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THE COMMON HERITAGE OF MANKIND AND THE WORLD HERITAGE: CORRELATION OF CONCEPTS

PATRIMÔNIO COMUM DA HUMANIDADE E PATRIMÔNIO MUNDIAL: CORRELAÇÃO DE CONCEITOS

EL PATRIMONIO COMÚN DE LA HUMANIDAD Y EL PATRIMONIO MUNDIAL: CORRELACIÓN DE CONCEPTOS

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ABSTRACT

Contextualization: Issues of legal regulation of the concepts of common heritage of mankind and world cultural and natural heritage have been actively discussed in science and have been the object of close scrutiny in practice for more than a decade, but nowadays, the context of these discussions has changed noticeably.

Objectives: This study focuses on the history of the emergence and development of the concept of the common heritage of mankind and the concept of world heritage. Particular attention is paid to the international legal regulation of both concepts and the analysis of their content. The article reveals the criteria and conditions for the universal value of the world heritage and offers a definition of the concepts of «common heritage of mankind»

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and «world cultural and natural heritage».

Methodology: The research uses the inductive method and a literature review.

Result: It is concluded that any changes to and expansion of the scope of the concept of the common heritage of mankind can affect the approach to the concept of state sovereignty, thereby affecting the stability of the international legal order.

Keywords: **Common heritage of mankind. World heritage. C**ustomary international law.

RESUMO

Contextualização: As questões da regulamentação legal dos conceitos de patrimônio comum da humanidade e de patrimônio cultural e natural mundial têm sido ativamente discutidas na ciência e objeto de grande atenção na prática, há mais de uma década, mas, agora, o contexto de sua consideração mudou visivelmente.

Objetivo: Este estudo centra-se na história do surgimento e desenvolvimento do conceito de patrimônio comum da humanidade e do conceito de patrimônio mundial. É dada especial atenção à regulamentação jurídica internacional de ambos os conceitos e à análise do seu conteúdo. O presente artigo revela os critérios e as condições para o valor universal do patrimônio mundial, define os conceitos de patrimônio comum da humanidade e patrimônio cultural e natural mundial.

Metodologia: A pesquisa utiliza o método indutivo e a revisão bibliográfica.

Resultado: Conclui-se que qualquer modificação e ampliação do alcance do conceito de patrimônio comum da humanidade pode afetar a abordagem do conceito de soberania estatal, impactando a estabilidade do ordenamento jurídico internacional.

Palavras-chave: Patrimônio comum da humanidade. Patrimônio mundial. Direito internacional consuetudinário.

RESUMEN

Contextualización: Los temas de regulación legal de los conceptos de patrimonio común de la humanidad» y patrimonio mundial cultural y natural se han discutido activamente en la ciencia y han sido objeto de una estrecha atención en la práctica durante más de una década, pero por ahora el contexto de su consideración ha cambiado notablemente.

Objetivo: Este estudio se centra en la historia del surgimiento y desarrollo del concepto de patrimonio común de la humanidad y el concepto de patrimonio mundial. Se presta especial atención a la regulación jurídica internacional de ambos conceptos y al análisis de su contenido. El artículo revela los criterios y condiciones para el valor universal del patrimonio mundial, da una definición de los conceptos de patrimonio común de la

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humanidad y patrimonio mundial cultural y natural.

Resultado: Se concluye que cualquier modificación y ampliación del alcance del concepto de patrimonio común de la humanidad puede afectar el abordaje del concepto de soberanía estatal, afectando la estabilidad del ordenamiento jurídico internacional.

Metodología: La investigación utiliza el método inductivo y la revisión de la literatura.

Palabras clave: Patrimonio común de la humanidad. Patrimonio mundial. Derecho internacional consuetudinario.

INTRODUCTION

The cultural and natural heritage is an invaluable and irreplaceable asset that is reserved not only for individual people, but to humanity as a whole. The risk of such values being lost through deterioration or disappearance unites the heritage of all peoples of the world. Certain heritage sites, due to their exceptional merits, are outstanding universal assets that require special protection from gathering threats to their existence[3]. Wars, natural disasters and acts of vandalism aimed at destroying or damaging cultural and natural heritage have led to the need for an innovative approach to identifying, protecting, conserving and promoting this heritage. The concept of a world cultural and natural heritage[4] emerged a little later than that of "common heritage". It was developed with the adoption of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage[5] (hereinafter, the 1972 Convention).

A further concern is the open question of "world cultural and natural heritage" vs. "common heritage of mankind"[6] both as legal categories and as scientific concepts. This pressing concern was what prompted the authors to carry out a detailed study in this regard.

3 The concept of World Natural Heritage: textbook/Mar. State University; V.I. Drobot. - Yoshkar-Ola. 2008. - 122 p. Undoubtedly, the World Heritage status seems to be very attractive in terms of a number of advantages both in the context of environmental protection and in terms of comprehensive support to the territories inscribed on the World Heritage List. The Convention represents a wide range of opportunities in the legal, informational and economic field, connections and contacts, which have been developing and improving for more than three decades. The main benefits can be summarized as follows: 1. Additional guarantees of safety and integrity of unique natural complexes. 2. Increased prestige of territories and institutions managing them. 3. Popularization of the objects included in the List. 4. Development of alternative types of nature management, first of all, ecological tourism. 5. Priority in attracting financial resources to support the World Heritage sites, first of all From the World Heritage Fund. 6. Organization of monitoring and control over the state of conservation of natural sites.

4 Anisimov I.O. Underwater cultural heritage. Actual problems of international legal protection: a monograph. 2nd edition - Moscow: Pero, 2015. - 267 p.; Anisimov I.O. Correlation of the concepts of "underwater cultural heritage" and "world cultural and natural heritage" // Law and Politics. - 2014. - № 7. C. 996-1004. DOI: 10.7256/1811-9018.2014.7.12429; Anisimov I.O. International maritime law. Educational and methodical manual. - Moscow: Quant Media, 2018. - 136 p.; Drobot V.I. The concept of the World Natural Heritage: a textbook / Mar. State University; V.I. Drobot. - Yoshkar-Ola, 2008. - 122 p.

5 UNESCO. **Conventions for the Protection of Cultural Heritage.** Moscow: Uniprint, 2002. p. 70-87.

6 Also termed the common heritage of humanity, common heritage of humankind or common heritage principle.

The evolutionary background of the common heritage of mankind demands the highest attention and deliberation by the international legal community. However, there have been fewer studies on this topic than one might expect, perhaps due to the lack of specialized material on issues such as the Antarctic legal status, genetic marine resources, space assets, the atmosphere, and the natural environment. But there are many viewpoints surrounding the issue in question, and a change in attitudes requires renewed reflection on the existing models.

- The concept of a common heritage has evolved over time:
- At first, anything out of state sovereignty was seen as "a thing without an owner" **(res nullis)**[7];
- It was gradually realized that international spaces should be shared, and hence, the concept of a common heritage came into being (**res communis**)
- Everyone could take his share from the common assets but nobody was responsible for its preservation; so, due to the devastating damage resulting from constant usage, the urgent need arose to collectively protect the common heritage. Hence, the concept of common heritage of mankind came into being (**res communis humanitatis).**

The recent development of the concept is as follows:

- 50-60s: offshore research showed large deposits of natural resources on the seabed; developing and underdeveloped nations have expressed concern that the ocean resources will be divided among nations with advanced maritime technology[8];
- 60-70s: Extension of the concept of CMH to space and the seabed. 1967 Ambassador Arvid Pardo of Malta proposed that the seabed beyond national jurisdiction be declared part of the "common heritage of mankind";
- 70-90s: The International Seabed and its resources are the common heritage of mankind;
- 90-present: collective rights (human right to a favorable environment[9]), Artemis

7 O'CONNELL, D. P. Jurisdiction on the High Seas. **The International Law of the Sea**. Vol. 2, n. 21. 1988. Available at: https://opil.ouplaw.com/view/10.1093/law/9780198254690.001.0001/law-9780198254690-chapter-6

8 ANISIMOV I.O., GULYAEVA E.E. Promoting the Development and Transfer of Marine Technologies as a Mechanism for Implementing the Sustainable Development Goals: International Legal Aspect. **Revista Opinio Juridica**. v. 19, n. 32 p. 184-201, 2021.

9 DANELYAN, A.A.; GULYAEVA E.E. The right to healthy and favorable environment in the practice of the European Court of Human Rights. **International Legal Courier**. N. 2, p. 9-23, 2021.

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Agreement[10].

Over time, all these positions have formed the basis of the concept of the common heritage of mankind, extending protection to the interests not only of present but also of future generations.

The main sources of **regulation of the common heritage of mankind** are a set of international treaties and international legal customs[11] that contain, inter alia, the international legal regime of scientific research and the determination of the basis of international legal liability for harm caused. **The main sources include**:

- Geneva Convention on the High Seas of 1958;
- Antarctic Treaty of 1959;
- The Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (UNGA resolution 1962 (XVIII) of December 13, 1963);
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967;
- Declaration of Principles Governing the Regime of the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, 1970 (UNGA Resolution 2749 (XXV));
- United Nations Convention on the Law of the Sea, 1982;
- Customary international law.

The concept of the common heritage of mankind is regarded as part of international customary law. It provides an accurate legal framework with general, rather than specific legal obligations concerning areas beyond national jurisdiction. It runs counter to the principle of respect for state sovereignty, as it raises the idea of the common public good and the binding nature of international cooperation[12].

10 NASA. **The Artemis Accords:** principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes. 2020. Available: https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf. Accessed on: 01/08/2021; ISPOLINOV, K. A.S. **Agreement of Artemis:** American model of space resources mining regulation goes into orbit. 2020. Available: https://zakon.ru/blog/2020/10/16/soglashenie_artemidy_amerikanskaya_model_regulirovaniya_dobychi_resursov_kosmosa_vyhodit_na_orbitu. Accessed on: 01/08/2021.

11 Convention on the High Seas; Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space; Declaration of Principles Governing the Regime of the Ocean Floor and its Subsoil Beyond National Jurisdiction; United Nations Convention on the Law of the Sea.

12 VÖLKERRECHT; WITZTUM, Wolfgang Graf et. al. **International law.** 2 ed. Moscow: Infotropic Media, 2015. p. 1072.

There is general agreement among scholars on the lack of doubts about the applicability of the common law to outer space[13], the moon and other celestial bodies, and the international area of the seabed. Nevertheless, experts recognize significant strain in practical application of the concept of common heritage of mankind in the Antarctic, the atmosphere and the environment. In the absence of proper legal regulation of marine genetic resources and space objects, the dissemination of the concept of common heritage of mankind is compromised by a lack of recognition by the international community **(erga omnes),** the extension of a special international legal regime which, in turn poses serious problems for the area in question. At the level of international law, the conceptual framework for defining and regulating the marine genetic and space resources is still not reflected in the key international legal instruments. This constitutes a major gap in the maritime and space law that needs to be filled urgently, in view of the current commercialization of space and the ocean.

This brings the authors to the point that common heritage of mankind is the concept of international law that gives a clear understanding that certain territories and their resources of benefit to mankind should be protected against unilateral exploitation by individual states and their citizens, as well as by corporations and other entities, and that their exploration and use should only be permitted under an international treaty or regime that benefits mankind as a whole.

We would like to stress, however, that the recently-signed Artemis Agreements[14] call on partner states to commit to protecting places and objects of historic value in space. Since 2015, there have been opinions among U.S. experts and organizations that it is necessary to develop an international agreement for the protection of places and objects related to United States space activities, in order to prevent damage to them due to the activities of individuals or nations engaging in Moon exploration.

Addressing undeveloped space resources through improvements in the international legal system is a crucial international challenge. Influenced by the concept of freedom of the seas proposed by Hugo Grotius, and enshrined in the 1982 Law of the Sea Convention[15], traditional international law theory holds that the exploration and use of an international asset, such as the ocean or outer space should be conducted under the concept of liberalism (free competition).

13 KAPUSTIN, A.Y., AVKHADEEV, V.R., GOLOVINA, A.A. et. al.. **Formation of modern international-legal concept of research and use of outer space.** Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation (INFRA-M), 2021.

14 The Artemis Accords: principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes. Available at: https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf. Accessed on: 01/08/2021.

15 UNITED NATIONS. **Convention on the Law of the Sea of December 10, 1982**. [Available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_r.pdf. Accessed on 01/08/2021.

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In 2019, a Working Group on International Environmental Law was established, as a spin-off of the conference of the European Association of International Law in Greece, which held an additional conference on "States, Corporations and the Common Heritage of Mankind: Divergences and Agreements (Dissent and Concord)". The event took place at the Aristotle University of Thessaloniki, Faculty of Law. It was attended by international environmental lawyers, and was supported by the American Association of International Law and the Aristotle University of Thessaloniki Faculty of Law. The conference declared that "the common heritage of mankind is the cultural and natural resources available to all members of the world community including natural elements such as air, water, and livable land. These resources are shared, not privately owned.

The idea of shared destiny adopted by the Chinese government attests to this view. The most significant legal issue that could arise resulting from the exploration, utilization and development of space resources is how to share the opportunities and benefits that these activities bring.

The Community of One Destiny for Humanity (sometimes also translated as "Community of Collective Future for Humanity" in the academic literature) is a slogan used by Chinese officials to describe the country's foreign policy goals. Although the content of the concept is still the subject of debate in academic circles, its underlying principles were articulated by Chinese President Xi Jinping during his address to the 70th session of the UN General Assembly in 2015, when he declared: "We must build partnerships in which countries treat each other as equals, engage in mutual consultation and demonstrate mutual understanding <...> We must create a security environment based on honesty, fairness, shared contributions and common benefits <... > We must promote open, innovative and inclusive development that benefits all <...> We must expand inter-civilizational exchanges to promote harmony, openness and respect for differences <...> We must build an ecosystem that puts mother nature and ecological development first"[16].Thus, according to President Jinping, it is five-dimensional concept that involves political partnership, security, economic development, cultural exchange and the environment.

Thus, the core of the concept of common heritage of mankind can be summarized as follows:

- It belongs to the international community as a whole;
- All states, without discrimination, shall establish their own regimes and administration;
- It is to be used in the best interests of all mankind, and only for peaceful purposes;

16 Xi Jinping's Address to the 70th Session of the UN General Assembly September 28, 2015.

- Operating regimes may not allow its degradation;
- All states should benefit equally from it;
- The interests of future generations in relation to it should be considered.

The concept of a common, or shared heritage[17] is related to another concept in contemporary international law; that of sustainable development (UN SDG 2030)[18]. The goals enshrined in the 2030 Agenda for Sustainable Development (resolution 70/1, adopted by the UN General Assembly in 2015) were formulated with the preservation of common heritage in mind and require that sustainable development be achieved for all countries. The interests of both developed and developing countries must be taken into consideration. We should note that according to academic opinion, it is necessary to establish a uniform conceptual framework and to increase the practical significance of previous, fragmented research on the cultural heritage and sustainable growth.

The 1972 Convention, Article 1[19] gives a descriptive definition of the terms "cultural heritage" and "natural heritage". The primary goal of that international agreement is to use international instruments to identify, protect and comprehensively support World heritage sites and environmental amenities.

1. THE CONCEPT OF THE WORLD CULTURAL AND NATURAL HERITAGE:

17 The concept of common heritage was introduced into positive international law by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967). According to this Treaty the use of outer space "shall be carried out for the benefit and in the interest of all countries, regardless of their degree of economic or scientific development, and shall be the heritage of all mankind" (Article 1). Outer space, including celestial bodies, is not subject to national appropriation (Article 2). The concept under consideration is also reflected to some extent in the legal regime of international airspace. With the scientific and technological progress, it opens up more and more new areas. The development of radio and then electronic communications raised the question of the allocation of wave frequencies. As we know, modern civilization is increasingly dependent on the reliability of telecommunications. Arbitrariness in this field poses a threat to all countries. Hence the need for cooperation in the use of the "electronic commons." The International Telecommunication Union deals with these issues. The concept is also of direct relevance to environmental law, which is generally seen as the common heritage of humanity. The atmosphere is included in the category of the common heritage. Its deterioration threatens the survival of mankind. Melting ice in the Antarctic could flood vast areas of land and lead to fundamental climate change. It should be noted that the principle of the common heritage of mankind applies to the international legal regime of Antarctica to a lesser extent. At the 11th Antarctic Treaty Consultative Meeting on December 1, 1959, the Antarctic Treaty Consultative Parties, in Recommendation XI-I, paragraph 5.d, only testified that "in dealing with the issue of Antarctic mineral resources, the Consultative Parties are not prejudicial to the interests of all mankind in that area." Moreover, during discussions at the UN on the application of the principle of the common heritage of mankind to the Antarctic, the authority of the Antarctic Treaty Consultative Parties to negotiate and conclude a treaty for the exploration and exploitation of Antarctic mineral resources has been questioned.

18 UNITED NATIONS. **Resolution adopted by the General Assembly on 25 September 2015 -** "Transforming our world: the 2030 Agenda for Sustainable Development". 2015. Available: https://undocs.org/A/RES/70/1. Accessed 01.08.2021.

19 UNESCO. **Conventions for the Protection of Cultural Heritage.** Moscow: Uniprint, 2002. p. 70-87.

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GENESIS AND EVOLUTION

The authors of this study suggest that the following stages should be highlighted in the formation of the concept of the world cultural and natural heritage:

- in slave societies of ancient India, rules of warcraft started to form, whereby churches, places of worship and their clergy enjoyed inviolability;
- In the late 19th and early 20th Centuries, the humanization of warfare rules led to greater preservation of historical monuments, artistic and scientific works, and religious sites, through international instruments;
- 1935 r. - adoption of the Roerich Pact, which became the basis of universal international treaties for the protection of historical monuments, museums, scientific, artistic, educational and cultural institutions;
- 40-50s. – a joint work between UNESCO and the ICRC to codify rules for the protection of cultural sites. For the first time, the notion of "cultural property" was defined at a universal level
- 1960s and 1970s - UNESCO worked on the World Heritage Convention. - UNESCO worked on the concept of world heritage. For the first time, the notions of cultural heritage, natural heritage and outstanding universal value were enshrined at universal level;
- Early 21st century to now - adoption by UNESCO of universal international treaties on underwater cultural heritage and intangible cultural heritage. Work is progressing on improving the legal protection of sites, with a view to the concepts of sustainable tourism and sustainable development, including those referred to in the UN Sustainable Development Goals.

In 2001, the world heritage committee launched the world heritage program on sustainable (responsible) tourism. This program aims to strengthen the relationship between sustainable tourism and preservation of heritage sites, and to promote environment-oriented policy, reducing negative social economic effects and ensuring social and economic support for local populations.

2. THE KEY SOURCES OF REGULATORY FRAMEWORK FOR

INTERNATIONAL LEGAL PRESERVATION OF WORLD HERITAGE

At present, the main sources governing the protection of the world's cultural and natural heritage are international treaties and customs of international law. These including the following[20]:

- The Hague Convention on the Laws and Customs of War on Land of 1907;
- The 1935 Treaty for the Protection of Artistic and Scientific Institutions and Historical Monuments (Roerich Pact). (The Treaty for the Protection of Artistic and Scientific Institutions and Historical Monuments of 1935;)
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954;
- Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999;
- Convention for the Protection of the World Cultural and Natural Heritage, 1972;
- Additional Protocol I to the Geneva Conventions of 1949;
- UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, 2003;
- Operational Guidelines for the Implementation of the World Heritage Convention (revised July 17);
- Customary International Law.

3. IDENTIFYING CULTURAL AND NATURAL HERITAGE

Under Article 1 of the1972 Convention, "***cultural heritage***" is identified as:

- Monuments: architectural works, works of monumental sculpture and painting,

20 The 1935 Treaty for the Protection of Artistic and Scientific Institutions and Historical Monuments, available at: http://www.icr.su/rus/evolution/pact/; I Additional Protocol to the 1949 Geneva Conventions, available at: https://www.icrc.org/ru/doc/resources/documents/legal-fact-sheet/protocols-1977-factsheet-080607.htm; Convention for the Protection of Human Rights and Fundamental Freedoms; Collection of Legislation of the Russian Federation; Convention Concerning the Protection of World Cultural and Natural Heritage; Convention on the Law of the Sea; European Convention on the Protection of Archaeological Heritage; Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict; European Landscape convention and explanatory report; Convention on the Protection of the Underwater Cultural Heritage; Declaration concerning the Intentional Destruction of Cultural Heritage; Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Guidelines for the implementation of the World Heritage Convention.

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elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

- Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

- Sites: works of man or the combined works of nature and man, and areas, including archeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view;

Under art. 2 of the 1972 Convention, ***"natural heritage"*** is identified as

- natural monuments created by physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

- geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of Outstanding Universal Value from the point of view of science or conservation;

- natural sites or precisely delineated natural areas of Outstanding Universal Value from the point of view of science, conservation or natural beauty.

Universal value criteria. Certain criteria and modalities have been elaborated for use by the World Heritage Committee, the body responsible for preserving and managing world heritage sites, when assessing the outstanding value of sites and their benefit for the states – Convention parties. For a site to be included in the world heritage list, it should:

i. represent a masterpiece of human creative genius;

ii. exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

iii. bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

iv. be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

v. be an outstanding example of a traditional human settlement, land-use or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

vi. be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. *The Committee considers that this criterion should preferably be used in conjunction with other criteria);

vii. contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;

viii. be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphologic or physiographic features;

ix. be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal marine ecosystems and communities of plants and animals;

x. contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

4. UNIVERSAL VALUE ASSESSMENT MODALITY

Authenticity – properties may be understood to meet the conditions of authenticity of their cultural values are truthfully and credibly expressed through a variety of attributes including

- form and design;
- materials and substance;
- use and function;
- traditions, methods and management systems;
- location and setting;

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- language, and other forms of intangible heritage;
- spirit and feeling; and
- other internal and external factors.

Integrity - the measure of the wholeness and intactness of the natural and/or cultural heritage and its attributes. Examining the conditions of integrity requires assessing the extent to which the property:

a. includes all the elements necessary for the expression of Outstanding Universal Value;

b. is of adequate size necessary for the complete representation of the features and processes which convey the property's significance;

c. suffers from the adverse effects of development and/or neglect.

At the core of the entire concept is the notion of "outstanding universal value." It is worth noting some of the provisions of the concept set forth in the 1972 Convention, namely:

1. the sovereignty of the State where the sites are located is fully acknowledged and respected, and is totally subject to the sovereign rights and provisions of national legislation;
2. ensuring, identifying, protecting, preserving and promoting the world heritage is primary a matter for the state where site is located;
3. international community is bound to collaborate for protection of world cultural and natural heritage providing assistance to the state concerned at its request;
4. states undertake not to act in such a way that might cause direct or indirect harm to the cultural or natural heritage;
5. states as well as other entities undertake to conduct their activities with the sites of world cultural and natural heritage according to the concept of sustainable development and tourism in particular.

FINAL CONSIDERATIONS

We have seen there is a clearer perception, in the international legal society, that a number of key areas of international law are indeed governed by customary law, due to the scarcity or absence of applicable treaties. Even where there is a treaty in force,

customary international laws continues to govern matters not covered by the treaty, and to apply these laws in relations with and between non-parties to the treaty. In the article under consideration, the authors conclude that there are similarities and differences between the concept of common heritage of mankind and that of world heritage.

Main similarities between the concepts:

- the protection regime is governed primarily by international law;
- both concepts are based on the perspective of future generations;
- both concepts are closely linked to the idea of sustainable development[21];
- territories and facilities are to be used for peaceful purposes only;
- territories and facilities are to be used for the benefit of mankind as a whole.

Main differences between the concepts:

- world heritage sites have international legal status or are in common use/world heritage sites are formally owned by the states where they are located;
- ensuring, identifying, protecting, preserving and promoting the common heritage is primarily the responsibility of the state where the site is located/the preservation of Common Heritage of Mankind is the task of all states as a whole;
- world heritage sites are subject not to rules of international legislation only, but also to domestic laws;
- The concept of Common Heritage of Mankind is not as widely recognized as the concept of world heritage;
- The concept of Common Heritage of Mankind is not clearly defined under any treaty.

It is noted that at the 29th session of the UNESCO General Conference in 1997, several experts expressed the opinion that "all sites of archaeological interest in the Deep-Sea Area should be declared as Cultural Heritage of Humanity". On one hand, this confirms the close relationship between the two concepts under consideration. But on the other, it leads to further debate over the terminology.

21 LOULANSKI, Tolina. Hokkaido University Cultural Heritage and Sustainable Development: Exploring a Common Ground https. **The journal of International Media,** n. 5, p. 37-58, 2007. The author of the study emphasizes that cultural heritage is an evolving social concept based on dynamism, complexity and multiplicity, and that sustainable development is the dominant development paradigm of our time.

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We should also mention the existing differences in the approaches to the organization of the legal protection of the world cultural and natural heritage sites and the territories, declared as "common heritage of mankind". This, in turn, determines different methods of management of the relevant sites and territories.

All world cultural and natural heritage sites, as well as "common heritage of mankind", require the utmost care and protection. They are exposed to common threats such as possible adverse effects of the environment, as well as other hazards, including anthropogenic ones. There is an understanding in customary international law that the fundamental rules of contemporary international law apply to the common heritage of mankind and world heritage and that in the event of damage, they can be held internationally responsible[22].

Moreover, it should be emphasized that any changes to or expansion of the concept of the common heritage of mankind are likely to affect the approach to the notion of state sovereignty, impinging on the stability of international legal order. At the same time, and viewing the world as a single structure, China's idea of a shared destiny takes into account the development imbalances of science, technology, economy and society in the world today, and advocates the promotion of heterogeneity and diversity of states through a civilized dialogue based on recognition and understanding. Some scientists are of the opinion that such a position will ultimately lead to common development and progress[23].

REFERENCES

HUI, Zhang. The Commonality of Human Destiny: Contemporary Development of Basic Society Theory in International Law. **Chinese Social Science**, n. 5. 2018.

UNITED NATIONS. **Vienna Convention on the Law of Treaties**. Treaty Series, vol. 1155, n. 18232, 1969.

INTERNATIONAL COURT OF JUSTICE. **Croatia v. Serbia**. 2015

LOULANSKI, Tolina. Hokkaido University Cultural Heritage and Sustainable Development: Exploring a Common Ground https. **The journal of International Media,** n. 5, p. 37-58, 2007.

O'CONNELL, D. P. Jurisdiction on the High Seas. **The International Law of the Sea**. Vol. 2, n. 21. 1988. Available at: https://opil.ouplaw.com/view/10.1093/law/9780198254690.001.0001/law-9780198254690-chapter-6

22 A number of important areas of international law are still essentially governed by customary international law because of the few or no treaties that are applicable. Even where a treaty is in force, customary international law continues to regulate matters not provided for in the treaty and continues to apply to and among non-parties. Furthermore, treaties may refer to customary international law; and such rules may be taken into account in interpreting treaties in accordance with Article 31 (3) (c) of the UNITED NATIONS. **Vienna Convention on the Law of Treaties**. Treaty Series, vol. 1155, n. 18232, 1969. p. 331. Furthermore, it may sometimes be necessary to determine which law was applicable at the time of certain acts ("inter-temporal law"), and the applicable law may be customary international law, even if a treaty is now in force. In any event, a rule of customary international law may survive and be applied separately from a treaty, even if its content is the same and even between the parties to the treaty (see Military and Paramilitary Activities in and against Nicaragua INTERNATIONAL COURT OF JUSTICE. **Nicaragua v. United States of America**. 1986, p. 14/93-96. Application of the Convention on the Prevention and Punishment of the Crime of Genocide INTERNATIONAL COURT OF JUSTICE. **Croatia v. Serbia**. 2015, p. 3/47-48/88).

23 HUI, Zhang. The Commonality of Human Destiny: Contemporary Development of Basic Society Theory in International Law. **Chinese Social Science**, n. 5. 2018.

DANELYAN, A.A.; GULYAEVA E.E. The right to healthy and favorable environment in the practice of the European Court of Human Rights. **International Legal Courier**. N. 2, p. 9-23, 2021.

ANISIMOV I.O., GULYAEVA E.E. Promoting the Development and Transfer of Marine Technologies as a Mechanism for Implementing the Sustainable Development Goals: International Legal Aspect. **Revista Opinio Juridica**. v. 19, n. 32 p. 184-201, 2021.

VÖLKERRECHT; WITZTUM, Wolfgang Graf et. al. **International law.** 2 ed. Moscow: Infotropic Media, 2015. p. 1072.

UNESCO. **Conventions for the Protection of Cultural Heritage.** Moscow: Uniprint, 2002.

UNITED NATIONS. **Convention on the Law of the Sea of December 10, 1982**. Available: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_r.pdf. Accessed on: 01/08/2021.

UNITED NATIONS. **Resolution adopted by the General Assembly on 25 September 2015 -** "Transforming our world: the 2030 Agenda for Sustainable Development". 2015. Available: https://undocs.org/A/RES/70/1. Accessed 01/08/2021.

NASA. **The Artemis Accords:** principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes. 2020. Available: https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf. Accessed on: 01/08/2021

ISPOLINOV, K. A.S. **Agreement of Artemis:** American model of space resources mining regulation goes into orbit. 2020. Available: https://zakon.ru/blog/2020/10/16/soglashenie_artemidy_amerikanskaya_model_regulirovaniya_dobychi_resursov_kosmosa_vyhodit_na_orbitu. Accessed on: 01/08/2021.

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