should be looked upon as inheritance passed down from ancestors to present and future generations.[104] If the common areas are the inheritance of mankind then any decision regarding it has to be made by the whole of 'mankind.' And since the present generation is only one dimension of mankind the needs of the future generations have to be taken into account as well.[105] To fail the preservation and protection would break the legal obligation regarding the supervision of the common heritage for the future.[106]

The rights of future generations can certainly be considered as human rights. A formal ethical argument can prove this: if all humans are equal, then the future generation,

[100] E.g: World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, 4 September 2002 A/CONF. 199/20, available at: http://www.un-documents.net/jburgdec.htm Accessed 14.08.2015
[101] E.g: "The Philippines: Supreme Court Decision in Minors Oposa v. The Secretary of the Department of Environment and Natural Resources", In: *International Legal Materials*, Vol. 33. No.1. (1994) [hereafter Minors Opposa v. The Secretary of DENR]
[102] Moon Treaty (see above 4) at Article 4.
[103] Baslar (see above 2) at 61.
[104] Christopher C. Joyner: "Legal Implications of the Concept of the Common Heritage of Mankind", In: *The International and Comparative Law Quarterly*, Vol 35. No.1. (1986), at 195.
[105] Ibid. At 195; Baslar (see above 2) at 65; Helmut Tuerk: "The idea of the common heritage of mankind" In: *Serving the Rule of International Maritime Law, Essays in Honour of Professor David Joseph Attard*, ed. Norman A. Martínez Guitérrez, Routledge 2009 New York, at 164;
[106] Joyner (see above 104) at 195.

who is sure to born, will have the same claim to enjoy human rights as we do.[107] The rights of the future generations aim to guarantee a life of quality for the humans of the future. These 'intergenerational rights' are regarded as collective rights, not as individual rights, as they exist regardless of the number and identity of the individuals making up the generation.[108]

In summary, the common heritage of mankind with the norm being related to the protection of the interest of future generations can be imagined as a kind of distributive mechanism, ensuring that the people of the future also benefit from the common heritage.

Conclusion

In this chapter it has been successfully proved that human rights thinking influenced the common heritage of mankind and that the principle can be used as a means to achieve human rights goals. Admittedly, not all of the elements have been inspected, this task remains for future researchers. But out of the examined elements, all could be linked to collective human rights.

The next chapter will decide if legal enforcement of a collective human rights-themed common heritage of mankind is possible. For the purpose of this brief research, the forthcoming chapter will focus on one important obstacle: Can mankind truly enjoy its rights?

[107] Boldizsár Nagy: „Védőbeszéd a jövő nemzedékekért" *Liget*, February 1994, available at: http://ligetmuhely.com/nagy-a-jovo-nemzedekekert/ accessed 15.08.2015(translation my own) [hereafter Nagy: Védőbeszéd]
[108] Weiss (see above 94) at 24.

CHAPTER THREE

In the international documents mentioned in the second chapter ‘mankind’ has been named as the beneficiary of rights instead of ‘all states’. This provokes several questions: does this mean that mankind is a new subject of international law? Is mankind more than just the collection of all states? If yes, who or what is exactly mankind? Legal scholars have different theories regarding the interpretation; some see it as the proof for the existence of a new subject of international law, whereas some do not accept the legal personality of mankind at all.[109] This chapter will attempt to shed some light on the issue.

In order to have the common heritage of mankind as a human right instrument, it has to be proved that the common heritage of mankind is unquestionably part of the international law. Several issues must be considered in relation to this topic: the normativity of the principle; whether mankind is a new subject of international law having the right to the common heritages; what sort of source of international could it be, a treaty principle or perhaps a custom; the lack of legal definition etc. This paper will focus on one aspect of this dispute: it will aim to prove that mankind is indeed a subject of international law.

First, a brief examination of the corpus of international law will be provided; to present the setting in which the dissertation will try to fit mankind in as a subject. Then the requirements to be a subject of international law will be listed, based upon the features of the existing and universally accepted subjects of international law and the argument of legal scholars. Finally, analysis will be conducted to determine whether or not mankind fulfils these requirements.

[109] Tronchetti (see above 18) at 86.

International Law and the Law of Human Rights

The development of international law inspired the desire to establish a comprehensive system for human rights.[110] It became a comprehensive, consistent body of law through the consent of the international community in the form of agreements between the subjects making up the international community.[111] A great number of general, specific and regional instruments make up this system, and it is practically impossible to separate conventional and non-conventional instruments, such as declarations.[112] This is because international human rights law uses 'soft-law' frequently, since non-binding documents make states and other subjects more likely to agree to them even if it contains significant restrictions on their activity. These sources still play an important role as they have the possibility of becoming customary rules and binding upon the international community.

Subjects play an important role in forming this legal order. They are the beneficiaries and the creators of international agreements. Thus, accepting mankind as a source of international law would be a significant step towards the acknowledgment of the common heritage of mankind as a human rights instrument.
The original and major actors of international law are states. International organizations became subjects for only certain purposes; their capacity is limited by their own charters. There are some non-state actors with a defined and limited special type of personality: federal states, international territories, national liberation movements etc. International law also has special cases with unique international personality, for example the Holy See and the Sovereign Order of Malta. Both of

[110] Van Boven (see above 38) at 87.
[111] Ibid; Paul Sieghart: *The Lawful Rights of Mankind, An introduction to the International Legal Code of Human Rights,* Oxford University Press, 1986 Oxford, at 40.
[112] Van Boven (see above 38) at 87.

them used to be states but lost some requirements of statehood over the course of history (the Order of Malta lost its territory, and the Holy See no longer has population living habitually on its territory, as the citizenship is granted only to officials of the church and only last as long the person occupies that position).

After establishing the basic features of the international law in relation to human rights and its subjects, the paper will now examine the possibility of mankind as a subject of international law.

Requirements of subjectivity in International Law

Different subjects have different kinds of legal personality, it is therefore easily imaginable that mankind can be a subject of international law even if with limited capacity. According to Nagy there are five elements that have relevance in ascertaining whether or not an entity is an international legal subject: (1) the entity must be a bearer of rights and obligations designated by international customary law or treaty law; (2) the capacity to make claims; (3) the capacity to conclude treaties; (4) capacity to enjoy privileges and immunities; (5) and admission to the international community.[113] The paper will examine these criteria to see if mankind fulfils them. The capacity to make claims and the capacity to conclude treaties will be together in one section, titled Representation, as both capacities depend on the entity to have a representative that can act on its behalf. The essay will also add another requirement, the need for a clear definition for the entity. It would be quite hard to provide states rights without knowing what exactly a state is; therefore a definition for mankind is needed as well.

[113] Nagy Boldizsár: „Speaking Without a Voice" In: *Future Generations and International Law*, eds. Emmanuel Agius, Salvino Busuttil, Routledge 2013 New York, at 57-60 [hereafter Nagy: Speaking Without Voice]

The Need for Definition

What is mankind? This is the first question that needs to be answered in order to determine whether mankind has a legal personality or not. The use of mankind in biblical, philosophical and literal terminology can be traced back to the early stages of our civilisation.[114] The uniqueness of the present situation is that mankind has found its way into legal documents, giving rise to the implication that a new legal subject is being created.[115]

Two sides of the argument can be discerned. There are scholars, who insist on the legal personality of mankind. For example Cocca argued that "the international community from now has recognised the existence of a new subject of international law namely mankind itself."[116] Marcoff was similarly supportive: "for the first time in history mankind was recognized in positive law by the international legal order as a subject of this order."[117] Niciu also cautiously accepted the implication, although he argued that mankind did not become a subject of international law yet, but the process has begun: "at present we are at the beginning of the process of the assertion of mankind as a subject of public international law, nevertheless mankind does not yet meet the requirements for becoming a subject of international law"[118] On the other hand the majority of legal writers do not accept the legal personality of mankind, mainly because of the lack of representation or definition, the former of which will be discussed in the next section of the chapter.

---

[114] Baslar (see above 2) at 70.
[115] Stephen Gorove: "Concept of Common Heritage of Mankind: A Political Moral Or Legal Innovation" In: *San Diego Law Review,* Vol. 9. No.3. (1972) at 393.
[116] A.A. Cocca: "The Common Heritage of Mankind Doctrine and Principles of Space Law – An Overview" Quoted in: Gyula Gál: " Some Remarks to General Clauses of Treaty Space Law" In: *Journal of the International Law Department of the University of Miskolc*, Vol. 1. No. 1 (2004), available at: http://www.uni-miskolc.hu/~wwwdrint/20041gal1.htm accessed 20.08.2015
[117] Quoted in Tronchetti (see above 18) at 126.
[118] Ibid. At note 294.

Giving definition in a legal sense is a hard task. First, 'mankind' was associated with 'all states.'[119] But mankind existed before the nation states were formed and one does not have to be an anarchist or socialist to say that the public good can be served without an even so civilised Leviathan.[120] It can also be argued, as Aristotle did thousands of years ago, that the whole is greater than just the sum of its parts.[121] Therefore mankind is more than just the collection of states. States definitely are part of mankind. In a sense they act as trustees who act on the behalf of mankind, but there are also entities outside of states.[122] There are numerous territories on this planet that do not have a government on their own. Recent development aimed to include the rights of future generations as well and so 'mankind' became associated with 'all peoples.'[123] There were also attempts to associate mankind with the 'international community' but defining the international community is also proven difficult.[124]

The Oxford Dictionary defines mankind as human being collectively; the human race.[125] The common feature of definitions in literature is that mankind comprises only human beings independently of politically motivated states.[126] The most fitting definition is provided by Nagy: "mankind is a complex web of states and other entities, nations, peoples, tribes, and other sort of human associations, down to the individual. All the complex relationships among these elements, including their

[119] Baslar (see above 2) at 72.
[120] Nagy: Speaking Without a Voice (see above at 113) at 61.
[121] Nagy Boldizsár: "Az emberiség közös öröksége és a jövő nemzedékek érdekei" Presented at the University of Debrecen, School of Law, 18. May 2005, available at: http://www.nagyboldizsar.hu/az-emberiseacuteg-koumlzoumls-oumlroumlkseacutege-eacutes-a-joumlv337-generaacutecioacutek-eacuterdekei.html accessed 20.08.2015 [hereafter Nagy: Presentation)
[122] Zieck (see above 17) at 182.
[123] Baslar (see above 2) at 72-73.
[124] Ibid. At 75.
[125] "Definition of Mankind", available at: http://www.oxforddictionaries.com/definition/english/mankind Accessed 20.08.2015
[126] Gál (see above 116)

temporal dimensions and the social and other institutions produced by those elements, from legal entities to governments are part and parcel of mankind."[127]

Thus, as we can see, the expectations of mankind have developed over the last few decades. There are numerous views provided by scholars and definitions by legal writers, some of them even that fit the present expectations. But an international legal document has to include a definition that satisfies the expectations of the term in order to have it legally accepted. For now, this remains a task waiting to be fulfilled by future writers.

Representation (Capacity to Make Claims and to Conclude Treaties)

While it is clear that mankind is the addressee of international norms, its capacity to act is still problematic, because of the issue of legal representation.[128] It is unclear at this point whether the interest of mankind could be enforced in any way.

As mentioned in the previous section the lack of representation is one of the main concerns of scholars. In law, incapable groups or persons can be represented by a guardian or representative but in case of mankind the creation of such representative is problematic. There are some scholars who think that mankind does have a representative that can act on its behalf. Arnold argues that the collective entity of mankind is represented by the nation states; they exercise the rights of mankind in cases where their acts are not acts of the state representing its citizens but acts on the behalf of mankind.[129] However, most writers have a different opinion. They argue that mankind does not have a legal representation; some even say that – for one reason or

[127] Nagy: Speaking Without a Voice (see above 113) at 60-61.
[128] Antônio Augusto Cançado Trindade: *International Law for Humankind, Towards a New Jus Gentium*, The Hague Academy of international law monographs, Martinus Nijhoff Publishers, 2010, at 286.
[129] Rudolph Preston Arnold: „The Common Heritage of Mankind as a Legal Concept" In: International Lawyer, Vol. 9. No.1. (1975) at 154.

another - it is not possible to create one. Góbriel points out the lack of representation in his argument: "every subject of international law must have an organ competent to represent it in the international relations. There does not exist any such organ representing the mankind as a whole."[130] Gorove hints at the unfeasibility of a representative when he asks "how could one state or group of states or an international organization be a spokesman or representative of all mankind without some formal act of authorization or mandate involving such representation?"[131] Matte also finds the issue problematic: "one cannot avoid the questioning the meaning of the world mankind and how it could be represented in a future international regime?"[132]

Tatsuzawa not only criticizes mankind for not having representation, but focuses on the problem of the unlikelihood that it could obtain the necessary authorization for it: "a state or group of states can't represent the will of all mankind. Mankind is not yet institutionalized as such. It remains only a philosophical concept in the actual stage of human progress."[133] Baslar arrives to the same conclusion, although on a different way when arguing that it would be quite hard to obtain the consensus of all components mankind to authorize a representative, which would be needed if mankind is to be given a legal personality, especially if we include the future generations as well.[134] He claims rather pessimistically that all human beings owning the international commons means in practice that no one owns them.[135]

[130] Quoted in: Tronchetti (see above 18) at 127.
[131] Stephen Gorove*: Studies in Space Law: the Challenges and Prospect*, A. W. Sijthoff, Leiden 1977, at 69.
[132] N.M. Matte*:* "Treaty Relating to the Moon" In*: Manual of Space Law*, ed. N. Jasentuliyana, R.S.K. Lee, Vol.1, Oceana, New York 1979, at 159.
[133] Kunihiko Tatsuzawa: "Political and Legal Meaning of the Common Heritage of Mankind" Quoted in: Gál (see above 116)
[134] Baslar (see above 2) at 50-75.
[135] Ibid. at 51

But is it really that unimaginable that mankind could have a representative? One of the main issue seems to be the representation of future generations, as it would be impossible to get authorization from people who are not born yet. Representing the future generations is not as implausible as one may think. Several ideas are known and moreover, there are also examples for practical realization. In 1993 the French President created a working group to stand for the interest of the future generations regarding those decisions which could influence the future condition of our environment.[136] It has been mentioned in the previous chapter that the interest of future generations was once represented in a national trial in the Philippines as well.[137] Trindade also argues that it is plausible to think that we could establish a legal representation for mankind, comprising its present and future segments.[138] What is more, he sees the International Seabed Authority as one materialized form of representation, despite its limits and setbacks.[139] His opinion is in harmony with the view of this dissertation, which is that the present limits of the ability to act on the behalf of mankind at international level is in no way affecting its emerging legal personality or its condition as a subject of international law.[140] The personality and capacity should be distinguished as two different types of participation of a subject of law. Personality without capacity is well known in domestic legal systems and in special international situations, for example in the case of Germany between 1945 and 1949 when Germany had international legal personality but no capacity.[141]

Another issue is that at first glance mankind's right to self-determinations seems to be conflicting with the attempt for mankind's representation, as the former splits up

[136] Nagy: Védőbeszéd (see above at 107)
[137] In the case Minors Opposa v. The Secretary of DENR (see above 101)
[138] Trindade (see above 128) at 187.
[139] Ibid. at 286.
[140] Ibid. At 287.
[141] Nagy: Speaking Without a Voice (see above 113) at 57.

people and the representation tries to unite them. However, the two are not necessarily conflicting. The representation does not automatically mean creating a 'world state.' It is possible to imagine different kind of set-up regarding different questions. As for what form should representation have, it *is* a hard question. The authorization of such an international body would require it to encompass the interests of states, international organizations, territories without governments etc. In special cases the inclusion of individuals would be useful as well, on the basis of their expertise.

Capacity to Enjoy Privileges and Immunities

The right to immunity and privileges derives from the doctrine of sovereign equality of states. It is necessary to have immunity from jurisdiction over acts of the state so that the state can perform its functions. In case of mankind this capacity may be found irrelevant. Mankind does not presently exercise jurisdiction, therefore their acts do not need to be exemptions to being overruled by another entity.[142] In the future this might change; the views on mankind certainly changed quickly in the last century, and this requirement will need to be fulfilled. As it is not yet the case, the paper will not examine this issue further.

Bearer of Rights and Obligations

Although we should separate rights and obligations as the two are quite different consequences of law, in this case the two are linked tightly together. For every right of mankind is also an obligation for at least a portion of mankind. For example, mankind is the beneficiary of the results of research and exploration of the outer

[142] Ibid. at 59.

space, but the states and individuals participating in said research, whose obligation is to share the results, are also part of mankind.[143]

Apart from the Moon Treaty this paper already mentioned several international documents where mankind has been named as a beneficiary of rights. In the past century examples have multiplied themselves in the number of treaties where the parties contracted obligations for the common interest of mankind.[144]

Most of the scholars admit that mankind has rights provided by international law, and consequently has legal personality, even if in a limited way.[145] However, some writers claim that having rights and not being able to enforce means that the entity is not a subject of the legal order, as passive legal personality is self-contradiction.[146] The essay already took a stand in this issue in the previous section; it is not uncommon in national or international legal orders for subjects to have limited capacity, therefore mankind's position as subject should not be dependent upon this issue.

The argument is looking into the question of whether or not mankind is a subject of international law because it would guarantee a stronger normative position for the principle of common heritage of mankind. However, the connection is not only one-sided. In the relation to mankind's right to the common heritage, it would be a question of importance to ask if the common heritage of mankind presents a concept sufficiently normative in character that it can generate specific legal effects, namely rights and obligations.[147] Future studies may shed some light on this topic.

[143] Moon Treaty (see above 4) at Article 4.
[144] Trindade (see above 128) at 285.
[145] E.g Tronchetti (see above 18) at 126.
[146] Ibid at. 127.
[147] Ibid.

Acceptance into the International Community

The acceptance of the international community is another requirement which may be found irrelevant in this case. The acceptance from the actors of the community definitely has a part to play when entering into treaty agreements. If an actor does not accept another entity as a subject it will not enter into written agreements with it. However, as we established before, mankind is not capable of entering into such relationship yet because of the lack of representation.

It would be a completely different situation if mankind could satisfy all the other requirements. If that were to happen, one might question the real power of the acceptance. The status of the Holy See and the Sovereign Order of Malta is debated to this day, but it does not exclude them from being considered to be subjects of international law, at least in some contexts.[148] The fact that some states may deny the subjectivity of mankind would not prejudice their status to a larger extent than the past resistance of the socialist bloc to recognize the individual or the Holy See as a subject of international law prejudiced their situation.[149]

Conclusion

All in all, mankind does not satisfy all of the requirements for subjectivity in international law. However, it does appear to have rights ensured by international law. It seems that Niciu's assessment was right; mankind is on the process of becoming a subject of international law.[150] At the present mankind has a limited international personality, with rights but practically no capacity to make claims. The biggest obstacle to overcome will be the lack of representation. In order to achieve

[148] Nagy: Speaking Without a Voice (see above at 113) at 57.
[149] Ibid.
[150] Quoted in Tronchetti (see above 18) at 126, Note 294.

representation such a level of cooperation from all parts of mankind is needed that has never previously been achieved of conceived of. But history has proven time after time that impossible things are only impossible until someone does them, so there is hope that the representation of mankind in international law will be achieved once.

CONCLUSION

The common heritage of mankind principle remains a controversial subject to this day. The controversy includes the issues of scope, content and legal status. It was created to be a revolutionary principle that challenged traditional concepts of international law. Because of the lack of clear, universally agreed definition, there has been no universal agreement on this subject as of yet.

This paper endeavoured to demonstrate a connection between the common heritage of mankind principle and collective human rights. The dissertation attempted to prove that the common heritage of mankind could be a useful instrument in promoting human rights. The common heritage concept has gradually found its way into several more fields of international law than it was originally created for. If it were to be acknowledged as a human right instrument it would help spreading human rights into new areas of international law, too. For this purpose the elements of the common heritage of mankind principle were examined for possible human rights considerations. The paper was able to determine that human rights *did* influence the common heritage principle therefore it could be a human rights instrument, if the legal position of the principle is clear. Unfortunately the legal status is unclear and faces many issues, principally the question of the legal personality of mankind. The essay came to the conclusion that until mankind has a representative that can act on its behalf there will be no universal agreement on the legal status of the common heritage of mankind, as the beneficiary of the principle is not recognized as a subject of the international legal order. Defining mankind is also important, not only for the legal status of the principle, but for the development of collective human rights as well.

This would make mankind a bearer of human rights, and its institutionalization would mean a possible way of enforcing other collective rights that are not linked to the common heritage of mankind so closely, for example health rights.[151]

The dissertation has in no way solved all the problems of the common heritage of mankind, in general or as a human right instrument. However, the paper can act as a good start, laying some of the groundwork for future studies and research. It established the human rights connection to the common heritage of mankind principle and discovered important difficulties; although it proved the human rights connection of the elements of the principle, it did not elaborate on what are the exact human rights obligations deriving from the principle. It also only focused on collective human rights and only on certain elements of the concept; therefore it would be worth to study the possible connection to individual human rights in all of the elements of the principle as well to obtain a clearer picture. The second half of the paper did discover one important obstacle in the way of mankind's international legal subjectivity and offered one potential form for the representation, but the examination of the realization of said possibility could be a study on its own. These studies could be an important follow-up to the paper, but they are not the only research that has to be conducted in order to realize the common heritage of mankind principle as a human rights instrument. The normativity of the common heritage of mankind also has to be examined thoroughly. As mentioned previously, the concept has to have a strong normative power so that it can prescribe human rights obligations and duties.

Collective human rights are also not a universally accepted concept. Most human rights treaties reflect an individualistic concept of rights and its holders. As mentioned

[151] The collective character of health rights has been discussed for example by Meier. See generally Meier BM: "Advancing health rights in a globalized world: responding to globalization through a collective human right to public health." In: *Journal of Law Med Ethics*, Vol. 35. No 4. (2007)

in the first chapter, not many treaties acknowledge the collective characteristics of certain rights. This view certainly will change in the future, as there are already a few international documents that guarantee rights for groups (e.g. refugees, indigenous people) and scholars pay more and more attention to it. The acceptance of the common heritage of mankind as a human right instrument would certainly help this development, because the link to collective rights has been identified.

Another complex question is the legal status of the common heritage of mankind as a human rights instrument. Right now, it is only included in one human rights treaty, which does not elaborate on the obligations deriving from it. In general, the legal content of the concept is unclear; therefore it has to be established by development of custom or treaty, which has only happened in relation to the deep sea-bed so far.[152] It would have to be examined what type of source would allow it to have legal consequences in the field of international human rights. In the study of Hannikainen it has been proved that the principle has some elements, for example the sharing of benefits, that possess the characteristics of a jus cogens norm.[153] Tuerk also argues that parts of the principle has a legal effect that is similar to that of a jus cogens.[154] On the other hand proponents of the common rights approach for Antarctica claimed that the concept became a customary rule under international law.[155] Hannikainen also arrived to the conclusion that any universal obligation arising from the principle is based on customary law.[156] But these theorists studied the concept not in relation to

[152] Birnie at 78.
[153] Lauri Hannikainen: *Peremptory Norms (Jus cogens) in International Law, Historical Development, Criteria, Present Status,* Finnish Lawyers Publishing Company, Helsinki 1988, at 595.
[154] Tuerk (see above 105) at 264.
[155] John W: Kindt: "A Regime for Ice-Covered Areas: The Antarctic and Issues Involving Resource Exploitation and Environment" In: *The Antarctic Legal Regime,* eds. Christopher C. Joyner, Sudhir K. Chopra, Martinus Nijhoff Publishers, Dordecht 1988, at 199.
[156] Hannikainen (see above 153) at 565.

human rights, but to other fields of international law. The binding legal power of the human rights obligations of the elements has to be examined as well.

Despite its limitations the essay showed an important connection between collective human rights and the common heritage of mankind. It has proved that the principle itself does not have to be considered a human right, it could prescribe human rights obligation in its, more-or-less, original form. The significance cannot be downplayed. Human rights gained more and more significance in the last century. The number of general or specific treaties in this field has multiplied. It has been mentioned before that the common heritage of mankind strives for global fairness. In a sense, so do human rights. If the two would have an established connection they would have a bigger chance achieving this common goal.

BIBLIOGRAPHY

"Definition of Mankind," available at: http://www.oxforddictionaries.com/definition/english/mankind
Last accessed 20.08.2015

"Quotes by Albert Einstein", *Goodreads,* available at: https://www.goodreads.com/quotes/729410-peace-is-not-merely-the-absence-of-war-but-the Last accessed 07.07.2015

"Quotes by Henry S. Truman", *Note a Quote,* available at: http://www.noteaquote.com/quote/3038 Last accessed 07.07.2015

"The Philippines: Supreme Court Decision in Minors Oposa v. The Secretary of the Department of Environment and Natural Resources," In: *International Legal Materials,* Vol. 33. No.1. (1994) pp. 173-206

"The Statute of Poljica" translated by Alan Ferguson, In**:** *The Autonomous Principality of Poljica*, Edo Pivcevic, available at: http://www.cuvalo.net/?p=49 Last accessed: 23.08.2015

"What does the right of peace mean?" *Testimony before the UN Human Rights Council 22nd Session, delivered by Hillel Neuer under Agenda Item 5, March 13, 2013.*
http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=13021147 Last accessed: 07.07.2015

"With the stroke of a pen, peace comes to Bosnia", *CNN*, 14 December 1995, available at: http://edition.cnn.com/WORLD/Bosnia/updates/dec95/12-14/bosnia_am/ Last accessed 07.07.2015

Arnold, Rudolph Preston: "The Common Heritage of Mankind as a Legal Concept" In: International Lawyer, Vol.9. No.1. (1975) pp. 153-158.

Avrid Pardo's speech, 22nd session of theUN General Assembly, 1516 meeting, Agenda item 92, *A/6695 AC. 1/956,* 1. November 1967, available at:

http://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967.pdf
Last accessed: 07.07.2015

Baslar, Kemal: "The Concept of the Common Heritage of Mankind in International Law" *Developments in International Law* Vol 30. Martinus Nijhoff Publishers, 1998 The Hague

Bulajic, Milan: *Principles of International Development Law, Progressive Development of the Principles of International Law Relating to the New International Economic Order,* Martinus Nijhoff Publishers, 1986 Dordrecht

Caruso, Linda A.: "The Impact of the Law of the Sea Conference on the International Law of Freedom of Marine Scientific Research" In: *Lawyers of the Americas,* Vol. 10. No.3. (1976) pp. 932-949.

Cassese, Antonio: *International Law in a Divided World,* Clarendon Press, 1986 Oxford

Chopra, Sudhir K.: "Antarctica as a Commons Regime: A Conceptual Framework for Cooperation and Coexistence" In: *The Antarctic Legal Regime,* eds. Christopher C. Joyner, Sudhir K. Chopra, Martinus Nijhoff Publishers, 1988 Dodrecht, pp. 163-186.

Conference on Antarctica: *The Antarctic Treaty*, 1 December 1959, available at: http://www.ats.aq/documents/ats/treaty_original.pdf Last accessed 23.08.2015

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf Last accessed 23.08.2015

De Jonge, Bram: "What is Fair and Equitable Benefit-sharing?" In: *Journal of Agricultural and Environmental Ethics,* Vol 24. No.2. (2011) pp. 127-146.

Donelly, Jack: „In defense of the Universal Declaration" In: *International Human Rights in the 21st Century, Protecting the Rights of Groups,* eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc, 2003 Boston, pp. 20-48

Drzewicki, Krzysztof: “The Rights of Solidarity – The Third Revolution of Human Rights” In: *Columbia Journal of transnational Law*, Vol. 36. Issues 1&2, pp. 399-430.

Freedman, Paul: “Principles of Scientific Research” In: *Journal of the Royal Society of Arts*, Vol. 98. No. 4814 (1950) pp. 308-309

Frey, Hildebrandt and Yaneske, Paul: *Visions of sustainability, Cities and regions,* Routledge, 2007 Abingdon

Gál, Gyula: “Some Remarks to General Clauses of Treaty Space Law” In: *Journal of the International Law Department of the University of Miskolc*, Vol. 1. No. 1 (2004), pp. 1-8 available at: http://www.uni-miskolc.hu/~wwwdrint/20041gal1.htm
Last accessed 20.08.2015

General Conference of the United Nations Educational, Scientific and Cultural Organization, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, available at: http://whc.unesco.org/en/conventiontext/
Last accessed: 23.06.2015

General Conference of the United Nations Educational, Scientific and Cultural Organization, *Universal Declaration on the Human Genome and Human Rights,* 11 November 1997, available at: http://unesdoc.unesco.org/images/0012/001229/122990eo.pdf,
Last accessed 23.06.2015

Goldie, L.F.E.: “A Note on Some Diverse Meanings of the Common Heritage of Mankind” *Syracuse Journal of International Law and Commerce,* Vol. 10. No.1. (1983) pp. 69-112

Gorove, Stephen: “Concept of Common Heritage of Mankind: A Political Moral or Legal Innovation” In: *San Diego Law Review,* Vol.9. No.3. (1972) pp. 390-403.

Guntrip, Edward: “The Common Heritage of Mankind: An adequate regime for managing the deep seabed?” *Melbourne Journal of International Law*, Vol.4. (2003) pp. 376-405

Holmila, Erkki: “Common Heritage of Mankind in the Law of the Sea” In: *Acta Societatis Martensis* Vol. 187. (2005) pp. 187-205

Ingram, David: “Group Rights, a defense” In: *The International Dimension of Human Rights*, Volume 1, ed. Karel Vasak, Greenwood Press, 1982 Westport, pp. 277-290.

Intergovernmental Negotiating Committee for a Convention on Biological Diversity, *Convention on Biological Diversity*, adopted on 05.06.1992, C.N.29.1996, available at: https://www.cbd.int/doc/legal/cbd-en.pdf Last accessed: 14.08.2015.

Jackson-Preece, Jennifer: “Human Rights and Cultural Pluralism, The ’Problem’ of Minorities” In: *International Human Rights in the 21st Century, Protecting the Rights of Groups*, eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc. 2003 Boston, pp. 49-71

Jacobs, Benjamin: “Future Energy: Lunar Resource Management and the Common Heritage of Mankind” In: 24 *Georgetown International Environmental Law Review* 221, pp. 222-244

John W: Kindt: “A Regime for Ice-Covered Areas: The Antarctic and Issues Involving Resource Exploitation and Environment” In: *The Antarctic Legal Regime,* eds. Christopher C. Joyner, Sudhir K. Chopra, Martinus Nijhoff Publishers, Dordecht 1988, pp. 189-218

Joyner, Christopher C.: “Legal Implications of the Concept of the Common Heritage of Mankind”, In: *The International and Comparative Law Quarterly,* Vol 35. No.1. (1986) pp. 190-199

Kiss, Alexandre: “Common Heritage of Mankind: Utopia or Reality?” In: *International Journal*, Vol 40. No. 3, Law in the International Community, 1985, pp. 423-441

Lauri Hannikainen: *Peremptory Norms (Jus cogens) in International Law, Historical Development, Criteria, Present Status,* Finnish Lawyers Publishing Company, Helsinki 1988

Lyons, Gene M. and Mayall, James: „Stating the Problem of Group Rights" In: *International Human Rights in the 21st Century, Protecting the Rights of Groups*, eds. Gene M. Lyons and James Marshall, Rowman & Littlefield Publishers Inc, 2003 Boston, pp. 3-19

Matte, N.M.: "Treaty Relating to the Moon*"* In: *Manual of Space Law*, ed. N. Jasentuliyana, R.S.K. Lee, Vol.1, Oceana, 1979 New York

Meier, BM: "Advancing health rights in a globalized world: responding to globalization through a collective human right to public health." In: *Journal of Law Med Ethics,* Vol. 35. No 4. (2007), pp. 545-555.

Monden, Annalise and Wils, Gert: "Art objects as common heritage of mankind" In: *Belgian Review of International Law,* Vol. 19. No.2. (1986), pp. 327-338

Nagy, Boldizsár: "Az emberiség közös öröksége és a jövő nemzedékek érdekei" Presented at the University of Debrecen, School of Law, 18. May 2005, available at: http://www.nagyboldizsar.hu/az-emberiseacuteg-koumlzoumls-oumlroumlkseacutege-eacutes-a-joumlv337-generaacutecioacutek-eacuterdekei.html Last accessed: 23.08.2015

Nagy, Boldizsár: "Speaking Without a Voice" In: *Future Generations and International Law*, eds. Emmanuel Agius, Salvino Busuttil, Routledge 2013 New York, pp. 52-63

Nagy, Boldizsár: "The Background Of The 'Rights Of Future Generations' In Hungarian and International Law" In: *A jövő nemzedékek jogai,* ed. Benedek Jávor, Védegylet, 2000 Budapest, pp. 52-64.

Nagy, Boldizsár: "Védőbeszéd a jövő nemzedékekért" *Liget*, February 1994, available at: http://ligetmuhely.com/nagy-a-jovo-nemzedekekert/ Last accessed 15.08.2015

Organization of African Unity, *African Charter on Human and Peoples' Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: http://www.refworld.org/docid/3ae6b3630.html Last accessed 15.06.2015

Rao, R. Jaganmohan and Rao, R. Ventaka: "Freedom of the Seas, Common Heritage of Mankind and the New International Economic Order" In: *The New International Economic Order Perspectives (Towards a Global Concern),* eds. K. C. Reddy, M. Jagdeswara Rao, S. Chandra Sekhar, Ashish Publishing House, 1991 New Delhi, pp. 163-174.

Sieghart, Paul: *The Lawful Rights of Mankind, An introduction to the International Legal Code of Human Rights,* Oxford University Press, 1986 Oxford

Smith, George P.: "Re-evaluating the Freedom of Scientific Inquiry Through Biotechnology and Human Rights" In: *Proceedings of the Annual Meeting (American Society of International Law),* Vol. 96 (2002), pp- 115-120

Statement by Judge Mohammed Bedjaoui at RAWOO Seminar „International Dimension of the Development Problem" on Amsterdam, 05.10.1984, as quoted in: Bulajic, Milan: *Principles of International Development Law, Progressive Development of the Principles of International Law Relating to the New International Economic Order,* Martinus Nijhoff Publishers, 1986 Dordrecht, at 328.

Stephen Gorove: *Studies in Space Law: the Challenges and Prospect, A. W. Sijthoff,* 1977 Leiden

Taylor, Prue: *An Ecological Approach to International Law: Responding to Challenges of climate change,* Routledge, 1998 London

Trindade, Antônio Augusto Cançado: *International Law for Humankind, Towards a New Jus Gentium,* The Hague Academy of international law monographs, Martinus Nijhoff Publishers, 2010 Leiden

Tronchetti, Fabio: *The Exploitation of Natural Resources of the Moon and Other Celestial Bodies, A Proposal for a Legal Regime,* Martinus Nijhoff Publishers, 2009 Leiden

Tuerk, Helmut: "The idea of the common heritage of mankind" In: *Serving the Rule of International Maritime Law, Essays in Honour of Professor David Joseph Attard,* ed. Norman A. Martínez Guitérrez, Routledge, 2009 New York, pp. 165-175

Türk, Danila: “Introduction: Group Rights and Human Rights” In: *The Tension Between Group Rights and Human Rights, A multidisciplinary approach*, eds. Koen De Feyter, George Pavlakos, Hart Publishing, 2008 Portland, pp. 1-9

UN General Assembly *Declaration on the Right of Peoples to Peace*, A/RES/39/11, adopted 12 Nov. 1984, Meeting No. 57. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightOfPeoplesToPeace.aspx Last accessed 07.07.2015

UN General Assembly, *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, 5 December 1979, UNGA Res. 34/68, available at: http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html Last accessed 15.06.2015

UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982, available at: http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm Last accessed 15.06.2015

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.unhcr.org/3b66c2aa10.html Last accessed 16.08.2015;

UN General Assembly, *Declaration of Principles governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of Nations Jurisdiction*, 17 December 1970, A/RES/2749(XXV), available at: http://www.refworld.org/docid/3b00f1cec.html Last accessed 17.05.2015

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx Last accessed 23.08.2015

UN General Assembly, *Report of the United Nations Conference on Environment and Development*, 12 August 1992, A/CONF.151/26, available at:

http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm
Last accessed 14.08.2015

UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994, available at: http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503 Last accessed 14.08.2015

UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
Last accessed 16.08.2015

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.un.org/en/documents/udhr/ Last accessed 23.08.2015

UN General Assembly, *World Charter for Nature*, 28 October 1982, A/RES/37/7, available at: http://www.un.org/documents/ga/res/37/a37r007.htm Last accessed 14.08.2015

UN General Assembly: *Our Common Future: Report of the World Commission on Environment and Development,* A/42/427 Annex, 1987, available at: http://www.un-documents.net/wced-ocf.htm
Last accessed: 07.07.2015,

United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: http://www.un.org/en/documents/charter/preamble.shtml, Last accessed 14 August 2015

Van Boven, Theodoor C.: "Distinguishing criteria of Human Rights" In: *The International Dimension of Human Rights,* Volume 1, ed. Karel Vasak, Greenwood Press, 1982 Westport, pp. 87-110.

Van Hoof, G.J.H: "The Legal Status of the Concept of the Common Heritage of Mankind" In: *Grotiana*, Vol. 7, pp. 49-79.

Weiss, Edith Brown: "In Fairness To Future Generations and Sustainable Development" In: *American University International Law Review*, Vol.8. No.1, pp. 19-26.

World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, 4 September 2002 A/CONF. 199/20, available at: http://www.un-documents.net/jburgdec.htm Last accessed 14.08.2015

Zieck, Marjoleine Y. A: "The Concept of 'Generations' of Human Rights and the Right to Benefit from the Common Heritage of Mankind with Reference to Extra-terrestrial Realms" In: *Verfasssung und Recht im Übersee/ Law and Politics in Africa, Asia, and Latin America,* Vol. 25. No.2. (1992) pp. 161-198.