

# The Principle Of The Common Heritage Of Mankind

## Introduction

The term 'common heritage of mankind (CHM)' has sought significant attention of states since the formation of modern international laws. Appearance of the term in various international treaties in vague manner & its varying interpretations by various states has serious connotations in managing international relations & on global governance, more particularly in management of natural resources & territories which are beyond any state's national jurisdiction.

After the 2nd world war, in 1945, United Nations system was established mainly to prevent any future world war &, to discuss, resolve disputes between states in peaceful manner through enhanced co-operation among member states. Through its various organs, committees & specialized agencies, it started addressing issues of global concern such as climate change, conservation of natural resources, problems associated with arms race, nuclear weaponization & many such issues which, under the absence of common governance mechanism, had potential to turn into possibly violent conflict between states. 'State sovereignty' & 'equality of states' were the cornerstone of the UN system where 'sovereignty' implies both internal as well as external sovereignty & 'equality' implying equality of state powers in UN proceedings no matter the size of their territory, population, economy & military. From 1950s onwards, the world observed significant events of growth in scientific expeditions to those places which does not fall under the territory of, jurisdiction of any state. Examples of such places include places like Antarctica, outer space, the moon, high seas, and deep seabed. Remarkable features of these places includes that, these places are known to be environmentally sensitive areas, known to have uncountable amount of untapped natural resources, they could become a places of hotspot of disputes between states, if states claim sovereignty over those areas & over natural resources found there. Such places, does not fall under exclusive sovereignty of any state, and therefore were open to all.

During the cold war period, technological advancements in developed countries, intensified scientific expeditions, growth of dual use products such as rockets & aggravating power race among USA & Soviet Union to dominate the world caused concern worldwide about utilization of these territories and its resources for military purposes, put simply, to attack other states or wage war against other states. In addition to this, developing country feared that the developed countries have money, resources & technology to explore such regions & extract maximum benefit from such regions for their own use only, in uncontrolled manner, this was against the interest of small developing countries that had limited resources at their disposal, & couldn't afford costly expeditions & experiments. There emerged a need to regulate these common areas or 'common heritage' based on some criteria, which would be commonly acceptable to all states, which could legalise the ownership status of those territories & control usage of resources found there through an international administration mechanism, so that no state can unilaterally exploit the region. Thus, 'The common heritage of mankind' principle was introduced in some multilateral international treaties. It holds that, some specific territorial areas belong to all humankind, they be reserved for peaceful purposes, their resources be available for everyone's use and benefits, taking into account need of future generations, they be protected from any unilateral exploitation & be governed through common management.

## Key concept & its elements

The concept of CHM is a rather a vague concept. It is a concept in international law which states that there are resources which do not belong to any state &, which are advantageous for humankind, should be seen as belonging to all of humankind, and no state should claim sovereignty over it. The concept lays emphasis on preventing any unilateral exploitation of the resources found there by individual states or individual person, corporation or other entity, but rather advocates extraction of resources under some sort of international arrangement or regime, & use of those resources for the benefit of humankind as a whole. In short, The CHM principle is applicable to areas which are beyond the limits of national jurisdiction and to natural resources found there & is concerned with sustainable management & sharing of those resources. CHM concept has only been applicable to areas that are traditionally res communes, meaning things owned by no one and subject to use by all, vesting rights to the resources in question in humankind as a whole. Examples of common heritage of mankind may include areas such as seabed, the moon, outer space, Antarctica etc. The CHM principle has been established firmly in United Nations Conventions on the Law of the Seas (UNCLOS) governing deep oceans as well as in the moon agreement that governs moon & celestial bodies. However, It has not yet been formally extended to Antarctica & outer space treaty but they too, exhibit most of its features.

The concept gained popularity after the speech delivered by the Maltese ambassador Mr. Arvid Pardo to the United Nations General Assembly, in November 1967, in which he proposed that deep seabed beyond national jurisdiction and the resources contained therein to be declared the common heritage of mankind. His stance was based on & motivated by reports of rich resources in this part of the sea, and by the possibility that the rich states with the technology to do so would unilaterally exploit resources & poor states would not be able to derive any benefit from them. He feared that under the absence of any international

authority to regulate the sea bed, it would become inaccessible to poorer countries. Therefore, CHM principle was proposed to address the issue of governance of areas beyond national jurisdiction & sharing of



benefit derived from them o n fair & equitable footing.

The concept lacks clear universally accepted definition. While differing interpretations of this concept have been proposed & used by various states as per their own convenience, there are some core elements of the concept of 'common heritage of mankind' which are well known, widely recognized & internationally documented in some treaties. They are as follows.

- 1) **Non-appropriation of territory:** – No state or person or any other entity can own common heritage spaces. Acquisition of, or exercise of sovereignty over, the area under common heritage is prohibited.
- 2) **Non-exclusive Use:** – No one has exclusive control over the area & resources. It also implicates indirectly, no ownership over area & resources. All states have equal access to areas & their resources.
- 3) **Peaceful Use exclusively:** – The CHM principle focuses on reserving the area for peaceful purposes only. It prevents any military use of areas such as stationing of troops, creating military base, using territory to launch attacks on other states, weaponization of those territories etc.
- 4) **Benefit Sharing:** – This is one of the most debated and disputed feature. CHM principle hints towards equitable sharing of benefits associated with the exploitation of the resources in question. Any benefit derived from resources utilization of these areas should be distributed among international community equally.
- 5) **Protection of Environment:** – CHM principle seeks to protect natural environment of areas of common heritage areas. It proposes to preserve natural environment through individual joint efforts.
- 6) **Sustainable use of area & its resources:** – It means exploitation of resources to be conducted in a controlled, responsible and equitable manner taking into account future generations and the needs of developing countries.
- 7) **Common Management:** – It implicates mutual co-operation among states to build & maintain a consistent policy for the administration of the area. It upholds the notion of establishment of an independent authority for joint administration, joint utilization & protection of the areas & resources.
















Now summarizing these elements precisely. It can be said that CHM imposes prohibition on sovereign y. No state exercise sovereignty over CHM region & on resources found there. It clarifies 'jurisdictional' status of these areas. Other elements such as sharing of benefits, sustainable use of resources & no exclusive use, peaceful use of the common heritage reveals as to how the areas should be utilized. Therefore, these elements are concerned with the 'utilization' of the area and resources in question. Lastly, the common management element is aimed at 'effective administration' of resources. It seeks to enhance mutual trust & co-operation among states for building policies to govern the areas & resources for the benefit of humankind as a whole. For this purpose, it supports the idea of formulation of special authority which shall have representations from all states. Such authority will work on behalf of all mankind, shall govern the area & to look after the management & sharing of resources in more harmonious, transparent & equitable manner.








### **Analysing use of CHM principle & its elements in various treaties -**



























Taking into consideration, the significance of the principle of the Common Heritage of Mankind & its distinct implications in managing world resources which are beyond state's jurisdiction, the principle was added to some international treaties. We shall now explore & analyse applications of this principle & its various elements in important international treaties such as The Antarctic Treaty (1959), the outer space treaty of (1967), The Moon Agreement (1979), United Nations Convention On The Law Of The Sea ( with reference to sea bed & high Seas).






The applications of CHM in these treaties have been discussed below in chart format. The chart format presentation is purely aimed at assisting readers to understand in simplest manner the similarity & differences of usage of CHM principle and its elements in those treaties.




























| Particulars  | <b>The Antarctic Treaty - 1959</b><br> | <b>The Outer Space Treaty -1967</b><br>(Treaty on principles governing the activities of States in the exploration and use of outer Space, including the Moon and other Celestial Bodies) | <b>The Moon Treaty - 1979</b><br>(Agreement governing the activities of states on the moon and other celestial bodies.)   | <b>United Nations Convention On The Law Of The Sea (UNCLOS) -Part VII - High Seas -1982</b>                     | <b>UNCLOS Part XI - Seabed- 1982 &amp; An implementation agreement to Part XI of UNCLOS 1994</b>   |
|--|---|---|---|---|--|
| 1. Area Covered  |                                        |    |    |                              | The seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction," "resources" are limited to "solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules." |
| 2. Significant events that generated need for formation of treaty. |                                        |    | The intent of the Moon treaty was to form more specific regulations than the outer space treaty for activities of nations in space. The cold war competition between Soviet Union & USA had already entered in the technology & space expedition arena & both had developed capabilities to explore moon & other celestial bodies. Therefore, need was felt for formulation of specific rules to guide exclusive peaceful use of moon & and to form rules which shall govern activities of states to explore moon, celestial bodies other than Earth, as well as administration of the resources that exploration may yield . |                              |   |
| 3. Main purpose.   |                                      |    |    | To standardise maritime zones & entitlement claims over it. To standardise activities pertaining to use of high |   |

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|   |  |  |  | seas. |   |
| <b>4. Name of the governing organization / committee.</b> |  |  |  |       |   |
| <b>5. Date of Signature /open for signature.</b>          |  |  |  |       |   |
| <b>6. Entry into force.</b>                               |  |  |  |       |   |
| <b>7. Parties to treaty.</b>                              | Original signatories - 12 (Argentina, Australia, Chile, France, New Zealand, Norway, United Kingdom & northern Ireland, Belgium, Japan, Russian federation, South Africa, USA)<br>Number of Parties to the Treaty as of February 2023 = 55 |  |  |       |   |
| <b>8. The secretariat location.</b>                       |  |  |  |       | Kingston, Jamaica (International Seabed Authority)<br><br>Montego Bay, Jamaica (UNCLOS) |
| <b>9. Central theme of treaty.</b>                        |  |  |  |       |   |
|   |  |  | an international regime should be established to govern the exploitation of such resources when such exploitation is about to become feasible. |       |   |


































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| <p><b>10. Specific articles in treaty that reflects CHM principle or its elements.</b></p> | <p><b>Preamble</b><br/><u>Interest of all mankind</u></p> <p>Article in nutshell – Preamble recognizes that it is in interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord.</p> <p><b>Elements Of CHM Implied:</b><br/>Use of word ‘Mankind’, peaceful use exclusively.</p> | <p><b>Preamble</b><br/><u>Interest of all mankind</u></p> <p>Article in nutshell – Recognizes the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes. Believes that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development.</p> <p><b>Elements Of CHM Implied:</b><br/>Use of word ‘Mankind’, sharing of benefit.</p> | <p><b>Article 3</b><br/><u>The moon shall be used by all states parties exclusively for peaceful purposes.</u></p> <p>Article in nutshell – Any threat or use of force or any other hostile act or threat of hostile act on the moon is prohibited. Any military use of celestial bodies, including weapon testing, placing nuclear weapons or weapon of mass destruction in orbit around the moon, or formation of military bases, military installations &amp; fortifications on moon is prohibited. The use of military personnel for scientific research or for any other peaceful purposes has not been prohibited.</p> <p><b>Elements Of CHM Implied:</b><br/>Peaceful use exclusively.</p> | <p><b>Article 87</b><br/><u>Freedom of the high seas</u></p> <p>Article in nutshell – The high seas are open to all states, whether coastal or land-locked. All state have freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law subject to Part VI, freedom of fishing, subject to the conditions laid down, freedom of scientific research, subject to Parts VI and XIII</p> <p><b>Elements Of CHM Implied:</b><br/>No exclusive use.</p> | <p><b>Article 136</b><br/><u>The Area and its resources are the common heritage of mankind.</u></p> <p>Article in nutshell – The Area and its resources are the common heritage of mankind.</p> <p><b>Elements Of CHM Implied:</b><br/>CHM principle.</p>   |
|  | <p><br/><u>Antarctica shall be used for peaceful purposes only.</u></p> <p>Article in nutshell – </p> <p><b>Elements Of CHM Implied:</b><br/>Peaceful use exclusively.</p>   | <p><br/><u>Recognition of the common interest of mankind</u></p> <p>Article in Nutshell – </p> <p><b>Elements Of CHM Implied:</b><br/>No exclusive use, sharing of benefit.</p>  | <p><br/><br/>Article in Nutshell – as well as to the need to promote higher standards through international intergovernmental organizations shall be encouraged.</p> <p><b>Elements Of CHM Implied:</b><br/>Sustainable use of area &amp; its resources, sharing of benefits, no exclusive use, common management.</p>  | <p><b>Article 88</b><br/><u>Reservation of the high seas for peaceful purposes.</u></p> <p>Article in nutshell – The high seas shall be reserved for peaceful purposes.</p> <p><b>Elements Of CHM Implied:</b><br/>Peaceful use exclusively.</p>   | <p><b>Article 137</b><br/><u>No sovereignty claims.</u></p> <p>Article in nutshell – No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources; All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. No State or natural or juridical person shall claim, acquire or exercise rights with respect </p> |

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|  | <p><b>Article 2</b><br/><u>Freedom of scientific investigation.</u></p> <p>Article in nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p>  | <p><b>Article 2</b><br/><u>No claim of sovereignty</u></p> <p>Article in Nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/>Non-appropriation of territory</p>   | <p><br/><u>Freedom of scientific investigation</u></p> <p>Article in Nutshell -<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/>No exclusive use.</p>   | <p><br/>Article in nutshell –<br/>No State may validly purport to subject any part of the high seas to its sovereignty.</p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p>   | <p><b>Article 140</b><br/><u>Benefit of mankind</u></p> <p>Article in nutshell –<br/>Activities in the Area shall be carried out for the benefit of mankind as a whole taking into particular consideration the interests and needs of developing states &amp; peoples who have not attained full independence; The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis.</p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p> |
|  | <p><br/><u>Scientific observations and results from Antarctica shall be exchanged and made freely available</u></p> <p>Article in nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p> | <p><br/><u>The moon and other celestial bodies shall be used exclusively for peaceful purposes</u></p> <p>Article in Nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p> | <p><br/><u>Protection of environment</u></p> <p>Article in Nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p> | <p><br/><u>Duty to render assistance</u></p> <p>Article in nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p> | <p><br/><u>Use of the area exclusively for peaceful purposes.</u></p> <p>Article in nutshell –<br/></p> <p><b><u>Elements Of CHM Implied:</u></b><br/></p>  |
|  | <p><b>Article 4</b><br/></p> <p>Article in nutshell –</p>  | <p><b>Article 5</b><br/><u>Regards astronauts as envoys of mankind in outer space.</u></p> <p>Article in nutshell –</p>  | <p><br/><u>The moon and its natural resources are the common heritage of mankind.</u></p> <p>Article in nutshell –</p>  | <p><br/>Article in nutshell –<br/>All States have the right for their nationals to</p>  | <p><b>Article 143</b><br/><u>Marine scientific research for peaceful purpose.</u></p> <p>Article in Nutshell –</p>   |

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|  | <p style="text-align: center;"></p> <p style="text-align: center;"><b><u>Elements Of CHM</u></b><br/><b><u>Implied:</u></b><br/>Non-appropriation of territory</p> | <p style="text-align: center;"></p> <p style="text-align: center;"><b><u>Elements Of CHM</u></b><br/><b><u>Implied:</u></b><br/></p> | <p>Treaty declares The moon and its natural resources are the common heritage of mankind; The moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means; Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person.; The placement of personnel, space vehicles, equipment, facilities, stations and installations on or below the surface of the moon, including structures connected with its surface or subsurface, shall not create a right of ownership over the surface or the subsurface of the moon or any areas thereof; States Parties have the right to exploration and use of the moon without discrimination of any kind, on the basis of equality; to establish an international regime to govern the exploitation of the natural resources of the moon for orderly and safe development of the natural resources of the moon, The rational management of those resources, The expansion of opportunities in the use of those resources; An equitable sharing by all states parties in the benefits derived from those resources.</p> | <p>engage in fishing on the high seas subject to their treaty obligations</p> <p style="text-align: center;"><b><u>Elements Of CHM</u></b><br/><b><u>Implied:</u></b><br/>No exclusive use.</p> | <p style="text-align: center;"></p> <p style="text-align: center;"><b><u>Elements Of CHM</u></b><br/><b><u>Implied:</u></b><br/></p> |
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|  |   |   | <b><u>Elements Of CHM Implied:</u></b><br> |   |   |
|  | <br><u>Ban on nuclear explosion.</u>   | <br><u>Environment protection and mutual assistance.</u>   |   | <br><u>Cooperation of states in the conservation and management of living resources.</u>                             | <b>Article 144</b><br>   |
|  | Article in nutshell –<br>  | Article in nutshell –<br>  |   | Article in nutshell –<br>  | Article in Nutshell –<br>  |
|  | <b><u>Elements Of CHM Implied:</u></b><br>Peaceful use exclusively,<br>  | <b><u>Elements Of CHM Implied:</u></b><br>Protection of environment.  |   | <b><u>Elements Of CHM Implied:</u></b><br>Sustainably use of resources, common management.  | <b><u>Elements Of CHM Implied:</u></b><br>   |
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|                                       |   |   |   |   | <p><br/>                 Article in nutshell –<br/> <br/> <br/> <b><u>Elements Of CHM Implied:</u></b><br/> </p>   |
| <p><b>11. Remarks / Comments.</b></p> | <p>1) <br/>                 2) It <br/>                 3) It <br/>                 4) The <br/>                 5) The <br/>                 6) Env <br/>                 7) The </p> | <p>1) The tr <br/>                 2) Denial <br/>                 3) Regardi <br/>                 4) This <br/>                 5) Even </p> | <p>1) <br/>                 2) It <br/>                 3) It <br/>                 4) The <br/>                 5) The <br/>                 6) Env <br/>                 7) The </p> | <p>1) <br/>                 2) It <br/>                 3) It <br/>                 4) The <br/>                 5) The </p> | <p>1) <br/>                 2) It <br/>                 3) It <br/>                 4) The </p> |



Out of the 5 treaties discussed above, the 'Common herit

### Disputes & Criticism

- 1) **No exclusive Use & non appropriation of territory** - These two elements have been reason of dispute between developed states & less developed states. It is often interpreted by some developed state as,



every state has equal access to the area & its resources, they are own by no as 'common property' which belongs to all. With this logic, any resource or benefit derived from those resources, or the use of them, should serve for benefit of all states. Therefore they support the idea of creation of authority to look after the management of this common property, which would distribute all benefits derived from the exploitation of common areas to all state in identical manner.



- 2) **Equitable sharing of benefits** -
- 3) **Peaceful use of area** – Whether using territory for peaceful purposes is the feature of CHM is debated. The International Law Association, in its 1986 Seoul declaration concerning the CHM principle, does not list "peaceful purposes" among utilization features of a common heritage regime. Further, treaties such as Antarctic treaty, the outer space treaty, moon agreement, and seabed treaty ban any military use of the area. However, the UNCLOS high seas agreement allows warships to traverse in high seas.



- 4) – CHM principle, which has been a part of the moon treaty, uses contrasting language when describing two different articles. As mentioned earlier, Article 6 of the Moon treaty allows 'collecting on and removing from the moon samples of its mineral and other substances & further mentions that such samples shall remain at the disposal of those states parties which caused them to be collected and may be used by them for scientific purposes'. When interpreting this statement, it can be said that it allows state to exercise exclusive control over resources & as such it goes out of the province of mankind & becomes a private property of state.



- 5) - Whether environmental protection element, is a part of the CHM principle, have been disputed. This is because some experts consider that, to protect the natural environment, the environment must be kept in its original condition, and activities of benefitting from the area can alter and, most probably, harm the natural environment. Moreover, The CHM principle does not provide guidelines as to what specific activities are to be conducted for environment protection & does not allot any specific responsibilities to states. The concept of environment protections has been exhibited in generalised fashion.



- 6) - CHM principle does not allow resources to be owned by anyone. However under the high seas agreement of UNCLOS, states are allowed to exploit & own fishing stocks from common heritage region, which makes it their private property. This is contradictory to the principle of common heritage of mankind.

**Conclusion**



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**Sources:**



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