

A Common Concern of Humankind and Its Contribution to Solving Marine Plastic[†]

해양 플라스틱 문제 해결을 위한 인류공동관심사의 역할

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Contents

- I. Introduction
- II. A Common Concern of Humankind in International Law
- III. Can Marine Plastic Become a Common Concern of Humankind?
- IV. Approaching Marine Plastic as a Common Concern of Humankind
- V. Conclusion

Abstract: The vast oceans support diverse life, provide food, oxygen, and resources, and regulate climate. They are vital for global trade and play a key role in absorbing carbon dioxide. However, marine plastic pollution threatens delicate ecosystems, harming numerous species. Therefore, to address the problem of marine plastic, the UN Environment Assembly (UNEA) has decided to establish a new legally binding international convention.

In international conventions to manage complex transboundary pollutants such as marine plastic, the environmental problem is specified as a common concern of humankind and efforts are made to solve the problem in the way of common responsibility. This will undoubtedly have implications for the newly establishing marine plastic convention. In this context, the objective of this study is to examine the suitability of designating marine plastic as a common concern of humankind within the recently decided international plastics treaty. Furthermore, this study explores how it can be applied to solving problems by designating marine plastics as a common

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concern of humankind in the new treaty.

Key words: Marine Plastic, A Common Concern of Humankind, Common Responsibility, The Principle of Common but Differentiated Responsibility

I. Introduction

Oceans, covering two-thirds of the Earth's surface, are vital ecosystems supporting millions of species, sustaining communities, generating oxygen, regulating climate, and providing resources and trade routes.¹⁾ They support an astounding 100 million species and sustain around 10 million people, including indigenous communities.²⁾ However, the oceans face a grave threat from marine plastic pollution. More than 200 animal species suffer its detrimental effects, and projections indicate that by 2030, an alarming 53 million metric tons of plastic could infiltrate the ocean each year.³⁾ Furthermore, according to the 2016 World Economic Forum, there will be more plastic in the ocean than fish by 2050.⁴⁾

Therefore, the international community acknowledges the importance of the maritime environment and is working together to cope with the negative consequences of marine litter on the environment. In the 6th meeting of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (ICP) in 2005, the issue of marine litter and plastic was discussed.⁵⁾ Subsequently, in 2014, at the first the UNEA conference, the parties adopted Resolution 1/6 on 'Marine plastic

1) Kumar A.(2004), p. 39, Earle A.S.(2009), p. 12, Danson T. and D'Orso M.(2011), p. 2, Ward A. et al.(2012), p. 2189, UNGA(2007), para. 158.

2) GESAMP(2015), p. 11, Díaz M.S.(2019), p. 3.

3) Teuten L.E.(2009), p. 2028, Borrelle B.S.(2020), p. 1515.

4) Industry Agenda(2016), p. 14.

5) UNGA(2005), para 14, 66.

debris and microplastics’ that “adversely affect ecosystem services, marine natural resources, fisheries, tourism, and the economy, as well as the potential risks to human health.”⁶⁾ This led to a request that the UN Environment Secretary-General conduct research on marine plastic litter and share the findings at the second UNEA in May 2016.⁷⁾ As a result of these efforts, the international community has agreed to establish a binding international agreement directly regulating plastic pollution at the UNEA held in Nairobi from February 28 to March 2, 2022.⁸⁾ The UN Environment Programme (UNEP) mentioned that this day is a “historic day in the campaign” to protect the marine environment from plastic pollution.⁹⁾

It is a positive development for the marine environment that the international community has agreed to enact an international treaty to regulate marine plastics directly. However, the establishment of new international treaties should not be regarded as a ‘cure-all’. To truly address the problem of marine plastic pollution, the international community must focus on developing an efficient treaty that encourages the widespread participation of numerous countries. Only then we can effectively resolve the challenge at hand.

A report released in 2016 by UNEP stated that “the accumulation of plastic litter in the ocean is a common concern of humankind owing to its far-reaching environmental, social and economic impacts.”¹⁰⁾ The UNEA has designated marine plastic and plastics into the oceans as a common concern of humankind and has stated that immediate action is necessary.¹¹⁾ The fact that international organizations have expressed a ‘common concern of humankind’ about marine plastic has significant implications. However, this is just an expression of the reports published by international organization. Therefore, it is necessary to discuss whether it is possible

6) UNEA(2014) annex.

7) UNEP(2016).

8) UNEP(2022).

9) Ibid.

10) UNEP(2016), p. xvii.

11) UNEA(2019).

to adopt the term 'common concern of humankind' in the legally binding treaties that currently directly regulate marine plastics.

In this situation, the following research questions arise: first, is it appropriate to formally stipulate marine plastic pollution as a 'common concern of humankind' in the new convention?; and second, if marine plastic pollution is specified as a 'common concern of humankind', what role can it play in solving the problem?

To answer these questions, this study adopts doctrinal legal research methodology to examine the international environmental conventions that have adopted the common concern of humankind. It investigates international conventions that have adopted this notion and analyses it in depth. In addition, this study discusses whether marine plastic issue can be considered a common concern of humankind.

Moreover, this research employs documentary research methodology to explain the international interests and impacts of marine plastic. It collects books, renowned journals, and documents published by various international conferences (e.g. UNGA, UNEA) to describe the factual aspects of marine plastic. Through organizing the contents of these documents, this research explains that marine plastic is an international issue that requires the attention and efforts of the global community by organizing the contents of these documents and summarizing and explaining the factual characteristics of marine plastic.

This study discusses whether marine plastic pollution is a common concern of humankind. In addition, based on this discussion, this study will suggest concretely what role it can play in solving the problem if marine plastic is specified as a common concern of humankind. Ultimately, this research aims to contribute to solving the marine plastic problem by proposing specific measures and to help protect the marine environment.

II. A Common Concern of Humankind in International Law

1. Concepts of a Common Concern of Humankind

Throughout the 20th century, environmental treaties address global problems using the phrase ‘a common concern of humankind.’ The ‘common concern’ expression first appeared in the preface to the ‘World Commission on Environment and Development Report’ in 1987.¹²⁾ The report described environmental issues as “a common concern for the planet and the interlocked ecological and economic threats with which its people, institutions, and governments now grapple.”¹³⁾ The report explained that the international community needs to unite to solve shared problems, and although, the commissioners did not use precise words, they conveyed that environmental issues are a common concern of humankind.¹⁴⁾ In 1980, UNEP gathered a group of legal professionals to prepare for the 1992 Rio Conference.¹⁵⁾ This group evoked the concept of common concern of humankind and emphasized how crucial it is to preserve the harmony between national interests and those of the international community.¹⁶⁾ To this end, the group introduced the concept of a common concern for humankind, extending it beyond global concerns. Since then, this concept has evolved to encompass “issues which were truly fundamental to all mankind,”¹⁷⁾ moving beyond the scope of climate change. In addition, the idea of common concern serves to deal with relationships with public goods,¹⁸⁾ emphasizing the need for collective action and collective responsibility

12) UN(1992).

13) Ibid, p. 7.

14) Bowling C. Pierson E. and Ratté S.(2016), p. 4.

15) United Nations Audiovisual Library of International Law.

16) Cançado Trindade A. A. and Attard D. J.(1991), p. 20.

17) Ibid.

18) Cottier T. et al.(2014), p. 307.

to protect the involved interests.¹⁹⁾

A clear definition of the common concern of humankind has yet to be established. Therefore, this study has derived common elements of this concept by reviewing treaties and materials that refer to the common concern of humankind. The common concern of humankind has the following elements:²⁰⁾ first, there is community interest. It is not easy to define the interests of the international community or the community interest. However, the community interest is often embodied in specific legal principles, such as rights and obligations related to the common heritage of humankind, and the principles of sustainable development.²¹⁾ It represents the public interest and seeks the protection of public goods on an international scale.²²⁾ In addition, agreements between major countries affect the interests of the entire international community. For example, consider a scenario where two major emitters have bilateral agreements on climate change. In such case, the consequence will extend beyond the interests of these countries and impact the entire international community. Therefore, it can be argued that the actions of individuals or certain countries can have implications that are of common concern to humankind, as they affect the interests of the international community as a whole.

Second, there are transboundary problems. Community interest has become a common problem and concern. However, not all issues that are of common interest to the international community are necessarily transboundary in nature. It is difficult to draw international attention if it is not a transboundary issue. The concept of common concern of humankind is best suited for the problems that require collective action and cooperation among two or more countries to address or prevent real

19) Soltau F.(2016), pp. 207-208.

20) The elements of common concern of humankind are derived by the author from exploring and analysing numerous research materials. This study explored the following sources: Cottier T.(2021), pp. 3-91, Zaman T.S.(2020), pp.171-180, French D.(2016), pp. 334-358, Soltau, pp. 202-213, Shelton D.(2009), pp. 83-96, Biermann F.(2002), pp. 158-212, Brunnée J.(2008), pp. 550-573.

21) Cottier, *ibid* pp. 33-34.

22) *Ibid*.

inter-state threats.²³⁾ Therefore, the concept has been adopted for transboundary environmental issues. Furthermore, the concept is used to underscore the significance of international cooperation through global institutions by designating certain issues as a common concern of humankind,²⁴⁾ thereby fostering collective efforts to address them.

Third, the concept is often associated with complexity. The issues that fall under this concept are often complex and controversial. They involve complex factors and pose challenging problems that require collective responsibility and shared efforts from the international community to solve the problem. Moreover, due to the multifaceted nature of these issues, there are challenges to determining the extent of damage and establishing causation. The presence of various pollution sources and diversity of affected parties further complicate the process of proof.

Lastly, the common concern of humankind is a problem that has intergenerational implications. It is almost certain that they have long-term and potentially devastating impacts on future generations. Thus, the concept places importance on intergenerational equity. For example, in negotiations for the Convention on Biological Diversity (CBD),²⁵⁾ the negotiators have decided to adopt the notion of the common concern of humankind to address intergenerational equity and ensure equitable sharing of burdens.²⁶⁾

2. A Common Concern of Humankind in International Environmental Treaties

Because of the factors mentioned above, the common concern of humankind has been widely adopted in the environmental field. The term ‘common concern of humankind’ referred to in the following treaties is the primary reference.

23) Ibid, 36–37.

24) Shelton, pp. 85–86.

25) Convention on Biological Diversity, CBD (adopted on 5 June 1992, entered into force 29 December 1993).

26) UNEP(1991).

The CBD refers to the preservation of biodiversity as a common concern of humankind.²⁷⁾ In this convention, the preamble expressed “affirming that the conservation of biological diversity is a common concern of humankind.” National policies for the conservation of biodiversity have been established in response to the recognition and commitment to the common concern of humankind.²⁸⁾ In addition, the Nagoya Protocol on Access to Genetic Resources was created by adopting guidelines for sharing profits.²⁹⁾ This Protocol has also adopted a common concern of humankind to conserve biodiversity.³⁰⁾

In the case of climate change, the United Nations Framework Convention on Climate Change (UNFCCC)³¹⁾ and the UNGA Resolution on Climate Change treat climate change as a global issue since global warming and its repercussions can affect entire state communities.³²⁾ Climate change is also an environmental problem that affects future generations. It is caused by the accumulation of greenhouse gases (GHGs) in the atmosphere, which accumulates over time and mix globally, meaning emissions from any state can affect all other states.³³⁾ Thus, the UNFCCC recognized in its preamble that the “change in the Earth's climate and its adverse effects are a common concern of humankind.” Moreover, the Paris Agreement was mentioned as a common concern.³⁴⁾ In the end, the acknowledgement of a common concern of humankind in the UNFCCC and the Paris Agreement³⁵⁾ supports and triggers a commitment to cooperate in mitigating and adapting to climate change.³⁶⁾

27) CBD preamble.

28) Ibid.

29) Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilisation to the Convention on Biological Diversity (adopted on 29 October 2010, entered into force on 12 October 2014).

30) Article 8(a&b), 22, 23, 25

31) United Nations Framework Convention on Climate Change, UNFCCC (adopted on 4 to 14 June 1992, entered into force 21 March 1994).

32) UNGA(1988).

33) Voigt C. and Ferreira F.(2016), p. 287.

34) UNFCCC preamble.

35) The Paris Agreement (adopted on 12 December 2015, entered into force 4 November 2016).

36) Bodansky D.(2001), pp. 23-24.

There are opinions that environmental issues other than climate change and biodiversity should also be considered a common concern of humankind. These include fresh water,³⁷⁾ desertification,³⁸⁾ deforestation,³⁹⁾ soil,⁴⁰⁾ and marine biological diversity.⁴¹⁾ The mentioned issues are characterized by being transboundary environmental problems, making it appropriate to adopt the concept of a common concern of humankind.⁴²⁾ In addition, it is suitable for environmental issues with long-term and potentially destructive impacts on future generations, such as the loss of biodiversity.⁴³⁾ Some argue that the concept of common concern of humankind gives the international community “both a legitimate interest in resources of global significance and a common responsibility to assist in their sustainable development.”⁴⁴⁾ After all, the concept is related to the *erga omnes* obligation, suggesting that the entire international community has obligations and interests,⁴⁵⁾ making it appropriate to address these concerns through international cooperation.⁴⁶⁾

The environmental problems of common concern are pollutants that affect future generations due to the accumulation of current activities and have transboundary characteristics. Considering these aspects, it is possible to reaffirm the necessary elements of the common concern of humankind. In conclusion, the concept of the common concern of humankind could play a positive role in the absence of appropriate global-level instruments for environmental issues. Moreover, it can serve as motivation for the international community to engage in long-term efforts for international cooperation. While the common concern of humankind holds normative potential, a

37) Weiss B Edith(2012), pp. 163–168.

38) Xiang Y. and Meehan S.(2005), pp. 212–224.

39) Brunnée J. and Nollkaemper A.(1996), pp. 307–314.

40) Ginzky H.(2018), pp. 433–450.

41) Bowling C, Pierson E. and Ratté S. pp. 1–15.

42) Shelton, p. 88, Biermann, pp. 177–178.

43) Bowling C, Pierson E. and Ratté S. p. 3.

44) Engler M.C.(2007), p. 23.

45) Shelton, p. 83.

46) Brunnée, p. 566.

universally accepted definition is yet to be agreed upon. Although it has been recognized as promising for application to international environmental issues, it is still insufficient to conceptualize it as a fundamental legal principle. To date, it has not been widely accepted in state practice and international law beyond the treaty preambular texts. However, as complex international environmental issues that affect the next generation as transboundary pollutants emerge, continuous studies are required to explore their legal definition, status, and implications in the future.

III. Can Marine Plastic Become a Common Concern of Humankind?

During a conference in June 2014, the UNEA recognized that plastics, including microplastics, are becoming an escalating issue in the marine environment due to their widespread and continuing usage as well as insufficient management and disposal practices.⁴⁷⁾ A subsequent report stated that marine plastic is a common concern of humankind and that immediate action by the international community is needed.⁴⁸⁾ Given the international community's profound concern over the severity of marine plastic pollution and the crucial role of the ocean for mankind, the question arises as to whether marine plastic can be regarded as a common concern of humankind. Although the term 'a common concern of humankind' lacks a clear legal status in international law, it is mentioned in various international environmental treaties. By examining the characteristics of environmental treaties and pollutants that adopt this term, it becomes essential to determine whether marine plastic can transcend the scope defined by international organizations and truly become a common concern of

47) UNEA(2014), para. 4.

48) UNEA(2019).

humankind.

As this research has seen so far, firstly, there must be a community interest. The protection and preservation of the marine environment is one of the core purposes of UNCLOS (United Nations Convention on the Law of the Sea),⁴⁹⁾ and a sound marine environment is one of the common interests among states.⁵⁰⁾ Marine plastic is an environmental issue for which international cooperation is important. Therefore, the international community is actively working towards addressing this problem by developing a new international treaty specifically aimed at regulating marine plastic pollution. However, it is essential to highlight that addressing this issue requires not only international efforts but also domestic actions. Marine plastic is a global environmental problem that demands each country to establish and enforce laws and policies related to waste management and sewage facility management. In other words, the legislation and practices adopted by individual countries regarding waste management can significantly affect the interests of the entire international community. In sum, marine plastic pollution is an issue of community interest.

Second, environmental treaties adopting the term ‘common concern of humankind’ typically address transboundary issues. The issues referred to as a common concern in the treaty suggest that they are important issues of shared problem and shared responsibility, and issues that reach beyond the boundaries of single communities and states in international law.⁵¹⁾ Therefore, there is an expression that a common concern is an issue that “transcends the boundaries of a single state and requires collective action in response.”⁵²⁾ For instance, climate change serves as a prominent example of a transboundary pollutant. Similarly, marine plastic pollution, like climate change and air pollution, is a transboundary pollutant. It is well-documented that marine plastic can

49) United Nations Convention on the Law of the Sea (adopted on 10 December 1982, entered into force on 16 November 1994).

50) Schäli J.(2021), p. 171.

51) Satragno L.(2022), p. 65.

52) Shelton, p. 83.

travel long distances through wind and ocean currents, reaching coastlines far from its original source, as in the study that proved marine plastic from Korea is transported to the Japanese coast.⁵³⁾ In addition, marine plastic and plastic are carried not only to the Arctic and Antarctic, but also to remote areas of the Pacific Ocean.⁵⁴⁾ Therefore, such global nature of marine plastic pollution necessitates international cooperation to effectively address them.

Third, a common concern of humankind is appropriate for environmental issues with complex factual aspects such as climate change. The issue of climate change is also tricky to identify the causal link with environmental damage due to various complex factors. It is desirable to set the pollutants with the characteristics of such complex factors as a common concern of humankind and to cooperate with the international community under a common concern of humankind. Marine plastic pollution includes natural factors, such as ocean currents, wind, and natural disasters like tornadoes as well as a wide range of social factors, such as coastal use and infrastructure for coastal management. In addition, waste is traded from developed countries to developing countries that do not have a proper waste management system. Therefore, it is very difficult to know where the plastic floating in the ocean came from and who dumped it into the ocean first. Marine plastic caused by land-based source is a multifaceted problem caused by such various actors and activities. Therefore, given that multifaceted nature of marine plastic pollution caused by diverse activities and actors, it is crucial for the international community to recognize it as a common concern of humankind and collaborate collectively to address the problem.

Finally, a common concern of humankind is that adverse environmental impacts have the potential to affect future generations. Biodiversity issues can be an example of this. The negative effects on biodiversity accumulate over time and take time to reveal their impacts on ecosystems. Similarly, marine plastic also requires time to grasp

53) Gold M. et al.(2013), p. 13.

54) Halsband C. and Herzke D.(2019), p. 308.

the full extent of its effects on the marine environment, marine ecosystems, and human health. Although the impact of marine plastic on the marine environment is known to some extent, the ecological toxicity is not yet fully understood.⁵⁵⁾ Marine plastic accumulates in the sea and coastline and its fragmentation into microplastic particles, requires time to assess its environmental consequences, which ultimately affects future generations.

Marine plastic moves to countries with different jurisdictions or to the high seas, which lie beyond any specific jurisdiction, depending on wind or currents. Marine plastic travels to other countries, polluting their coasts, damaging landscapes, and negatively impacting ecosystems. It causes economic damage to the people involved in the coastal tourism industry and the cost of cleaning up the waste. Further, marine plastic pollution in the high seas does not fall under any specific jurisdiction and may not have an immediate or direct negative impact on our daily lives. However, it is crucial to recognize that the ocean accounts for 70% of the Earth's surface and is a vital asset for mankind, playing a significant role in absorbing substantial amounts of carbon dioxide.⁵⁶⁾ Therefore, even though the marine plastic pollution in the high seas may not present an immediate threat to our lives, it affects all individuals and states collectively.

In the end, marine plastic exhibits the characteristics of the common concern of humankind outlined above. Addressing the issue of marine plastic can be regarded as a common concern of humanity, similar to the preservation of biodiversity and the climate change and its adverse impacts. Therefore, it is appropriate to recognize the issue of marine plastic pollution as a part of common concern of humankind. Moreover, regarding marine plastic pollution as a common concern of humankind implies that it should not be addressed as a bilateral or regional problem, but rather as a global issue that requires international cooperation and collective action.

55) Stöfen-O'Brien Aleke(2015), p. 64.

56) UNGA(2007), para. 158.

IV. Approaching Marine Plastic as a Common Concern of Humankind

This study analyzed whether marine plastic can become a common concern of humankind that the international community must take responsibility for. It can be argued that the protection of the marine environment from plastic is a joint duty of the international community to cooperate together. In sum, this study argues that international cooperation is required and that it is appropriate to manage marine plastic pollution as a common concern of humankind. Moreover, regarding it as a common concern of humankind provides the possibility of becoming a target for the adoption of the principle of Common But Differentiated Responsibility (CBDR) that require a ‘common responsibility.’ Therefore, in order to solve the problem of marine plastic, a new treaty will be able to approach the problem by applying the principle of CBDR. This part will discuss the applicability of applying the principle to the marina plastic issue.

1. Common Responsibility and Implementation in international treaties

In environmental agreements that adopt the expression ‘common concern for mankind,’ the principle of CBDR is also adopted. The expression of common concern of humankind was also used in the climate change regime, which is a representative example of adopting the principle of CBDR. The principle of CBDR seeks to solve the environmental problems that humankind must jointly solve through the international efforts of many countries.

The provisions of each treaty that has adopted the principle of CBDR mentioned so far are summarized below.

Table 1. International Environmental Conventions adopting the principle of CBDR

	Convention	Provisions
Ozone Regime	The Vienna Convention	Article 2(1)
	The Montreal Protocol	Article 5(1-3), 10(1-3), 10A (a & b)
Climate Change Regime	UNFCCC	Article 3(1&2), 4(2) (a&b), Article 12
	The Kyoto Protocol	Article 3(1), 11(2) (a & b)
	The Paris Agreement	Article 2(2), 3, 4(3) (5) (15)
Biodiversity Conservation Regime	The Convention on Biological Diversity	Article 15(7), 16, 17(1), 18(1)(2), 20, 20(2&4), 21(1)
	The Nagoya Protocol	Article 8(a&b), 22, 23, 25
The Land Conservation Regime	United Nations Convention to Combat Desertification	Articles 5, 6, 7, 17
Hazardous wastes regime	Amendment to the Basel Convention	Article 4A

The international community is trying to fill the gaps in the current international law by adopting environmental principles of environmental issues that are a common concern of humankind, which are difficult to stipulate under the current international regime.⁵⁷⁾ In addition, environmental principles are also adopted for the responsibility and allocation of environmental consequences. In the end, it can be argued that the international community has adopted the principle of CBDR to solve environmental issues such as ozone and climate change issues that are complicated and difficult to accurately estimate the damage. In addition, the principle of CBDR has been adopted by the conventions on land protection and waste movement.

Common responsibility is one of the elements of the principle of CBDR. Common responsibility means that two or more states have a shared obligation to protection of a particular environmental resource in consideration of their characteristics, historical

57) An example is Article 2(2) of the Paris Agreement sets out the international environmental principles necessary to guide implementation. In this Agreement, environmental principles serve as a guide for the interpretation and implementation of obligations. Moreover, environmental principles fill in the gaps in the legal system by specifying the purpose of environmental law and resolving legal problems: Dworkin R.(2013), p. 28,

use, and physical location.⁵⁸⁾ Under exclusive jurisdiction, a single state may acquire ownership of natural resources. However, it might not fall within a state's sovereign control, or it might be, yet still be subject to common legal interests like biodiversity and climate change.⁵⁹⁾ This means that each country has a responsibility to protect the global environment and its resources. Common responsibility derives from the notions of 'common concern', 'common heritage of mankind', and 'province of mankind', notions as old as international environmental law itself.⁶⁰⁾ Thus, CBD and UNFCCC recognize biodiversity and climate change as a common concern of humankind.

Acknowledging common responsibility can be interpreted as creating a greater responsibility and morality needed when establishing a regime.⁶¹⁾ Moreover, this requires states to take actions according to common destiny rather than national interest.⁶²⁾ It takes into account the global nature of national policy-making, state practice, and negotiating positions. Additionally, the international community justifies any moral pressure it can impose on a reluctant state.⁶³⁾ Therefore, in the common concern and common responsibility, neither developing nor developed countries are permitted to claim that it is a sovereign right to conduct polluting acts or take national measures as they wish.⁶⁴⁾

2. Applicability of Common Responsibility to Marine Plastic

Marine plastic is an environmental issue that countries around the world should reduce the use of plastics by establishing proper waste management systems and regulations. Moreover, at an individual-level, personal efforts are also needed to prevent

58) Sands P. and Peel J.(2018), pp. 244-248, Berwick(1997) p. 263.

59) Ibid.

60) Sands and Peel, p. 245.

61) Rajamani L.(2006b) pp. 135-136.

62) Rajamani L.(2006a) pp. 98-99.

63) Ibid.

64) Rajamani, pp. 135-136.

marine plastic from occurring when enjoying vacations on the beaches. In other words, marine plastic is an environmental issue that requires efforts by both the state and individuals, and there are no countries or people who are completely innocent from responsibility.⁶⁵⁾ Therefore, marine plastic has the factors to be a common concern of humankind. Issues of biodiversity and climate change, which are environmental issues that have characteristics similar to marine plastic, are specified in each treaty. It is described as “...a common concern for the planet and the interlocked ecological and economic threats with which its people, institutions, and governments now grapple.”⁶⁶⁾ International conventions to regulate international environmental issues, which are of a common concern of humankind, have adopted the principle of CBDR, requiring countries to take differentiated responsibility.

Environmental issues of common concern of humankind are transboundary, thus, those require collective action to respond. Environmental issues of common interest are pollutants with complex factual aspects. Moreover, a common concern is the potential for negative environmental impacts to affect future generations.

Marine plastic has the elements to become a common concern. Marine plastic is a transboundary pollutant that floats and moves on the shore. In addition, marine plastic is also moved by natural factors such as ocean currents and winds. Through the waste trade, waste from developed countries moves to developing countries, and waste from developing countries that lack the capability to properly manage waste flows out and eventually moves to the sea. Once waste enters the ocean, it is very difficult to know who dumped it and where it came from. As such, marine plastic has complex facts with various activities, polluters, and victims. The current problem of marine plastic has the potential to affect future generations. Marine plastic accumulates in oceans and shorelines, and over time it fragments into smaller particles. Plastic that has changed over time eventually affects future generations. After all, marine plastic is a common

65) Mayer B.(2017), p. 208.

66) UN(1982). p. 7.

concern of humankind that all members of the world should cooperate to deal with.

Therefore, the new treaty should recognize the common responsibility of the international community for marine plastics and specify that each country has a responsibility to protect the marine environment from marine plastics. Moreover, it can demand common responsibility and morality for marine plastics, and to act in the common interests of the international community rather than national interests.

3. Challenges of Application to Marine Plastic

Common responsibility is one of the elements of the principle of CBDR. Therefore, adopting common responsibility for marine plastics to solve the problem provides the possibility of adopting the principle of CBDR. As each country has a different environmental and financial situation, requiring only common responsibility is not appropriate for solving global environmental problems as it hinders universal participation. Therefore, when common responsibility is required, differentiated responsibility must be considered.

The principle of CBDR is a significant expression of equity in international environmental law. There is no agreement yet on the recognition of the principle CBDR as customary law or its legal status. Although this principle is applied on the basis of equity, each country has different agreements on the need to allocate differentiated responsibilities to each country. In the case of developed countries centered on the United States, it is argued that the global environmental problem is a task that all humankind should cooperate to solve together.⁶⁷⁾ In addition, the rapid increase in environmental pollution and GHGs caused by the economic growth of major developing countries such as China and India support the claims of developed countries.⁶⁸⁾ On the other hand, developing countries argue that the degradation of the global environment

67) Soltau F.(2009), p. 56.

68) Farhan Ahmed et al.(2022), p. 2.

is due to the industrialization of developed countries, so advanced countries should bear more responsibility and costs. It also argues that it is equity for developed countries to provide financial and technical support to developing countries.⁶⁹⁾ Due to this difference of opinion, the conflict between developed and developing countries continues. Therefore, it is not an easy task to resolve conflicts between developed and developing countries and reach an agreement.

Marine plastic is an environmental issue for which universal participation by members of the international community is very important. Environmental issues are important issues that must be resolved from a global perspective, but in reality, it is not easy for each individual country to participate in solving environmental issues even at the cost of economic disadvantages, especially in countries that are not yet mature in economic development. In the end, it is practically difficult to induce the participation of developing countries without preferential measures for developing countries in the international environmental convention.

Although it was difficult to negotiate, in practice, the principle of CBDR has made it possible to impose differentiated responsibility on parties, including the UNFCCC, the Montreal Protocol and the Kyoto Protocol. Overall, the principle of CBDR has contributed to the participation of developed and developing countries in environmental issues together. Of course, there are problems that arise because the interests of many countries do not necessarily coincide. However, the principle of CBDR has played an important role in building consensus among many countries, from differentiated responsibilities and supporting implementation.

This principle provides a basis for the need to take into account the situation in developing countries when establishing international environmental treaties on the environment. Therefore, although this principle has an uncertain international legal status, it plays an important role in discussing responsibility for environmental damage in international environmental conventions. In addition, it is expected to play a role

69) Soltau, pp. 152-154.

as a basic principle to impose differentiated responsibility to the state parties, but also as a facilitator in defining specific obligations in the future. Therefore, there is no doubt that the principle of CBDR is an important principle in assessing the due diligence of states to the protection of the environment.

However, similar to other international treaties, challenges are anticipated in reaching a consensus on universal participation, equity and differentiated responsibility when applying these principles to marine plastics. Universal participation presents a major hurdle. As marine plastics are a global issue, involving all states in addressing them is crucial. However, ensuring the participation of every country, especially those with varying capacities and priorities, becomes a formidable task. Balancing the interests and responsibilities of developed and developing nations, as well as addressing the concerns of coastal and landlocked states, adds further complexity. In addition, equity is another critical consideration. The impact of marine plastic pollution is not evenly distributed. Developing countries and coastal states often bear a disproportionate burden due to inadequate waste management systems and limited resources for mitigation efforts. Implementing equitable measures that account for different socio-economic contexts while promoting fair distribution of responsibilities remains a challenge.

Marine plastic is a common concern of humankind that can affect future generations beyond borders. Therefore, universal participation by reducing free-riders is important if the newly established treaty is to address the problem of marine plastic effectively. Indeed, developing countries do not have adequate financial and technical resources to prevent marine pollution. Considering the economic and technological difficulties of developing countries, it is virtually difficult to assign the same level of obligations and responsibilities as developed countries. This study acknowledges that developing countries face significant obstacles in combating marine plastic, such as limited financial resources and technological capabilities. Therefore, in order to solve the marine plastic problem, the new treaty should encourage developing countries to

participate together in solving the problem of the international community by specifying a common concern of humankind and differentiated responsibilities. Despite many difficulties, this study argues that adopting the principle of CBDR in the responsibility and allocation of marine plastic to ensure that each country bears differentiated responsibility is the fastest and most effective way to solve the rapidly increasing problem of marine plastic.

V. Conclusion

This study aimed to assess whether marine plastic pollution qualifies as a common concern of humankind, necessitating international responsibility. In addition, it was analyzed whether it was possible to seek effectiveness by adopting the principle of CBDR for a common concern of humankind.

In order to become a common concern of humankind, there must be community interest. Furthermore, it must be a transboundary pollutant that can negatively impact the environment for all of humanity. It also must be a pollutant with complex facts with various activities. Marine plastic has the characteristics of this common concern of humankind. Therefore, it is desirable to state that marine plastic is as a common concern of humankind in a new international convention. The international environmental issue, which is stated as a common concern of humankind, applies the principle of CBDR to solve the problems. Therefore, specifying the adoption of the principle of CBDR in a new international convention for marine plastic could be one way to solve the problem.

The principle of CBDR has already been adopted by several international environmental treaties. However, there are still problems such as the uncertainty of the legal status and the conflict of interests between developed and developing countries. Since each country has different economic, environmental, and resource circumstances,

demanding differentiated responsibility requires time for long discussions in the international community. For example, in the case of the Kyoto Protocol in the climate change regime, it took 15 years to negotiate the commitments.⁷⁰⁾ In addition, the Paris Agreement, which was later ratified with difficulty, was withdrawn by the U.S. President Donald Trump.⁷¹⁾

It will be appropriate for the international community to specify marine plastic as a common concern of humankind in a new international convention and adopt the principle of CBDR to address the problem. Therefore, recognizing that the principle of CBDR is a topic in which national interests in relation to state responsibilities, obligations and costs are in sharp conflict, the international community should start a discussion as soon as possible and strive to reach an international consensus.

In addition, although the possibility of application to international environmental issues of a common concern of humankind was recognized, it is still insufficient to conceptualize a common concern of humankind as fundamental legal principles. Until now, the notion of common concern of humankind has not been incorporated into state practice or international law beyond mere preambular references in treaties. Consequently, the issue remains unresolved, and additional research is required to address it adequately.

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70) Soltau, p. 106.

71) Fortunately, US President Joe Biden was elected in 2021, and the U.S. rejoined the Paris Agreement; U.S. Department of State(2021).

■ ■ 참고문헌

1. Berwick T.A. 1997. "Responsibility and liability for environmental damage: a roadmap for international environmental regimes." *Georgetown Environmental Law Review*, Vol. 10, pp. 257-267.
2. Biermann F. 2002. "Common concerns of humankind and national sovereignty." *Globalism: People, Profits and Progress*, pp. 158-212.
3. Bodansky D. 2001. "The history of the global climate change regime." in *International relations and global climate change*, by edited Urs Luterbacher and Detlef F Sprinz, MIT Press. pp. 23-40.
4. Borrelle B.S. 2020. "Predicted growth in plastic waste exceeds efforts to mitigate plastic pollution." *Science*, Vol. 369, pp. 1515-1517.
5. Bowling C, Pierson E. and Ratté S. 2016. "The common concern of humankind: a potential framework for a new international legally binding instrument on the conservation and sustainable use of marine biological diversity in the high seas." *White Paper*, pp. 1-15.
6. Brunnée J. 2008. "Common Areas, Common Heritage, and Common Concern." in *The Oxford Handbook of International Environmental Law* by edited Bodansky D., Brunnée J., and Hey E, Oxford University Press pp. 550-573.
7. _____, and Nollkaemper A. 1996. "Between the forests and the trees—an emerging international forest law." *Environmental conservation* Vol. 23, pp. 307-314.
8. Cançado Trindade A. A. and Attard D. J. 1991. "The Meeting of the Group of Legal Experts to Examine the Concept of the Common Concern of Mankind in Relation to Global Environmental Issues, Malta, 13-15 December 1990." *UNEP*, pp. 19-47.
9. Cottier T. et al. 2014. "The principle of common concern and climate change." *Archiv des Völkerrechts*, pp. 293-324.
10. Cottier T. 2021. "The principle of common concern of humankind" in *The Prospects of Common Concern of Humankind in International Law* by edited Cottier T. and Zaker A., Cambridge University Press. pp. 3-91.

11. Dworkin R. 2013. Taking rights seriously, A&C Black.
12. Schäli J. 2001. “Marine Plastic Pollution as a Common Concern of Humankind.” in The Prospects of Common Concern of Humankind in International Law by edited Cottier T. and Zaker A., Cambridge University Press. pp. 153-198.
13. Danson T. and D'Orso M. 2011 Oceana: Our endangered oceans and what we can do to save them, Rodale Books.
14. Díaz M.S. 2019. The global assessment report on biodiversity and ecosystem services: Summary for policy makers Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.
15. Earle A.S. 2009. The world is blue: How our fate and the ocean's are one Washington, D.C., National Geographic Books.
16. Engler M.C. 2007. Establishment and Implementation of a Conservation and Management Regime for High Seas Fisheries, with Focus on the Southeast Pacific and Chile Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations.
17. Farhan A. et al. 2022. “The environmental impact of industrialization and foreign direct investment: empirical evidence from Asia-Pacific region.” Environmental Science and Pollution Research, pp. 1-15.
18. French D. 2016. “Common concern, common heritage and other global (-ising) concepts: rhetorical devices, legal principles or a fundamental challenge?.” in Research Handbook on Biodiversity and Law edited by Bowman M. et al. Edward Elgar Publishing, pp. 334-358.
19. GEF. 2022. “Areas Beyond National Jurisdiction”
<https://www.thegef.org/what-we-do/topics/areas-beyond-national-jurisdiction>.
20. GESAMP. 2015. Sources, Fate and Effects of Microplastics in the Marine Environment: Part 2 of a Global Assessment GESAMP Reports and Studies No. 93.
21. Ginzky H. 2018. “The sustainable management of soils as a common concern of humankind: how to implement it?.” International Yearbook of Soil Law and Policy pp. 433-450.

22. Gold M. et al. 2013. "Stemming the tide of plastic marine litter: A global action agenda." Pritzker Environmental Law and Policy Briefs, Emmett centre on climate change and the environment, UCLA No. 5, pp. 1-30.
23. Halsband C. and Herzke D. 2019. "Plastic litter in the European Arctic: what do we know?." *Emerging Contaminants*, Vol. 5, pp. 308-318.
24. Industry Agenda. 2016. *The New Plastics Economy: Rethinking the Future of Plastics* Ellen MacArthur Foundation.
25. Kumar A. 2004. *A Text Book of Environmental Science*, APH Publishing.
26. Mayer B. 2017. "Climate change reparations and the law and practice of state responsibility." *Asian journal of international law* No. 7, pp. 185-216.
27. Rajamani L. 2003. "From Stockholm to Johannesburg: The anatomy of dissonance in the international environmental dialogue." *Review of European Community and International Environmental Law*, vol. 12, pp. 23-32.
28. _____, 2006a. "The nature, promise, and limits of differential treatment in the climate regime." *Yearbook of International Environmental Law* Vol. 16 pp. 81-118.
29. _____, 2006b. *Differential treatment in international environmental law*, Oxford University Press.
30. Sands P. and Peel J. 2018 *Principles of International Environmental Law* Cambridge University Press.
31. Satragno L. 2022. *A Common Concern of Humankind Approach to Monetary Stability, Monetary Stability as a Common Concern in International Law*, Brill Nijhoff.
32. Shelton D. 2009. "Common concern of humanity." *Environmental Law and Policy*, Vol 39, No.2 pp. 83-96.
33. Soltau F. 2009. *Fairness in international climate change law and policy*, Cambridge University Press.
34. _____, 2016. "Common concern of humankind." in *The Oxford handbook of international climate change law* edited by Cinnamon P.C. et al. Oxford University Press, pp. 202-213.

35. Stöfen-O'Brien Aleke. 2015. The international and European legal regime regulating marine litter in the EU, Nomos Verlag.
36. Teuten L.E. 2009. "Transport and release of chemicals from plastics to the environment and to wildlife." *Philosophical transactions of the royal society B: biological sciences* Vol. 364, pp. 2027-2045.
37. UN. 1982. "Report of the World Commission on Environment and Development: Our common Future." A/42/427.
38. UN Audiovisual Library of International Law, "Rio Declaration on Environment and Development." https://legal.un.org/avl/pdf/ha/dunche/rio_ph_e.pdf.
39. UNEA. 2014. "Marine Plastic Debris and Microplastics." Res.1/6.
40. UNEA. 2019. "Addressing Single-Use Plastic Products Pollution." Res. 4/9.
41. UNEP. 2016. "Marine Plastic Debris and Microplastics: Global Lessons and Research to Inspire Action and Guide Policy Chang."
42. UNEP. 1991. "Report of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity on the Work of its Second Session." <https://www.cbd.int/doc/meetings/iccbd/bdn-02-awg-02/official/bdn-02-awg-02-05-en.pdf>.
43. UNEP. 2016. *Marine Plastic Debris and Microplastics: Global Lessons and Research to Inspire Action and Guide Policy Change*, UN.
44. UNEP. 2022. "Historic day in the campaign to beat plastic pollution: Nations commit to develop a legally binding agreement." UNEP Press. <https://www.unep.org/news-and-stories/press-release/historic-day-campaign-beat-plastic-pollution-nations-commit-develop>.
45. UNGA. 1988. "Protection of global climate for present and future generations of mankind." Res. 43/53.
46. UNGA. 2007. "Report of the Secretary-General: Oceans and the Law of the Sea." UN Doc. A/62/66.
47. UNGA. 2005. "Report on the Work of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea at Its Sixth Meeting." UN Doc. A/60/99,

48. U.S. 2021. "Department of State, The United States Officially rejoins the Paris Agreement." <https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/>.
49. Voigt C. and Ferreira F. 2016 "Dynamic differentiation': The principles of CBDR-RC, progression and highest possible ambition in the Paris Agreement." *Transnational Environmental Law*, Vol. 5, pp. 285-303.
50. Ward A. et al. 2012. "The magnitude of global marine species diversity." *Current biology*, vol 22, pp. 2189-2202.
51. Weiss E.B. 2012. "The coming water crisis: a common concern of humankind." *Transnational Environmental Law*, No. 1, pp. 153-168.
52. Xiang Y. and Meehan S. 2005. "Financial cooperation, Rio Conventions and common concerns." *Review of European, Comparative & International Environmental Law*, Vol. 14, pp. 212-224.
53. Zaman T.S. 2020. "Recognising Biodiversity Conservation as a "Common Concern of Mankind": A Legal Appraisal." *Environmental Policy and Law*, Vol. 50, pp. 171-180.

