Chapter 2

Applying the Principle of the Common Heritage of Mankind

An East Asian Perspective

Seokwoo Lee and Jeong Woo Kim

Introduction

The common heritage of mankind (CHM), also known as common heritage of humanity,1 originally refers to the resources of the Area under Article 136 of the Law of the Sea Convention (LOSC). However, the precise meaning of CHM under international law – its elements, scope, and legal status – remains very much in debate to the present day. Much of this debate lies in the contrary perspectives of developed and developing states.2 Developed states veer towards the notion that the CHM allows the “common use of designated areas, while upholding traditional concepts such as freedom of the high seas and freedom of exploration.”3 On the contrary, developing countries view the principle of CHM as having three goals: (1) the prevention of monopolization in these areas by developed nations at the expense of nations that lack technology or financing, (2) the direct participation of developing nations in the international management of resource extraction, and (3) favorable distribution of economic benefits to developing nations.4

In addition to these differing views on the concept of CHM, the status of the principle under international law is also disputed. On one hand, the principle is gaining recognition as customary international law, with some even heralding

4 Id.
the principle as a *jus cogens* norm.\(^5\) The International Law Association’s 1986 Seoul Declaration provides, in part, that “[t]he concept of the chm as a general legal principle has entered into the corpus of public international law.”\(^6\) Indeed, various international organizations and commentators have proposed that the chm regime extends or should extend to other resources such as the natural environmental resources, genetic resources, cultural heritage, and even seeds.\(^7\) Others however believe that the principle is too indeterminate to be classified as a customary law, let alone one of a preemiptory nature. On this view, chm cannot be deemed as customary law due to theoretical inconsistency in its interpretation; thus, the standard only binds those nations that have signed the relevant treaties.\(^8\) Despite such controversies, the chm principle has survived to the present day.

After a brief overview of the chm principle, this chapter will examine the meaning of the principle – its elements, scope, and legal status – before considering the perspectives and practices of China, Japan, and Korea in relation to the principle.

**Beginnings of the Principle**

The introduction of chm commonly attributed to then-Maltese Ambassador Arvid Pardo who stated in a memorandum dated 17 August 1967 to the UN Secretary General that “the time has come to declare the seabed and the ocean-floor a common heritage of mankind.”\(^9\) Pardo was not alone in referring

---

\(^5\) For example, Chile proposed in 1979 and 1980 that the Law of the Sea Convention (LOSC) refer to chm as a *jus cogens* norm. However, in order for its proposals to be accepted, references to *jus cogens* had to be deleted. Currently, article 311(6) of LOSC contains no mention of *jus cogens*. Convention on the Law of the Sea, 10 Dec. 1982, 1833 UNTS 3 [*hereinafter LOSC*]. For details, see Erik Franckx, *The International Seabed Authority and the Common Heritage of Mankind: The Need for States to Establish the Outer Limits of their Continental Shelf*, 25(4) Int’l J. Marine & Coastal L. 543, 546, fn. 16 (2010).


\(^8\) Frakes, *supra* note 2, at 410–11.