

# International Law Facing Challenges of Arctic Conservation

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**Abstract** Given the unique and important role of the arctic in conserving natural balance of the earth, and considering its valuable and particular flora and fauna resources, it is vital that the international community pay serious and prompt attention to this issue in order to prevent the destruction of Arctic environment. Climate change and Ecological threats not only Arctic and its surrounding states, but also the entire of international community with serious security threats. The melting of arctic ices can lead to unimaginable risks. Undoubtedly, the strict attention of authorities of States to ecological threats is necessary and essential in order to save future generations and provide a sustainable environment for inhabitants of this planet.

**Keywords** Arctic, Environment, Climate change, Oil and gas extraction, Natural resources, Paris convention

## 1. Introduction

Climate change is one of the main causes of global warming. At the moment, melting arctic ices is considered as a main victim of climate change. Greenhouse gases keep sun's energy inside atmosphere and make earth warmer. Arctic ices play an important role in maintaining the balance of the Earth's climate. Their main function is their capacity for restoring sun rays and energy for cooling down the earth.<sup>1</sup> Pollution of arctic ices as a result of human activities in North Ocean causes ices to be darker and prevent that natural function. So, the more ices are destroyed, the more gets hot the climate.

Melting arctic ices increases the water surface in the oceans. This process not only affects the resources and situations of coastal States of tiny islands<sup>2</sup> but also endangers resources of States and international security.

Unlike Antarctic, arctic doesn't have special law regime. Exclusive situation of Antarctic is in a way that it is located in the group of regions like: watercourses international seabed and its resources, as well as, space beyond

atmosphere that are known as common heritage of mankind. Although ecological concerns are defeated against development demands, making pressure from public opinion and governmental or non-governmental institutions is considered an element for inducing international society of states to create laws necessary for conserving ecology.<sup>3</sup> This element can be affective about legitimacy of activities around arctic. While threats to arctic and Antarctic ecology and their fragileness due to external elements are equal, their treaty regimes are very different. Antarctic is under binding rules and especial treaty regimes, but arctic is under soft law and non-binding rules. Bilateral or multi-lateral conventions between governments around arctic are not enough for long term challenges of this region.

In the past, shipping was limited to certain maritime routes. Especial courses in the past. By discovering hydrocarbon and mineral resources marine activities also increased. Commercial shipping started in 1920 and expanded later by ice breaking ships. Decrease of arctic ices and emergence of new sea paths in the area increased sea trip from North West side<sup>4</sup>. Ices melting due to extensive sailing and sensitivity of this region, accelerated climate change<sup>5</sup>.

## 2. Situation of Law Regimes Governing Arctic

Most of people consider convention system of Antarctic as

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1 Developing islands that are confronted by destroying risk. Damages of this procedure will have extensive effects. Loosing homes, forced immigration and unemployment are some results of this climate change.

2 Agreement on the Conservation of Arctic Bears, *ILM* 13 (1974) -Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries, Misc. 2 (1980) - Ottawa Declaration on the Establishment of the Arctic Council (1996).

3 Lake, Robert, "The Physical Ecology," in *The Challenge of Arctic shipping: Science, ecological assessment, and human values*, (Montreal Buffalo: McGill-Queen's University Press, (1990), p20.

4 Arctic Marine Shipping Assessment 2009 Report, p. 136.

5 Rothwell, Donald, *the Arctic Regions and the Development of International Law*, Cambridge: Cambridge University Press, (1996), 157.

a pattern for arctic ecologic. Antarctic is managed like high ecological pressure under concise law system along with conserving ecologic. Yet, some key differences such as population, industry activities and national capacities between two poles made Antarctic convention to be useless for arctic. Along with finding a treaty solution, it is necessary to analyze current treaty system governing arctic and study conventions surrounding the conservation of arctic ecology before enforcement.<sup>6</sup>

Unlike Antarctic that has a concise convention system, Arctic lacks a bond law system. Arctic law system includes a soft law that started by the declaration of 1991 based on conserving ecology and strategy of arctic conservation. Arctic secretariat that guides the body of system is not just an international organization with treaty body, but it can speak about common issues of arctic, special problems of sustainable development and arctic conservation instead of a high level conference hall as a tool for expanding cooperation between arctic governments.

### 3. Guidelines for Conserving Arctic Ecology

Strategy of conserving arctic ecology is the start point of a establishing a new system that is not completed yet. Strategy for conserving arctic ecology is governments bound to determining ecological problems. As a part of this issue, arctic Governments state about some issues related to available universal agreements and their applications in law regimes of ecology. There was just one total overview about this convention before establishing strategy for conserving arctic in 1991. This overview clarified universal conventions that affected conserving arctic and divided them into four groups including: conventions related to atmosphere, sea, wildlife and dangerous garbage.

It should be mentioned that strategy for conserving arctic was not established in the frame of agreement, but this subject did not have any treaty problems<sup>7</sup>. The purpose of arctic conservation<sup>8</sup> strategy is conserving arctic ecosystem, Formalizing traditional and cultural demands and applying indigenous people values in conserving arctic ecologic. Recognition, reduction and finally destroying pollution.

Strategy of conserving arctic ecology discusses ecological problems: organic contaminant, oil pollution, heavy metals, radioactivity and oxidation. These six contaminants of ecology are recognized extensively in arctic.

Some of the ecological problems are not totally related with sustainable development such as pollution related to nuclear garbage. Some of the issues related to sustainable development don't have any correlation with ecologic. (Like far communication, abusing junks among arctic population), and some of the problems have relation with both of them lie indigenous people concerns about effects of business on future natural resources of society.

Arctic secretariat was the natural result of conservation strategy. Arctic Governments need expansive strategies that lie beyond related issues to ecologic. Declaration of secretariat says that: "the view of secretariat is related to sustainable development and conservation of arctic.

### 4. International Commitments Governing Arctic

Problems about arctic ecology coincide with most of the universal problems. Most of the threats to arctic ecology derive from out of the region.<sup>9</sup> The effect of contaminant activities beyond arctic region needs universal actions. Some of the universal contracts along with covering arctic ecology subjects were more successful (such as special regulations of convention of marine laws related to iced-covered regions that can be used in arctic.

On the other hand, universal conventions about atmosphere protection is considerable for arctic. Climate changes affect ecosystem and expand hydrocarbon resource development. Toxic Chemical substances production and unsuitable consumption and migration damage arctic.<sup>10</sup> "A convention on long-range transboundary air pollution" was approved in 1979 and get indispensable in 1983 in order to prevent balk contaminant. Contaminant substances that are created at the moment in addition to threatening directly human being and animal's health, indirectly endanger humans that finally its result is demolishing human right about having healthy ecologic.

### 5. Role of Public and Regional Organizations in Conserving Arctic Ecologic

Air pollution and demolition of earth ecosystems threat not only the life human being but also most of the other creatures. So, there should be different organizations to observe and conserve ecology through observation and adjustment of available rules in the field of providing healthy ecology for humanity. There is not any affective and exclusive organization in international level in order to solve

6 Declaration on the Establishment of the Arctic Council, Ottawa, 1996, at: <http://www.arcticcouncil.org/establ.asp>.

7 The Vienna Convention on the Law of Treaties, 1969, Art. 2 (1) (a) defines a treaty as: an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

8 Bruce A. Russell, The Arctic Ecological Protection Strategy & the New Arctic Council, online at the Arctic Circle website maintained by the University of Connecticut:

<http://arcticcircle.uconn.edu/ArcticCircle/NatResources/Policy/uspolicy1.html>.

9 Article 234 analyzes convention of marine laws that prevention, reduction and control of contaminants of sea in iced regions of a government.

10 Vogler John, The Global Commons: Ecological and Technological Governance, 2nd ed. (England: John Wiley & Sons Ltd, 2000), p136.

ecology problems in the world. Yet, the role of public organizations in presenting experimental guidelines should not be neglected.

## 6. Role of Arctic Indigenous People

Indigenous people as permanent members of a society play a particular role in the Arctic secretariat.<sup>11</sup> Indigenous workers involved in the work group of the strategy about conserving Arctic ecology.<sup>12</sup> The principle suggestion for the Arctic secretariat has been forecasting an equal situation for Arctic government agents and indigenous group agents. The Arctic secretariat chooses some of the permanent participants in order to formalize an exclusive situation of indigenous in the Arctic.

The result of this creative approach presented by the secretariat affected significantly the situation of indigenous.<sup>13</sup> Communion of indigenous in the strategy of Arctic conservation made the trend of production very different and more successful. Their communion in was considered as a real life example about the effects of politics and revolution. Applying traditional and local ecological knowledge has been started in the strategy of Arctic conservation. Indigenous people believe that reflection of their local life depends on universal decision making about conserving their resources.<sup>14</sup> For example, one of the working groups of the Arctic secretariat in his study collected local knowledge about Beluga whale in Alaska and presented some reports in this field. Agents of indigenous organizations have formal agency in the council of the Arctic region alike permanent participants and this issue depends on the region location. The recognition of indigenous people rights for taking part in regional conservation in international society have a few proportions.<sup>15</sup> There may be a suitable gap connection in Ice Mountains that clarifies the role of non-governmental activities and city agents in the structures of decision-making issues.

Exclusive features for confronting demands of inhabitants of the Arctic are also extensive and it is necessary to take part in an empowered law regime. An obligatory convention, whether it is under discussion or not, the Arctic council should change its place to promotion and enforcement of creative features.<sup>16</sup>

## 7. Regional Organizations Conserving Arctic Ecology

Instead of repeating the Antarctic convention that is located as a natural resource for conserving this continent, a new regional agreement can conserve local people rights, society demands and economic activities, yet there is a high certainty about ecological coherence. Local people rights and economy development in the Arctic are considered the most principle political and treaty issues. The Arctic is a potential for changing to a different model from a law system.

In the second half of the 20<sup>th</sup> century, the important subjects for international society such as international security, human rights and right for choosing fate, defeat against lack of penalty in the frame of international principles and rules demonstrated emergence and recognition of some common values without applying a common concern about them. The concept of human being common concern are cited by different concepts like common heritage and international concern about above mentioned issues. We will discuss ecological problems by mentioning different symbols and applying international laws in the frame of law. In order to affirm the main hypothesis, we will try to present a new concept, mankind common heritage and obligatory law system for conserving ecology of the Arctic to open a new way for conserving the future of earth. Common management is an idiom that explains common decision-making in programming and conducting natural resources. Common management of most of management structures in the Arctic is composed of government and local agents. Concise agreements about demand for habitation in Canada resulted in common management adjustments and decision-making systems.<sup>17</sup> Examples like resource management rights of the McKenzie valley in Canada is a federal right that presented local direct partnership in management and planning, and this analysis and control is considered a good basis for practical test for performing management. Other examples can be found in united government organizations like commission of whale hunting in Alaska, commission of walrus of Alaska Eskimos and convention of local village council that develop common regulations for wildlife. Although assignment of adjustment powers by the system of a common management for internal rights remained as an important issue, a regional agreement can encourage expanded usage about this treaty tool.

Necessity for changing international society function in order to prevent Arctic demolition:

Although two Arctic regions have common features, they have considerable cultural, historical and guideline differences. These two regions also have different geographical and natural situations. The Antarctic is a stone continent but the Arctic is part of the north icy ocean composed of ice.

11 Bloom, Evan, Current Development: Establishment of the Arctic Council, 1999, 93 A.J.I.L. 712.

12 The Indigenous Peoples' Secretariat was established to facilitate the involvement of indigenous peoples in the work of the Arctic Council. Its website is at <http://www.arcticpeoples.org>.

13 Tennberg, Monica, Indigenous People's Involvement in the Arctic Council, Northern Notes, IV: 21-32 (December 1996), Available at <http://arcticcircle.uconn.edu/arcticCircle/NatResources/Policy/tennberg.html>.

14 Traditional Ecological knowledge (TEK).

15 Burgess, Philip, Traditional Knowledge, 1999, available online at <http://www.arcticpeoples.org/knowl.htm>.

16 The Arctic Council agreement is careful to note that the use of the word "peoples" does not connote any claim for self-determination.

17 Ker, Alex, The Treaty Regulatory and Policy Framework for Non-renewable Resource Development in the Northwest Territories, (Ottawa: National Round Table on the Environment and the Economy), (2000), p4.

Although modeling from Antarctic treaty system as a model for adjusting arctic treaty system is possible at first, basic differences of these two regions makes it impossible. So, we try to plan a special treaty system according to special situation of this region in order to support arctic ecology.<sup>18</sup>

Opposite to Antarctic, arctic doesn't have a concise and obligatory treaty system. Yet, universal treaties and norms and legal contents of governments in the field of law development affect arctic. Marine law affected national law content of arctic in the field of ecology. Here are a lot of bilateral and exclusive conventions between arctic governments like wildlife, farming and preventing from air pollution.<sup>19</sup>

## 8. Treaty System of Antarctic

Antarctic treaty is the only international treaty that manage all affairs of a continent. From the management of a complete continent overview, Antarctic treaty system is a sample of successful agreement in universe system.<sup>20</sup> Antarctic treaty is designated for conserving ecology and continually developed for rules of environment protection. When the protocol of Madrid<sup>21</sup> performed in 1998 with protection of environment, the change in treaty system of Antarctic also completed in order to protect ecology. Scientists believe that Antarctic treaty system presents a model for the international laws. Protocol of 1991 about ecology protection considers Antarctic treaty as a criterion. In addition to Antarctic treaty and Madrid Protocol there are two other conventions called treaty of seal protection (1972) and convention of marine resources (1982) about protection of Antarctic.

This treaty forbidden atomic bombs (article 1, declaration 5) and every kind of army assessments like army establishments, army maneuvers as testing weapons in this region.

Applying personnel or army equipment for scientific research is allowed just for peaceful purposes. Antarctic treaty encourages solving problems.

## 9. Protocol of Antarctic Treaty Environmental Protection

Protocol of Antarctic protection was assigned in October 4, 1991 and approved in 1998. Antarctic treaty concentrates on research and non-army system that aims on protecting

environment. The purpose of this system adjusted in article 2 as follow: groups are committed to complete support of Antarctic environment because this region is a natural resource and belongs to scientific and peaceful utilization. This protocol analysis the effect of increasing tourism and making pollution in research stations.

Ecological Principals are clarified in article 3 of this protocol. All of the activities in Antarctic should be according to the principles:

- Protection of Antarctic environment
- Protection of aesthetics values.
- Protection of regional resources for scientific researches.

Article 2 of paragraph 3 limits activities that have contrary effects on environment of Antarctic and related ecosystems.<sup>22</sup> Article 7 prohibits all of the activities related to mineral resources of Antarctic region other than scientific researches.

This protocol should be corrected by its member until 2048. In addition, prohibitions about using mineral resources are unchangeable except by obligatory legal system under article 5 paragraph 25.

## 10. Governments' Responsibilities in Front of Arctic Region Environment Protection

Ecological problems of the world are increasing rapidly. This issue causes national and authorities concern and as a result emphasizing about necessity of proper actions in order to prevent ecological treats and serious damages. It should be noted that the problem of earth warming and changes of continent result from greenhouse gases and this a universal problem<sup>23</sup> and its solutions should be universal too and all of the countries should try to solve this problem. That is why, there is a principle in international law of environment called "common but different responsibility".<sup>24</sup> This principle state legal and obligatory guidelines for governments for reduction of greenhouse gases in order to prevent unfavorable effects on arctic that has serious results for the environment.<sup>25</sup>

Increase of international relations causes the balance of governing concept in the arena of international law. Paying more attention to regions that don't belong to any government such as South Pole, high seas, sea beds and atmosphere, governments cited two different ideas about

18 Falk, Richard, 'The Antarctic Treaty System: Are There Viable Alternatives?' in Arnfinn Jorgensen-Dahl and Willy Ostreng (eds.), *The Antarctic Treaty System in World Politics*, (London, 1991), p457.

19 Convention on the Conservation of Antarctic Marine Living Resources, [http://www.ats.aq/documents/ats/ccamlr\\_e.pdf](http://www.ats.aq/documents/ats/ccamlr_e.pdf).

20 Antarctic treaty had been bonded by 12 country in 1959 and approved in 1961. At the moment 53 governments are members of this treaty. For more information refer to <http://www.ats.aq/e/ats.htm>, last seen September 2016.

21 Protocol on Environmental Protection to the Antarctic Treaty, [http://www.ats.aq/documents/recatt/Att006\\_e.pdf](http://www.ats.aq/documents/recatt/Att006_e.pdf).

22 Any activity relating to mineral resources, other than scientific research, shall be prohibited. (Art7), available at: [http://www.ats.aq/documents/recatt/Att006\\_e.pdf](http://www.ats.aq/documents/recatt/Att006_e.pdf), p5.

23 For example convention 43/53 (December 6, 1998) of public assembly of united nation organization in the field of world continent protection for current and future generations state that universal continent change is "common concern of humanity" and this issue also is explained in the introduction of convention 1992.

24 The Principle of Common but Differentiated Responsibilities (CBDR).

25 principle 7, Declaration 1992 Rio de Janeiro, See: <https://sustainabledevelopment.un.org/getWSDoc.php?id=4086>, last seen December 2016.

them including: theory of non-ownership of this regions and joint ownership theory.<sup>26</sup> Concluding related conventions about these four regions showed that governments accepted mankind common heritage principle and organizations in order to observe these regions, nowadays, there is no doubt about replacement, effectiveness and boundary transition without paying attention to crafted boundaries in the domain of environment. Birds' migration, water fallow and changing climate illustrate this issue. Nowadays, governments commitments to environment protection whether their domain or beyond boundaries against public.<sup>27</sup> International tribunal in the field of nuclear test between Australia and news land on one hand and franc on the other hand in the context of ecological damages to public commons (high sea) stated that such kind of reversal does not affect a government's resources per se yet it affects the entire international society. Extensive and constant demolition of environment is also considered as an international crime in three important international documents. Paragraph 3 of article 35 of the first protocol of Geneva Convention (1977), article 18 of international statute penal approach of environment. International law commission in article 48<sup>28</sup> about government responsibilities (related to common responsibilities) states that: commitments included in first part of paragraph 1 should be among collective commitments and that should be enforced among a group of governments in order to support a national advantage. These kind of committeemen may be related to a region environment or security. Entrance of ecology issue to the field of human right documentation, international rights of environment is getting out of government domain and entering into human domain.<sup>29</sup>

The subject that causes government commitment is not reciprocity commitment in front of other countries but in front of human generation commitment toward conserving environment. When a country break one of the commitments toward environment or damage intentionally, they will be responsible for this affair, but when a government commit a

crime against another country due to an allowed action, responsibility won't be rejected and it will have different results (for example when an oil ship sink while crossing a high sea).

## 11. Common Heritage of Mankind

World will for environment conservation started by establishing first conference of united nation organization about human and ecology that is called Stockholm declaration (1972). Principle of mankind common heritage is one of the achievements of international law and development in the frame of united nation organization. In recent decades we observed international society members' support about expanding domain of mankind common heritage principle to subjects like mankind genome.<sup>30</sup> The range of mankind heritage principle is increasing. Yet, if the application of this principle in regions like sea beds in the domain of national ultra-space atmosphere and widespread part of South Pole had been registered, in relation with subjects like mankind rights, climate change, ecology and environment diversity what is the priority and concept of common heritage of mankind in order to have a just utilization about this common heritage.

The concept of mankind common heritage is derived from "common we". But this principle had many changes during history in a way that nowadays the concept of common heritage of mankind reflects this view. Applying the word "heritage" in the concept of mankind common heritage refers to material accept of non-habitant regions and resources.<sup>31</sup>

None of these documents and legal thesis had presented a precise definition about "common heritage of mankind" yet they mentioned basis and principles of this concept. This issue rise from the complexity of common heritage of mankind concept and its expanding range. Emerging and recognition of mankind common heritage did not shape unexpectedly. The times that support of region and resource in the domain out of national capabilities at risk were the subject, the principle of mankind common principle was mentioned.

As a result the concept of common heritage of mankind in its establishing process as a legal principle, first accepted in international assembly and statutes of united nation organization and then in international and regional convention.<sup>32</sup>

When a region or resource is known as a mankind common heritage, it gets necessary to govern some principles and rules that the most of them are as follow:

### 1- Indeed, the first element of mankind common heritage

26 Program of united nation ecology planning (UNEP) and world weather organization and intergovernmental climate change (IPCC) including hundreds of experts in order to study in the field of continent change. This council concluded in 1990 and 1992 that duplication of greenhouse gases in the atmosphere causes serious effects on social, economic and natural systems of the world. In addition it should be noted that effects of earth warming and changing continent climate can cause increasing challenges between governments and different regions of the world.

27 In this frame it should be mentioned that there is a principle in international law of environment that is called "contaminators of environment have to pay for it". Look at principle 22 declaration 1972 and principle 16 of 1992. Rio.

28 Article 48: documented to responsibility by country other than damaged country. 1- Every country other than damaged country is allowed according to article 2 to document to responsibility of other country if (a) the commitment is broken in front of a group of countries and created in order to support collective advantages. (b) The broken commitment is against international society totally.

29 Principle 51 of Stockholm declaration should declaration about natural resources and their utilization in a way that there be no harm and damage to the environment of other countries and regions that are out of national control. <http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>.

30 Declaration of the United Nations Conference on the Human Environment, available at: <http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>.

31 Egede, Edwin, Common Heritage of mankind, Oxford bibliographies, 2014, p5.

32 Shelton, Dinah, "Common Concern of Humanity", *Iustum Aequum Salutare*, 2009, vol.1, Available at: <http://ias.jak.ppke.hu/hir/ias/20091sz/05.pdf>, p38.

necessitates that their region and resources should not be under ownership.

- 2- Production and utilization of region should be in the frame of a common and public management system.

In fact this element contains the basis of mankind common heritage thesis,<sup>33</sup> because frame is established based on this element.<sup>34</sup> Establishing an international structure by universal assessment for providing resources of mankind is the main and important principle of common heritage. This structure or process should reflect a universal decision-making system and coincide with the legal laws of international society.

- 1- Enjoying regional resources should be just and without any prejudice and according to the demands of developing governments and future generations.
- 2- Peaceful application of mentioned regions, that means all of the army enterprises will be forbidden there.

Yet, in relation to the subject of climate change in international assemblies, the concept of mankind common heritage has common concern of humanity. This concept about climate change was applied for the first time in article 7 of convention 27/47 in international public assembly:

"Weather is considered as the main condition for life consistency in the earth, climate change is common concern of human being".<sup>35</sup>

This concept repeated also in the public assembly conventions of the following years after that. Other documentations related to the subject of climate can be found in convention of climate change that cites in article 7: "climate change of the earth and its negative effects is common concern of mankind". And finally united nation convention about fighting against desert and in those countries that experienced drought especially in Africa states that: "although the concept of common concern is not mentioned in it directly. Article 4 is the introduction of this convention and states that:

"Removing wilderness and drought is a universal problem, because all regions of world are affected by this subject and in order to remove drought or reduce the effects of drought there are many common actions in international society".<sup>36</sup>

Identifying international ecology as a common concern of mankind is the introduction of Antarctic convention and it states that: "it is a kind of advantage to mankind that Antarctic continent is used exclusively for the peaceful

purposes for ever".<sup>37</sup> Introduction of protocol Madrid is also about environment protection and it states that development of a concise system for conserving ecology of Antarctic and ecosystem related to it is a profit for all people and then this continent is introduced as a conserved region.<sup>38</sup>

The first article of introduction part of convention 1979 about conserving migratory species states that:<sup>39</sup> "wildlife with widespread variety are part of non-replacement system of earth that should be conserved because of humanity welfare".<sup>40</sup> The second part of introduction says that: "every generation conserves natural resource of the earth for the next generation and should commit that this heritage is conserved and is utilized rationally when necessary"<sup>41</sup> and finally convention about biological diversity in 1992 should be mentioned that announces clearly conserving environment as "common concern of mankind":<sup>42</sup> "Common concern of mankind" is described as a concept that international society can act necessary enterprises about resources and issues that emphasize on conservation and a kind of concern about protection and specially conveying to future generations.<sup>43</sup> On the other hand, some believe that common concern is an idea that basically problems and procedures about climate change and ecological diversity authorized rather than common resources and regions about climate change.<sup>44</sup> The basis of this concept is recognition of legal resources of international society about concern toward subjects and values that have especial importance for international society.<sup>45</sup> So, all of the governments are responsible for common concern to this subjects and should cooperate regarding conserving them and especially climate and ecologic diversity. Environment problems and damage of ozone layer and utilization of ocean resources are common concerns of mankind. Because it is not possible to manage them by international and even regional endeavors and yet conserving them demands cooperation in international level and has changed to one of the most important issues of international laws.

The concept of common concern of mankind is related to the idea that some of the values and common heritage of

33 Kaland, Arne, "Nature: The Common Heritage of Mankind"? Department of Social Anthropology, University of Oslo, available at: [www.sv.uio.no/sai/english/research/groups/perfroming](http://www.sv.uio.no/sai/english/research/groups/perfroming).

34 UN Doc A/Res/2749 (1970) Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, <http://www.un-documents.net/a25r2749.htm>.

35 Guntrip, Edward, The Common Heritage of Mankind: An Adequate Regime for Managing the Deep Seabed? Melbourne Journal of International Law, 2003, PP 13-14.

36 UN Doc A/Res/44/207 (1989) Protection of global climate for present and future generations of mankind, <http://www.un.org/documents/ga/res/45/a45r212.htm>.

37 Convention on The Conservation of Migratory Species (CMS).

38 UN Doc A/Res/44/207 (1989), UN Doc A/Res/45/2/2 (1990).

39 Convention on Migratory Species, 23 June 1979, Available at: [http://www.cms.int/documents/convtxt/cms\\_convtxt.htm](http://www.cms.int/documents/convtxt/cms_convtxt.htm).

40 The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, UN Doc A/AC.241/27 (1994).

41 United Nations Framework Convention on Climate Change (1992), available at: <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

42 Fuchs, Christine, "UN Convention to Combat Desertification: Recent Developments", Max Plank Yearbook of United Nations Law, vol. 12, 2008, pp.287-300.

43 The Convention on Biological Diversity, 5 June 1992, Available at: <http://www.cbd.int/convention/text>.

44 The Antarctic Treaty (1959), Available at: [http://www.antarctica.ac.uk/about\\_antarctica/geopolitical/treaty/update\\_1959.php](http://www.antarctica.ac.uk/about_antarctica/geopolitical/treaty/update_1959.php).

45 Pahuja, Sundya, "Conserving the World Resources?", in Crawford and Koskeniemi (eds.), Final Draft for the Cambridge Companion to International Law, Chapter 15, p20, Available at: <http://intranet.law.unimelb.edu.au/staff/prof ileupdate/files/CCIL%20Pahuja1.pdf>.

mankind is located in international level and are valuable. An idea that is stated in acceptance and announcement of international obligations in article 53 of convention of 1969 of treaty laws in front of everybody that is covered under international court of Barcelona. It is clear that correct management of issues that are vital for human life is very essential and is even related to future generations and common wealth and there should be collective acts and possible irrecoverable damages will bring to these issues.<sup>46</sup>

Above mentioned concerns are also true about arctic. Common heritage of mankind is used about regions and resources that are utilizable for society advantage.<sup>47</sup> These regions and public wealth are commonly higher than national competence of governments. Some believe that difference between common heritage of mankind and common concern is that the first is considered a legal concept and yet the second one is a political word. Although political entity of common concern of mankind makes it more flexible than common heritage of mankind, can make it accessory of political issues of international society. The concept of common concern of mankind is concise and doesn't create special commitments and rules, yet, it provides a basis for collective actions of international society. This right about international society in subjects that are considered as a concern resource for mankind in national domain should be harmonized with the principle of inspection toward governments. Governments governing I conserved providing observation of international laws necessities about protecting common wealth.<sup>48</sup>

Some of the lawyers consider common heritage of mankind and also the concept of common concern of mankind as a symbol of commitments toward everybody and international laws and they also believe that since these concepts are related to subjects with mankind entities, it is possible for some of these laws and commitments concern with commanding criteria that are recognized formally by international society. The principle of common heritage of mankind and also common concern of mankind are recognized by governments formally and there is differences in the context of their performance between some developed countries. Anyway, performing law a commitment related to these concepts as a legal base in developing and providing international society demands specially underdevelopment governs and also ensuring next generation resources has important and key role.<sup>49</sup>

## 12. Conclusions

Current assessment about legal system of marine

environment of arctic showed that this region is under a lot of threats that the most important is climate change and weather heat. The effect of this phenomenon on the arctic will continue while the ability of ecosystems of this region in reaction to these changes is limit. In addition, exclusive conditions of arctic threats usage of northern ocean and this threat increases by expansion of human activities toward north and pollution made of oil. These researches showed that available law system in regional and universal levels are inefficient and they don't have enough capacity to conserve arctic resources. In the regional level, arctic council as an intra- governmental organization guides region governments that suffer considerable defects. The first and principle defect is lacking power in creating bond laws that prevents solving related problems and causes solutions to be regarded without assuring necessities while recognition and to be dependent on voluntary commitments of north countries. In addition, achieving long term purposes mostly because of rapid management changes that causes change in aiming priorities, confronts serious problem. On the other hand, council's efficiency due to unsuitable work division and lack of consolidation between groups gets week. Paying attention to all of these cases it gets clear that council of Arctic is not capable of providing suitable solution in order to solve vulnerable environment of arctic. Another element for this problem is inefficient policy of this council and legal disharmony of organizations. Not only environmental conditions of region but also multi-level risks coming from human activities in this region creates a harder method for preventing pollution. In addition, a valid system for solving this problem suffers from lack of harmony and diversity of legal and organizational structure of this region. Most of the experts believe that achieving a binding agreement by long term negotiations and risk of agreement on law basis commonness is also possible. They conclude that there is now a legal frame for achieving an agreement. In fact, the best choice for a stable management in the region is a concise convention in the shadow of available law cases, such kind of choice (a binding agreement) will have more advantages than weakness and will provide necessary norms for supporting conservation association of this region. Against the current flexible legal system, a binding convention won't have deficiency in ensuring principles. In order to assure arctic governments toward such an agreement, Antarctic governments should clarify that their purposes is not changing natural resources of arctic to a cache but is a stable and extensive usage. First of all, activities of arctic local people should be conserved. Secondly, the right of coastal governments of arctic in relation to regions under their sovereignty should be considered. On the other hand, Antarctic governments should demonstrate that they have law interests regarding constant conservation and management of arctic resources especially ABNJ region. Perhaps non- coastal population mostly in high sea regions are more successful in satisfying coastal governments for participating in conservational activities of this region. The weather of region is changing rapidly and accessing to

46 Protocol on Environmental Protection to the Antarctic Treaty (The Madrid Protocol), 4 Oct. 1991, Available at: [http://www.ats.aq/documents/recatt/Att006\\_e.pdf](http://www.ats.aq/documents/recatt/Att006_e.pdf).

47 Erga Omnes Obligations.

48 Shelton, Dinah, "Common Concern of Humanity", *Iustum Aequum Salutare*, vol.1, p.34, available at: <http://ias.jak.ppke.hu/hir/ias/20091sz/05.pdf>.

49 Nowlan, *Op.cit.* p. 58.

waters of Central Ocean of arctic is increasing. In order to protect sea environment of arctic, it is necessary to take an active regional management before starting a competition in using resources.

1. Since humanity common heritage is a fairly new concept in international law, it is not completely supported by international rules and conventions.
2. Under-development countries give a systematic shape to conventions by their serious agreement about fastening more chains of this new concept in international laws in order to conserve their interests in international laws.
3. Lacking a full scale sanction, International laws cannot prevent effectively from interference of powerful governments in the common wealth of mankind and this issue demands more lawfulness of international law system. Since united nation organization is affected by powerful governments of the world in its decisions, belief of an expert like Aroid Pardo can be paled with the pass of time and lose its prior power.
4. According to law problems from international point of view utilization of common heritage of mankind needs a concise law with a secure sanction in order to ablate interference of powers for unbridled utilizing and conserve interests of countries that are incapable of operation currently.

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## REFERENCES

- [1] Alanna Mitchell, "The Northwest Passage Thawed," *The Globe and Mail*, February 5, 2000.
- [2] Alexandre Kiss, "Commentary and Conclusions" in Dinah Shelton, ed. *Commitment and Compliance*, 2000.
- [3] Alex Ker, *The Legal Regulatory and Policy Framework for Non-renewable Resource Development in the Northwest Territories*, (Ottawa: National Round Table on the Environment and the Economy), 2000.
- [4] Andrei Golovnev and Gail Osherenko, *Siberian Survival – The Nenets and Their Story* (Ithaca, NY: Cornell University Press) 1999.
- [5] Ayesha Ercelawn, *End of the Road – The Adverse Ecological Impacts of Roads and Logging: A Compilation of Independently Reviewed Research* (NRDC: New York) 1999.
- [6] CAFF Habitat Conservation Report No. 5 – *Gaps in Habitat Protection in the Circumpolar Arctic – A Preliminary Analysis*. 1996.
- [7] Christopher Joyner, "The Legal Status and Effect of Antarctic Recommended Measures" in Dinah Shelton, ed. *Commitment and Compliance*, (Oxford: Oxford University Press, 2000).
- [8] C.T Tynan and D.P De Master, "Observations and Predictions of Arctic Climatic Change: Potential Effects on Marine Mammals," *Arctic and Alpine Research* 50, no. 4 (1997).
- [9] David Vander Zwaag, "Land-based Marine Pollution and the Arctic," in Davor Vidas, ed. *Protecting the Polar Marine Environment – Law and Policy for Pollution Prevention* (Cambridge: Cambridge University Press), 2000.
- [10] Derek A. Scott, Bird Life International, *Migratory Birds of the Arctic – A Review of International Conventions and Other Legal Instruments Relevant to the Conservation of Migratory Birds*, CAFF, 1998.
- [11] Donald Rothwell, *the Polar Regions and the Development of International Law*, (Cambridge: Cambridge University Press), 1996.
- [12] Edward O. Wilson, *The Diversity of Life* (Cambridge Mass.: Belknap Press of Harvard University Press), 1995.
- [13] Georg Heygster, University of Bremen, Press Release, New Historic Arctic Sea Ice Minimum 2011, 16 September 2011.
- [14] Giles Whittell, "Russia to accept nuclear waste – for \$30 billion," *Vancouver Sun*, Dec. 22, 2000.
- [15] Henry Huntington and Gunter Weller, in: Jim Berner, Arctic Climate Impact Assessment - Scientific Report, New York: Cambridge University Press, 2005.
- [16] Howard Mann, *Indigenous Peoples and the Use of Intellectual Property Rights in Canada: Case Studies*, 1997, prepared for Industry Canada and the Canadian Working Group on Art. 8(j) of the Biodiversity Convention.
- [17] John Vogler, *The Global Commons: Environmental and Technological Governance*, 2nd ed. (England: John Wiley & Sons Ltd, 2000).
- [18] John Heap, Editor, *Handbook of the Antarctic Treaty System*, 8th Edition, 1994.
- [19] Jack Yves Cousteau and Bertrand Charrier, "The Antarctic Environment and International Law" (1992).
- [20] John Heap, Editor, *Handbook of the Antarctic Treaty System*, 8th Edition, 1994.
- [21] Kimball, "The Antarctic Treaty System" in John R. Twiss and Randall Reeves, eds., *Conservation and Management of Marine Mammals*, (Washington: Smithsonian Institution Press), 1999.
- [22] Kevin McCormick, "Involving Local Authorities and Indigenous Peoples in Marine Management," Background Paper, CAFF, IUCN, PAME Circumpolar Marine Workshop, 1999.
- [23] Kevin O'Reilly, "Impacts and Benefit Agreements: Tools for Sustainable Development?" vol. 25.4, *Northern Perspectives*, Fall-Winter 1999-2000.
- [24] Lee Kimball, "The Antarctic Treaty System" in John R. Twiss and Randall Reeves, eds., *Conservation and Management of Marine Mammals*, (Washington: Smithsonian Institution Press), 1999.
- [25] Monica Tennberg, Indigenous Peoples' Involvement in the Arctic Council, *Northern Notes*, IV: 21-32 (December 1996).
- [26] Oran Young, *Creating Regimes: Arctic Accords and International Governance*, (NY: Cornell University Press), 1998.
- [27] Oystein Jensen, "Arctic shipping guidelines: towards a legal



- regime for navigation safety and environmental protection?" *Polar Record* 44 (2008).
- [28] Their Management with Emphasis on the Northwest Territories," in Parsons and Lear, eds., *Perspectives on Canadian Marine Fisheries Management*, Canadian Bulletin of Fisheries and Aquatic Sciences 226, 1993.
- [29] Rune G. Graversen Ibid, "Vertical structure of recent Arctic warming," *Nature* 451, no. 7174 (2008).
- [30] Scott G. Borgerson, "Arctic Meltdown: The Economic and Security Implications of Global Warming," *Foreign Affairs* 87 (2008).
- [31] Susan J. Hassol, *Impacts of a warming Arctic: Arctic Climate Impact Assessment* (Cambridge, New York: Cambridge University Press, 2004).
- [32] Danly, J. "democracy, development and human right". Translated to Persian by: Sharifi, H. *guidline magazine*, No. 23. 2002.
- [33] Joneydi. M.J. "mineral industry and environment pollution". Tehran, organization of development and renovation of Iran crafts: 1973.
- [34] Kith Alexander, "an introduction to international laws of environment. Tehran, Tehran university publications. 2000.
- [35] Momtaz, J. "supporting environment according to Geneva and Lahe conventions in human laws in the shadow of international revolutions" (Tehran, Dadgostar Publication, 1998),
- [36] Mirzaiee, S. "revolution of government concept in united nations organization (Tehran, Foreign affair ministry publications, 1994).
- [37] Green, A. "Environment, translated by Alikhani, A. (Tehran, high courses of ware, faculty of Sepah and Army of Islamic revolution, 2000, p: 36, Sadoog, M.B. "development and constant development" *Environment periodical*, No. 36. 2001.