Satya Nandan’s Legacy for the Common Heritage of Mankind

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Slightly over thirty years after the adoption of the United Nations Convention on the Law of the Sea, which took place in New York on 30 April 1982, it seems appropriate to reflect on Satya Nandan’s contribution to the development of the “common heritage of mankind”, one of the most controversial principles embodied in the Convention. The common heritage principle is found in Part XI of the Convention, which is the Part of the Convention which establishes a regime for mining of the deep seabed beyond national jurisdiction.

This paper considers some aspects of the implementation of the common heritage principle in relation to the mineral resources of the deep seabed. It begins with a brief review of what is meant by the common heritage principle in the context of Part XI of the Convention. Secondly, it examines how successful, or not, the international community has been in implementing the common heritage principle through the mechanism of the International Seabed Authority and what steps may be necessary to improve implementation. Third, some general comments are made relating to the possible future development of the common heritage principle.

Background to the Common Heritage Principle

It is often said that the desire to give content to the principle of the common heritage of mankind was the main driving force behind the decision to convene a Third United Nations Conference on the Law of the Sea. In fact, the idea that one or more parts of the global commons should be considered the common heritage of mankind was not new even in 1967, which is when
Ambassador Pardo of Malta made his famous proposal to the First Committee of the General Assembly that the time had come to declare “the seabed and the ocean floor a common heritage of mankind”, not subject to national appropriation and reserved exclusively for peaceful purposes, with their resources to be used in the interests of mankind.\(^2\) Whilst this is often identified as the defining moment that was to lead to the decision to convene UNCLOS III, Pardo was in many ways merely reflecting the zeitgeist in an era where there was intense interest in the materialization of common interests in common resources through global regimes.\(^3\) Indeed, in broad terms, the idea of a common interest of mankind can be identified in the development of international agreements across multiple sectors in the second half of the twentieth century, including human rights, cultural heritage, labour, public health, telecommunications, outer space, Antarctica and the environment.\(^4\)

The basic content of what would become the common heritage of mankind principle as embodied in the Convention was largely contained in the operative paragraphs of the Declaration of Principles Governing the Seabed and Ocean Floor and the Subsoil Thereof, beyond the Limits of National

\(^2\) The issue was in fact already before the United Nations since 1966, when the Economic and Social Council had requested the Secretary-General to prepare a report identifying the mineral and food resources of the sea beyond the continental shelf, other than fish, which may be available for economic exploitation for the benefit of developing countries. In the same year that Pardo addressed the General Assembly, the World Peace through Law Conference adopted a resolution (Resolution No. 15) calling on the United Nations to declare the high seas the common heritage of mankind and issue a proclamation declaring the non-fishery resources of the high seas and the seabed to be made subject to the jurisdiction and control of the United Nations on behalf of mankind as a whole. This resolution was quoted by Ambassador Pardo in his presentation of the Maltese proposal to the First Committee (A/C.1/PV 1515, 1 November 1967, para. 104).

\(^3\) R. Wolfrum, The Principle of the Common Heritage of Mankind, 43 Zeitschrift für ausländisches öffentliches Recht under Völkerrecht (1983), 312–337. The idea that there could be a part of the global commons—an “indivisible common patrimony”—which should be set apart in common for the use of all people, which were not capable of being subject to claims of State sovereignty or ownership, but which were subject to certain defined rights of common use, had been expressed as early as 1830 by the Latin-American jurist Andrés Bello. For a discussion of the history of the common heritage principle see H. Tuerk, The Principle of the Common Heritage of Mankind, Chapter 3 In Reflections on the Contemporary Law of the Sea. Martinus Nijhoff, Leiden, 2012; Satya N. Nandan, Michael Lodge and Shabtai Rosenne, The Development of the Regime for Seabed Mining, Kingston, Jamaica: International Seabed Authority, (2002), 3–23.