



The common heritage of mankind and the world heritage: correlation of concepts¹

O patrimônio comum da humanidade e o patrimônio mundial: correlação de conceitos

El patrimonio común de la humanidad y el patrimonio mundial: correlación de conceptos

Elena Evgenyevna Gulyaeva²

Diplomatic Academy of the Russian Ministry of Foreign Affairs (Moscow, Rússia)
ORCID: <https://orcid.org/0000-0001-8376-7212>
E-mail: gulya-eva@yandex.ru

Igor Olegovich Anisimov³

Diplomatic Academy of the Russian Ministry of Foreign Affairs (Moscow, Rússia)
ORCID: <https://orcid.org/0000-0002-6575-6381>
E-mail: igoranisimovdunaevsky@gmail.com

Abstract

This article reviews 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, gives a definition of the concepts of “common heritage of mankind” and “world cultural and natural heritage”. The authors examine the debate regarding the Artemis agreements, the concept of the common heritage of humanity, in relation to the concept of sustainable

¹ GULYAEVA, Elena Evgenyevna; ANISIMOV, Igor Olegovich. The common heritage of mankind and the world heritage: correlation of concepts. **Suprema**: revista de estudos constitucionais, Brasília, v. 2, n. 2, p. 27-49, jul./dez. 2022.

² PhD, Associate Professor at International Law Department, Diplomatic Academy of the Russian Ministry of Foreign Affairs; Member of Russian Association of International Law, Member of European Association of International Law, Member of the Council for International Relations of the International Institute of Human Rights (IIDH -America), Member of Constitutional Council of Justice (Argentina).

³ Candidate of Legal Science, Member of Russian Association of International Law, Associate Professor, Deputy head Department of International Law, Diplomatic Academy of Russian Foreign Ministry.

development. In the article, the authors pay attention to the lack of legal regulation towards marine genetic resources, marine biological resources, and human genome and space resources. The research uses general scientific and special cognitive techniques wherein legal analysis and synthesis, systemic, formal-legal, comparative-legal, historical-legal and dialectical methods are applied. The authors found out that despite the fact of existence a list of the legal sources of international law towards concept of common heritage and world heritage still is incomplete and needs a revision.

Keywords

Common heritage of mankind; world heritage; UN Sustainable Development Goals; UNESCO Convention; Artemis Accords.

Contents

1. Introduction. 2. The content of the concept of the common heritage of mankind: genesis and evolution. 3. The content of the concept of the world cultural and natural heritage: genesis and evolution. 4. Conclusion.

Resumo

Este artigo revisa a 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 artigo revela os critérios e condições para o valor universal do patrimônio mundial, define os conceitos de “patrimônio comum da humanidade” e “patrimônio cultural e natural mundial”. Os autores examinam o debate sobre os acordos de Artemis, o conceito de patrimônio comum da humanidade, em relação ao conceito de desenvolvimento sustentável. No artigo, os autores atentam para a falta de regulamentação legal sobre recursos genéticos marinhos, recursos biológicos marinhos, genoma humano e recursos espaciais. A pesquisa utiliza técnicas científicas gerais e técnicas cognitivas especiais, nas quais são aplicados métodos de análise e síntese jurídica, sistêmicos, jurídico-formal, jurídico-comparativo, jurídico-histórico e dialético. Os autores constataram que, apesar da existência de uma lista das fontes jurídicas do direito internacional para o conceito de patrimônio comum e patrimônio mundial, ela ainda está incompleta e necessita de uma revisão.

Palavras-chave

Patrimônio comum da humanidade; patrimônio mundial; Objetivos de Desenvolvimento Sustentável da ONU; Convenção da UNESCO; Acordos de Artemis.

Sumário

1. Introdução. 2. O conteúdo do conceito de patrimônio comum da humanidade: gênese e evolução. 3. O conteúdo do conceito de patrimônio cultural e natural mundial: gênese e evolução. 4. Conclusão.

Resumen

Este artículo repasa la historia del surgimiento y desarrollo del concepto de patrimonio común de la humanidad y del 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 humanidad” y “patrimonio mundial cultural y natural”. Los autores examinan el debate sobre los acuerdos de Artemisa, el concepto de patrimonio común de la humanidad, en relación con el concepto de desarrollo sostenible. En el artículo, los autores prestan atención a la falta de regulación legal hacia los recursos genéticos marinos, los recursos biológicos marinos y el genoma humano y los recursos espaciales. La investigación utiliza técnicas científicas generales y cognitivas especiales en las que se aplican métodos de análisis y síntesis jurídica, sistémico, jurídico-formal, jurídico-comparado, histórico-jurídico y dialéctico. Los autores descubrieron que, a pesar de que existe una lista de las fuentes legales del derecho internacional hacia el concepto de patrimonio común y patrimonio mundial, todavía está incompleta y necesita una revisión.

Palabras clave

Patrimonio común de la humanidad; patrimonio mundial; Objetivos de Desarrollo Sostenible de la ONU; Convención de la UNESCO; Acuerdos de Artemis.

Índice

1. Introducción. 2. El contenido del concepto de patrimonio común de la humanidad: génesis y evolución. 3. El contenido del concepto de patrimonio mundial cultural y natural: génesis y evolución. 4. Conclusión.

1. Introduction

The 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 attention in practice for more than a decade, but by now, the context of their consideration has noticeably changed. The cultural and natural heritage is an invaluable and irreplaceable asset not reserved only for individual people, but applied to all 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 values that requires special protection from gathering threats to their existence⁴. Numerous wars, natural disasters and acts of vandalism aimed at destroying or damaging cultural and natural heritage have generated the need for an innovative approach to their identification, protection, conservation and promotion. The concept of the world cultural and natural heritage⁵ formed a bit later than the “common heritage”. It was developed with the adoption of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage⁶ (hereinafter – 1972 Convention).

⁴ 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.

⁵ 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. – N° 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.

⁶ Convention Concerning the Protection of World Cultural and Natural Heritage (Paris, November 16, 1972). – Moscow: UniPrint, 2002, pp. 70-87.

A further concern is the open question of “world cultural and natural heritage” vs. “common heritage of mankind”⁷ both as legal categories and scientific concepts, that brings the authors to the urgent necessity to carry out a detailed study in this regard.

The evolutionary background of the mankind common heritage demands the highest attention and deliberation by the international legal community. Although, there is not so many studies focused on the issue in question that one would expect but that could be explained by the lack of special material about the Antarctic legal status, marine genetic resources, space assets, the atmosphere and the natural environment. However, there are a lot of viewpoints currently concerning the issue in question so a change in attitude asks for 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*)⁸;
- It was gradually realized that international spaces should be shared and the concept of common heritage came to existence (*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 the constant usage, the mankind faced the issue of urgent collective protection of common heritage. The concept of common heritage of mankind came into being (*res communis humanitatis*).

The current development of the concept is due to the following:

- 50-60s: offshore research showed large deposits of natural resources on the seafloor; developing and underdeveloped nations have expressed concern that the resources of the oceans will be divided among nations with advanced maritime technology⁹;

⁷ See, also termed the common heritage of humanity, common heritage of humankind or common heritage principle.

⁸ D. P. O’Connell, Ch.21 Jurisdiction on the High Seas. The International Law of the Sea: Volume II (1st Edition). Edited By: I. A. Shearer. 1988. URL: <https://opil.ouplaw.com/view/10.1093/law/9780198254690.001.0001/law-9780198254690-chapter-6>.

⁹ 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. 2021. Pp. 184-201.

- 60-70s: Extension of the CMH concept 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 Area (Area) and its resources are the common heritage of mankind;
- 90-present: collective rights (human right to a favorable environment¹⁰), Artemis Agreement¹¹.

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 customs¹², which 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;

¹⁰ 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*. 2021. N° 2. Pages 9-23.

¹¹ The Artemis Accords: principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes of October 13, 2020 // [Electronic resource] URL: <https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf> (access date: 01.08.2021); K. Ispolinov A.S. Agreement of Artemis: American model of space resources mining regulation goes into orbit // URL: https://zakon.ru/blog/2020/10/16/soglashenie_artemidy_amerikanskaya_model_regulirovaniya_dobychi_resursov_kosmosa_vyhodit_na_orbitu (access date: 01.08.2021).

¹² UN Convention on the High Seas (Geneva, April 29, 1958) // C33 RF. – 1995. – N° 25. – Art. 1525; Antarctic Treaty of 1959 // URL: <https://docs.cntd.ru/document/1901494>; Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (UNGA Resolution 1962 (XVIII) of 13 December 1963); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 1967 // URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml; Declaration of Principles Governing the Regime of the Ocean Floor and its Subsoil Beyond National Jurisdiction 1970 (Resolution 2749 (XXV) of the UN General Assembly); United Nations Convention on the Law of the Sea (Montego Bay, December 10, 1982) [Text] // Collection of Laws of the Russian Federation. – 1997. – No. 48, art. 5493.

- 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.

2. The content of the concept of the common heritage of mankind: genesis and evolution

The concept of the common heritage of mankind regarded as the part of international customary law. The concept provides the accurate legal framework with the general not 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.¹³

There is general agreement among scholars on the lack of doubts about the applicability of the common law to outer space¹⁴, the moon and other celestial bodies, the international area of the seabed. Nevertheless, experts recognized significant strain in practical application of the common mankind heritage concept in the Antarctic, the atmosphere and the environment. In the absence of proper legal regulation of marine genetic resources as well as space objects, the dissemination of the common heritage of mankind concept 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 in the area in question. At the international legal level, the conceptual framework for defining and regulating the marine genetic and space resources is still not reflected in the key international legal instruments, which is a major gap in the maritime and space law that should be filled urgently in the current commercialization of space and ocean.

That brings the authors to the point that common heritage of mankind is the concept of international law with a clear understanding that certain beneficial to

¹³ International law = Völkerrecht / Wolfgang Graf Witztum [et al]; translated from German, 2nd ed. – Moscow: Infotropic Media, 2015. – 1072 p.

¹⁴ Formation of modern international-legal concept of research and use of outer space: monograph / A.Y.Kapustin, V.R.Avkhadееv, A.A.Golovina [etc.]; ed. – Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation: INFRA-M, 2021. – 264 c. – DOI 10.12737/1241334.

all mankind territories and their resources should be protected against unilateral exploitation by individual states and their citizens as well as corporations and other entities allowing their exploration and use only under any international treaty or regime to benefit us all.

Prof. Jean Buttigieg in the recent published book *The Human Genome as Common Heritage of Mankind* demonstrates the necessity to make it a legal principle of international law that the human genome is a common heritage of mankind¹⁵. In the 1997 UNESCO Declaration, the human genome is equated to the “heritage of mankind” (Art. 1), which cannot “serve as a source of income generation” (Art. 4)¹⁶. In this regard, the provisions of the United Nations Declaration on the Rights of Indigenous Peoples¹⁷ are important, stating the following: “all peoples contribute to the diversity and richness of civilizations and cultures that constitute the common heritage of humankind”. In Art. 31 of the Declaration reads: “Indigenous peoples have the right to preserve, control, protect and develop their cultural heritage, traditional knowledge and traditional forms of cultural expression, as well as manifestations of their scientific knowledge, technology and culture, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literary works, drawings, sports and traditional games, and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property in such cultural heritage, traditional knowledge and traditional cultural expressions.”

We wish to stress, however, that the freshly signed Artemis Agreements¹⁸ 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 on protection of places and objects related to United States space activities in order to prevent damage which might have been caused to them by the activities of private individuals or individual countries exploring the Moon.

¹⁵ Jean Buttigieg, *The Human Genome as Common Heritage of Mankind*. Studies in Medical Philosophy, vol. 2. Ibidem Press, 2018. 280 p.

¹⁶ The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164). URL: <https://rm.coe.int/168007cf98> (accessed on 01.08.2021).

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples. URL: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

¹⁸ The Artemis Accords: principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes of October 13, 2020 // [Electronic resource] URL: <https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf> (accessed: 01.08.2021).

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 Convention¹⁹, 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).

In 2019, a Working Group on International Environmental Law was established as part of the main 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 with the support of the American Association of International Law and the Aristotle University of Thessaloniki Faculty of Law. The conference noted 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 that. The most significant legal issue that could arise resulting from exploration, utilization and development of space resources, is how to share the opportunities and benefits that such activity brings.

The Community of One Destiny for Humanity (also translated “community of collective future for humanity” in the academic literature) is a slogan used by Chinese officials to describe the country’s foreign policy goal. 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 as follows: “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”²⁰.

¹⁹ UN Convention on the Law of the Sea of December 10, 1982 // [Electronic resource] URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_r.pdf (accessed on 01.08.2021).

²⁰ Xi Jinping Address to the 70th Session of the UN General Assembly September 28, 2015.

Thus, according to him, it is five-dimensional concept including political partnership, security, economic development, cultural exchange and environment.

Thus, more and more countries will be attracted to participate not only in the Artemis space program, but also in future activities for the development of space resources on other celestial bodies, such as the extraction, exploration and use of resources on Mars or asteroids. This will have a definite impact not only on the nature of space activities and relations between space powers, but also on discussions on the relevant norms of international law.

The core of the concept of the common heritage of mankind is therefore as follows:

- The common heritage belongs to the international community as a whole;
- All states without discrimination establish their regime and administration;
- The concept is used in all people best interests only with peaceful purposes;
- Operating regime does not permit common heritage degradation;
- All states should be benefited from the common heritage equally;
- Future generations' interests in common heritage should be counted.

The concept of shared heritage²¹ is related to another concept characteristic of contemporary international law, the concept of sustainable development

²¹ 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.

(UN SDG 2030).²² 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 the achievement of sustainable development for all countries. The interests of both developed and developing countries must be taken into consideration. We should note that according to scholars' opinion, it is necessary to establish the uniform conceptual framework and to increase the practical significance of the previous fragmented research on the cultural heritage and sustainable growth.

The 1972 Convention art.1²³ provides the descriptive definition of terms "cultural heritage" and "natural heritage". The primary goal of that international agreement is involving international instruments to identify, protect and comprehensively support World heritage sites and environmental amenities.

Following a review of the content, the authors raise possible problems, strategies, suggestions and guidelines for the concept of common heritage of humankind and the concept of world heritage. The authors assumed that it is necessary to include to the concept of the common heritage of humanity and world heritage the marine genetic resources, marine biological resources, human genome, and space resources. The search for a solution to expanding the concept of the common heritage of humanity is inextricably linked with the formation of new generations of human rights (such as the right to light, the right to water, the right to air).

3. The content of the concept of the world cultural and natural heritage: 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 society of ancient India, the rules of warcraft started to form under which churches, places of worship and their clergy enjoyed inviolability;

²² UN General Assembly: Resolution adopted by the General Assembly on 25 September 2015 "Transforming our world: the 2030 Agenda for Sustainable Development". URL: <https://undocs.org/A/RES/70/1> (accessed 01.08.2021).

²³ Convention Concerning the Protection of World Cultural and Natural Heritage (Paris, November 16, 1972). – Moscow: UniPrint, 2002, pp. 70-87.

- late XIX – early XX – humanization of warfare rules led to strengthening preservation of historical monuments, artistic and scientific works, religious sites in international instruments;
- 1935 г. – adoption of the Roerich Pact, which became the basis for universal international treaties for the protection of historical monuments, museums, scientific, artistic, educational and cultural institutions;
- 40-50s. – 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 the universal level;
- 1960s and 1970s UNESCO is working on the World Heritage Convention. – UNESCO works on the concept of world heritage. For the first time, the notions of cultural heritage, natural heritage and outstanding universal value are enshrined at the universal level;
- early twenty-first century. – to date – 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.

For example, the world heritage committee launched the world heritage program on sustainable (responsible) tourism in 2001.²⁴ This program aimed at the relationship between sustainable tourism and sites preservation as well as promoting environment-oriented policy, reducing negative social economical effect and social and economic support for the local population.

²⁴ URL: <https://whc.unesco.org/en/tourism/>.

3.1 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 including the following:²⁵

- 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;

²⁵ The 1935 Treaty for the Protection of Artistic and Scientific Institutions and Historical Monuments // URL: <http://www.icr.su/rus/evolution/pact/>; I Additional Protocol to the 1949 Geneva Conventions // URL: <https://www.icrc.org/ru/doc/resources/documents/legal-fact-sheet/protocols-1977-factsheet-080607.htm> 8; Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. [8; Convention on the Protection of Human Rights and Basic Freedoms of November 4, 1950 // Collection of Legislation of the Russian Federation. – 2001. – No. 2, p. 163; Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, May 14, 1954) // UNESCO standard-setting instruments on the protection of cultural heritage. – Moscow: Uniprint, 2002, pp. 5-21; European Cultural Convention (Paris, 19 December 1954) // European Treaty Series. – No. 018; Convention Concerning the Protection of World Cultural and Natural Heritage (Paris, November 16, 1972) // UNESCO standard-setting instruments for the protection of cultural heritage. – M.: UniPrint, 2002, S. 70-87; UN Convention on the Law of the Sea (Montego Bay, December 10, 1982) [Text] // Sobranie zakonodatel'stva Rossiyskoy Federatsii. – 1997. – No. 48, article 5493; European Convention on the Protection of Archaeological Heritage (revised) (Valletta, 16 January 1992) // SZ RF. – 2011. – No. 9 of June 27, 2011; Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, March 26, 1999) // UNESCO standard-setting instruments for the protection of cultural heritage. – Moscow: Uniprint, 2002, pp. 38-59; European Landscape convention and explanatory report (Florence, 20 October 2000) // European Treaty Series. – No 176; Decision N° 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 program // Official Journal L 063, 10/03/2000. – P. 1-9; Convention on the Protection of the Underwater Cultural Heritage. UNESCO. Paris, 2 November 2001 // URL: <http://unesdoc.unesco.org/images/0012/001246/124687r.pdf#page=60>; UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage 2003 // URL: https://www.un.org/ru/documents/decl_conv/declarations/heritage_destruction.shtml; Convention on the Protection and Promotion of the Diversity of Cultural Expressions. UNESCO. Paris, October 20, 2005 // URL: <http://unesdoc.unesco.org/images/0014/001429/142919r.pdf>; Guidelines for the implementation of the World Heritage Convention (revised on July 12, 2017) // WHC.17/01; Federal Law of 25 June 2002 N° 73-FZ "On the objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation" // SZ RF. – 2002. – No 26. – Art. 2519.

- 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.

3.2 Identification of cultural and natural heritage

Under art.1 of the 1972 Convention “cultural heritage” identified as:

- Sites: works of architecture, monumental sculptures and paintings, archeological elements or complexes, scripts, caves and groups of elements with outstanding universal value in the historical, artistic or scientific context;
- Ensembles: complexes of separate or combined constructions whose architecture, unity or connection to the landscape are of outstanding universal value in terms of art, history or science;
- landmarks: works of man or joint creations of man and nature, as well as areas, including archeological sites, of outstanding universal value from the historical, aesthetic, ethnological, or anthropological points of view;

Under art. 2 of the 1972 Convention, “natural heritage” identified as

- natural monuments created by physical and biological formations or groups of such formations of outstanding universal value in terms of aesthetics or science;
- geological and physiographical formations and strictly restricted areas representing the range of endangered animal and plant species of outstanding universal value from the point of view of science or conservation;
- natural landmarks or severely restricted 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 the sites to be included into the world heritage list by the committee of preservation and management of world heritage sites in order to assess the outstanding

universal value of such sites and serve for the benefit of states – Convention parties.
The sites should:

- (i) be a masterpiece of human creative genius;
- (ii) reflect the effect of the universal values shift within a certain time or a certain cultural area of the world, on the architecture or technology progress, monumental art, urban zoning or landscape planning;
- (iii) be unique or at least exclusive evidence of a cultural tradition or civilization that has existed or has disappeared;
- (iv) be remarkable construction pattern of architectural or technological group or landscape showing significant stage (stages) in the human history;
- (v) be remarkable sample belonging to a certain culture (cultures) of traditional human settlement, land or water use or outstanding pattern of human interaction with the environment – especially when such a pattern has become vulnerable under the impact of irreversible change;
- (vi) be under direct or indirect connection to the events or existing traditions, the ideas or beliefs, art or literature works of outstanding universal value (in a view of the committee, such criterion must be used together with other criteria);
- (vii) cover the greatest natural phenomena or places of exceptional natural beauty and aesthetic value;
- (viii) be the remarkable example reflecting the key stages of the Earth history including any traces of ancient life, ongoing geological processes of the land surface evolution or significant geomorphological and physiographic phenomena;
- (ix) be an example of significant ongoing environmental and biological processes of evolution and development of terrestrial, river and lake, coastal and marine ecosystems, as well as plant and animal communities;
- (x) include natural habitats that are the most important and significant in terms of in-situ biodiversity conservation, including habitats of endangered species of outstanding universal value from a scientific and conservation perspective.

3.3 Universal value assessment modality

Authenticity – if a cultural value truthfully and reliably expressed through a variety of attributes, including

- form and idea;
- material and substances;
- use and function;
- traditions, methods and management systems;
- place and environment;
- language and other forms of intangible heritage;
- perception of the spirit and sense of place; and
- other internal and external factors.

Integrity – a measure of the unity and intactness of natural and/or cultural heritage and its attributes. In this regard, examining the conditions of integrity requires an assessment of the extent to which an object:

- a) includes all the elements necessary for the expression of outstanding universal value;
- b) is of sufficient size necessary for comprehensive illustration of features and processes reflecting a site value;
- 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:

4. 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;
5. ensuring, identifying, protecting, preserving and promoting the world heritage is primary a matter for the state where site is located;
6. international community is bound to collaborate for protection of world cultural and natural heritage providing assistance to the state concerned at its request;

7. states undertake not to act in such a way that might cause direct or indirect harm to the cultural or natural heritage;
8. 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.

Genetic health data over several generations has a widespread impact on the family, including descendants, and in some cases on entire populations. Genetic information can also be culturally relevant to individuals or groups of individuals. In 2013, the US Supreme Court ruled “genes cannot be patented because DNA is a product of nature.”²⁶ The US Supreme Court decision invalidated previous patents, making previously patented genes available for research again. The discussion is developing against the background of the indecision of individual states to confirm the importance of the moral and ethical conflict in patenting, which boils down to the following dilemma: one side of the conflict advocates the need to obtain patents and considers this right as the protection of intellectual property and a guarantee of the further development of science, while the other side expresses concerns about patenting natural properties and adhering to fundamental principles of protecting the dignity and integrity of the person. However, it should be noted that human genetic resources are excluded from the scope of the UN Convention on Biological Diversity.²⁷ Such an exception is also provided for in the patent disclosure requirements in force in national legal systems.

9. Conclusion

So, there is a clearer perception in the international legal society that a number of key areas of international law indeed remains governed by customary law because of scarcity or absence of treaties that are applicable. Even where a treaty is in force, customary international laws keep on governing matters not covered by the treaty and continues 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

²⁶ US Supreme Court says human DNA cannot be patented. URL: <https://www.bbc.com/news/world-us-canada-22895161>

²⁷ The Convention on Biological Diversity (CBD) is the international legal instrument for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources” that has been ratified by 196 nations. URL: <https://www.cbd.int/>.

similarities and differences in the concept of the common heritage of mankind and the concept of world heritage.

Major similarities between the concepts:

- the protection regime is governed primarily by international law;
- both concepts are based on the perspective of future generations;²⁸
- both concepts are closely connected with the idea of sustainable development;²⁹
- territories and facilities used for peaceful purposes only;
- territories and facilities shall be used for the benefit of mankind as a whole.

Major differences between concepts:

- world heritage sites have an international legal status or are in common use/
world heritage sites are formally owned by the states where they are located;
- ensuring, identification, protection, preservation, promotion of common heritage is primarily the responsibility of the state where the site is located
/ the preservation of CHM is the task of all states as a whole;
- world heritage sites are subject not to rules of international legislation only but to domestic laws as well;
- CHM is not as widely recognized as the world heritage concept;
- The CHM concept is not clearly defined by any treaty.

Note may be taken that several experts at the 29th session of the UNESCO General Conference in 1997 expressed the opinion that “all sites of archaeological interest in the Deep-Sea Area should be declared as Cultural Heritage of Humanity”. So, on the one hand, this confirms the close relationship between the two concepts under consideration. On the other hand, it creates an even greater debate in terminology.

²⁸ URL: <https://whc.unesco.org/en/sustainabledevelopment/>.

²⁹ Tolina Loulanski. Cultural Heritage and Sustainable Development: Exploring a Common Ground. Hokkaido University. URL: https://www.researchgate.net/publication/333131985_Cultural_Heritage_and_Sustainable_Development_Exploring_a_Common_Ground.

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.

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 the “common heritage of mankind”. This, in turn, determines different methods of management of the relevant sites and territories.

The implication of the principle of the common heritage of mankind to MGRs may further generate conflicts of law because it is impossible to imply this principle to the high seas. For the first time ever, the legal protection of the intangible MGR heritage belonging to indigenous peoples and local communities is going to be universally fixed by maritime law. The law will also establish a special mechanism to control the concerned parties’ access to this knowledge. The traditional knowledge of indigenous peoples falls within the definition of intangible cultural heritage. This fact raises a question about an overlap between the future Agreement and the Convention for the Safeguarding the Intangible Cultural Heritage.

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. 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 in the case of harm can be held internationally responsible.³⁰

Moreover, it should be emphasized that any alterations or expansion of the concept of the common heritage of mankind likely to affect the approach to the notion of state sovereignty thus impinging on the international legal order stability. At the same time, viewing the world as a single structure, China’s idea of a shared destiny takes into account the development imbalances of science, technology,

³⁰ 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 Vienna Convention on the Law of Treaties (United Nations, Treaty Series, vol. 1155, No. 18232, p. 331 (“Vienna Convention of 1969”). 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 (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at pp. 93-96, paras. 174-179; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at pp. 47-48, para. 88).

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.³¹

The researchers conclude that hard law is necessary for the legal regulation of new types of resources (genetic human resources, marine genetic resources, marine biological resources, extraterrestrial space resources) in international law. The burning issue remains the preservation of biodiversity on our planet and the heritage of mankind for future generations in accordance with the UN Sustainable Development Goals. The formation of a clear conceptual apparatus and the legal differentiation of the two concepts is necessary in order to prevent the fragmentation of international law in the field of regulation of resource extraction (for example, the Artemis Agreement). The authors presume that any modifications and expansion of the scope of the concept of the common heritage of humanity can affect the approach to the concept of state sovereignty, thereby affecting the stability of the international legal order. The authors encourage applying the international legal regime to space resources, marine genetic resources and human genome by analogy with the development of other spaces on Earth with an international regime (for example, Antarctica, High Sea, the seabed). The researchers concluded that marine genetic resources, human genome and space resources are the common heritage of mankind. The authors encourage the complement to the international legal regulation to both concepts.

References

Anisimov I.O. Underwater cultural heritage. Actual problems of international legal protection: monograph. 2nd edition – Moscow: Pero, 2015. – 267 p.

Anisimov I.O. Correlation of the notions “underwater cultural heritage” and “world cultural and natural heritage” // Law and Politics. – 2014. – N° 7. P. 996-1004. DOI: 10.7256/1811-9018.2014.7.12429.

Anisimov I.O. International maritime law. Tutorial and methodical manual. – Moscow: Quant Media, 2018. – 136 p.

³¹ 张辉：《人类命运共同体：国际法社会基础理论的当代发展》·《中国社会科学》2018年第5期 (Zhang Hui: The Commonality of Human Destiny: Contemporary Development of Basic Society Theory in International Law, Chinese Social Science, 2018, Issue 5).

Drobot V.I. Concept of the World Natural Heritage: textbook / Mar. State University; V.I. Drobot. – Yoshkar-Ola, 2008. – 122 p.

Formation of modern international-legal concept of research and use of outer space: monograph / A.Y.Kapustin, V.R.Avkhadееv, A.A.Golovina [etc.]; ed. – Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation: INFRA-M, 2021. – 264 p. – DOI 10.12737/1241334.

Golinov A.S. Agreement of Artemis: American model of space resources extraction regulation goes into orbit // URL: https://zakon.ru/blog/2020/10/16/soglashenie_artemidy_amerikanskaya_model_regulirovaniya_dobychi_resursov_kosmosa_vyehodit_na_orbitu (accessed on 01.08.2021).

International law = Völkerrecht / Wolfgang Graf Witztum [et al]; translated from German, 2nd ed. – Moscow: Infotropic Media, 2015. – 1072 p.

Jean Buttigieg, The Human Genome as Common Heritage of Mankind. Studies in Medical Philosophy, vol. 2. Ibidem Press, 2018. 280 p.

Cited legislation

I Additional Protocol to the Geneva Conventions of 1949 // URL: <https://www.icrc.org/ru/doc/resources/documents/legal-fact-sheet/protocols-1977-factsheet-080607.htm> 8 (date of reference: 01.08.2021).

Convention on the Protection and Promotion of the Diversity of Cultural Expressions. UNESCO. Paris, October 20, 2005 // URL: <http://unesdoc.unesco.org/images/0014/001429/142919r.pdf> (date of access: 01.08.2021).

Convention Concerning the Protection of World Cultural and Natural Heritage (Paris, November 16, 1972) // UNESCO Conventions for the Protection of Cultural Heritage. – Moscow: Uniprint, 2002, pp. 70-87.

Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, May 14, 1954) // UNESCO standard set of instruments for protection of cultural heritage. – Moscow: UniPrint, 2002, pp. 5-21.

Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. [3. Convention on the Protection of Human Rights and Basic Freedoms of November 4, 1950 // Sobranie zakonodatelstva Rossiyskoy Federatsii. – 2001. – No 2, art. 163.

Convention on the Protection of the Underwater Cultural Heritage. UNESCO. Paris, 2 November 2001 // URL: <http://unesdoc.unesco.org/images/0012/001246/124687r.pdf#page=60> (date of access: 01.08.2021).

Decision N° 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the culture 2000 program // Official Journal L 063, 10/03/2000. – P. 1-9.

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).

Declaration of Principles Governing the Regime of the Ocean Floor and the Ocean Floor Beyond National Jurisdiction, 1970 (UN General Assembly Resolution 2749 (XXV)).

European Convention on the Protection of Archaeological Heritage (revised) (Valletta, 16 January 1992) // SZ RF. – 2011. – No. 9 of 27 June.

European Cultural Convention (Paris, 19 December 1954) // European Treaty Series. – N° 018.

European Landscape convention and explanatory report (Florence, 20 October 2000) // European Treaty Series. – N° 176.

Federal Law dated 25 June 2002 N° 73-FA “On Objects of Cultural Heritage (Monuments of history and culture) of Peoples of Russian Federation” // C3 RF. – 2002. – N° 26. – Art. 2519.

Guidelines for the implementation of the World Heritage Convention (revised July 12, 2017) // WHC.17/01.

Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, March 26, 1999) // UNESCO standard-setting instruments for the protection of cultural heritage. – Uniprint, 2002, P.38-59.

The Artemis Accords: principles for cooperation in the civil exploration and use of the Moon, Mars, comets and asteroids for peaceful purposes of October 13, 2020 // [Electronic resource] URL: <https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf> (date of access: 01.08.2021).

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No 164). URL: <https://rm.coe.int/168007cf98> (date of access: 01.08.2021).

Treaty on the Antarctic of 1959 // URL: <https://docs.cntd.ru/document/1901494> (date of access: 01.08.2021).

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967 // URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of reference: 01.08.2021).

Treaty on protection of art and scientific institutions and historical monuments of 1935 // URL: <http://www.icr.su/rus/evolution/pact/> (date of access: 01.08.2021).

UN Convention on the High Seas (Geneva, April 29, 1958) // Soviet Union. – 1995. – N° 25. – Art. 1525.

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage 2003 // URL: https://www.un.org/ru/documents/decl_conv/declarations/heritage_destruction.shtml (date of access: 01.08.2021).

United Nations Convention on the Law of the Sea (Montego Bay, December 10, 1982) // Sobranie zakonodatelstva Rossiyskoy Federatsii. – 1997. – No. 48, art. 5493.