CEUB
EDUCAÇÃO SUPERIOR
ISSN 2237-1036

REVISTA DE DIREITO INTERNACIONAL
BRAZILIAN JOURNAL OF INTERNATIONAL LAW

Activities in the Area for the benefit of "mankind as a whole": who is 'mankind'?

Atividades na Área em benefício da "humanidade como um todo": quem é a 'humanidade'?

Shani Friedman

VOLUME 22 • N. 2 • 2025
THE COMMON HERITAGE OF MANKIND IN INTERNATIONAL LAW: PAST, PRESENT AND FUTURE

Sumário

doi: 10.5102/rdi.v22i2.9842

Activities in the Area for the benefit of "mankind as a whole": who is 'mankind'?*

Atividades na Área em benefício da "humanidade como um todo": quem é a 'humanidade'?

Shani Friedman**

Abstract

This paper critically examines the term 'mankind' to determine who are the beneficiaries of the 'common heritage of mankind' (CHM) principle in UNCLOS. The definition of the term is not clear, for example whether it includes also states who are not parties to UNCLOS or whether it includes entities other than states. With the prospective beginning of exploitation of the International Seabed (the Area) the question of benefit-sharing and the identity of the beneficiaries would become critical. Yet, this issue did not gain sufficient scholarly attention. This paper seeks to fill this theoretical-legal gap by employing a legal analysis in accordance with the rules of treay interpretation in international law and by employing a comparative methodology. The paper supports the conclusion that the term 'mankind' in UNCLOS includes only states as the beneficiaries. This affects the competence of the International Seabed Authority (ISA) and the appropriate mechanisms concerning the distribution of the benefits.

Keywords: the international seabed; deep-sea mining; common heritage of mankind; benefit-sharing; the Area.

Resumo

em outro idioma Este artigo examina criticamente o termo "humanidade" a fim de determinar quem são os beneficiários do princípio do "patrimônio comum da humanidade" (PCH) na CNUDM. A definição do termo não é clara, por exemplo, se inclui também Estados que não são Partes da CNUDM ou se abrange entidades que não sejam Estados. Com a perspectiva do início da exploração dos Fundos Marinhos Internacionais (a Área), a questão da partilha de benefícios e da identidade dos beneficiários tornar-se-á crucial. Contudo, essa temática não tem recebido atenção acadêmica suficiente. Este artigo busca preencher essa lacuna teórico-jurídica por meio de uma análise jurídica em conformidade com as regras de interpretação de tratados no direito internacional, aliada a uma metodologia comparativa. O estudo sustenta a conclusão de que o termo "humanidade", na CNUDM, inclui apenas os Estados como beneficiários. Tal entendimento afeta a competência da Autoridade Internacional dos Fundos Marinhos (AIFM) e os mecanismos adequados relativos à distribuição dos benefícios.

* Recebido em: 02/12/2024.
Aprovado em: 22/04/2025.

** Dr. Shani Friedman is a Postdoc Fellow at the Leonard Davis Institute for International Relations, the Hebrew University of Jerusalem, and was a UBO Postdoc at the AMURE lab, IUEM, France. Shani has a PhD from the Faculty of Law, the Hebrew University of Jerusalem and is a Member of the Israeli Bar Association. Shani also has an M.A in International Relations from the Hebrew University of Jerusalem; and B.A in political science and Middle Eastern studies, Ben-Gurion University, Beer-Sheva. Shani research various topics within the field of the Law of the Sea, which is her main field of expertise, and international institutions and the interaction between international law and international relations, including theoretical aspects.
E-mail : shani.friedman@mail.huji.ac.il

Palavras-chave: fundos marinhos internacionais; mineração em águas profundas; patrimônio comum da humanidade; partilha de benefícios; a Área.

1 Introduction

This Article aims to critically examine the definition of the term 'mankind' under the legal regime of the law of the sea (LOS), and specifically the international seabed (the Area). This question is important to determine who are the beneficiaries that are entitled to the benefits under this legal regime (e.g., the resources in the Area). The term 'mankind', as discussed below, has not been defined nor did it receive sufficient attention from scholars and practitioners despite its significance. Thus, this article contributes to the legal literature by offering an analysis that aims to answer this question.

The UN convention on the Law of the Sea (UNCLOS) defines the Area and its resources as the 'common heritage of mankind' (CHM).[1] UNCLOS also provides that activities in the Area (e.g., marine research and mineral exploration and extraction) must be carries out for the benefit of mankind as a whole. The International Seabed Authority (ISA) must ensure the equitable sharing of benefits deriving from such activities.[2]

The term 'mankind',[3] does not clarify who exactly has a claim to the benefits from activities in the Area and who should receive a share of those benefits. For example, there is a question whether non-party states can be considered beneficiaries. Arguably, many of UNCLOS's provisions reflect customary norms or have become customary rules since its inception.[4] Thus, the term 'mankind' could include states and such entities recognized in resolution 1514 (XV) that are not party to UNCLOS.

However, some argue that Part XI regulating the Area does not reflect customary international law.[5] This is because much of this part establishes and regulates a treaty body – the ISA, which is not an issue that can become customary law.[6] Furthermore, this part cannot be considered as customary law as it was amended by the 1994 agreement on the implementation of UNCLOS Part XI (Part XI agreement), which prevails over Part XI in case of any inconsistency.[7]

Considering the above, the definition of the term 'mankind' in UNCLOS is not clear. Furthermore, there is a question whether it includes only states as beneficiaries, or also non-state actors such as individuals. While the Convention mentions the term 'mankind as a whole' in connection to the issue of the beneficiaries, it also refers to states, whether coastal or land-locked, and specifically to developing states and self-governing entities recognized by the General Assembly resolution 1514 (XV),[8] i.e., entities that have high level of socio-political institutional arrangement. Thus, it is unclear whether non-state actors have an actual claim to the resources in the Area and can be direct beneficiaries under UNCLOS.

This is complicated further by the position of the ISA's secretariat and the Finance Committee is that the eligible beneficiaries are the members of the ISA, i.e., states parties to UNCLOS, as representatives of humanity.[9] However, as discussed in-depth in section 2.1.1 below, the position of the ISA is inconsistent, referring to other possible beneficiaries.

Considering the conflicting positions regarding the term 'mankind', this article seeks to fill this theoretical-legal gap, as this issue has not gained sufficient scho-

[1] United Nations Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS), Article 136.

[2] Articles 137(2), 140, 160(f)(i); ISA. *Equitable sharing of financial and other economic benefits from deep-sea mining*. 2022. Available at: https://www.isa.org.jm/wp-content/uploads/2022/06/policy_brief_benefit_sharing_01_2022-1.pdf.

[3] Today the term used is 'humankind' to represent all peoples rather than just men, see e.g., *Gender and the Law of the Sea* (Irini Papanicolopulu ed, 2019); TRINDADE, A. A. Cançado. *International law for humankind*: towards a new jus gentium. 3rd. ed. [*S. l.: s. n.*], 2020.

[4] Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Merits) [1982] ICJ Rep 18; Delimitation of the Maritime Boundary in the Gulf of Maine Area (Merits) [1984] ICJ Rep 246; Continental Shelf (Libyan Arab Jamahiriya/Malta) (Merits) [1985] ICJ Rep 13.

[5] See for example, CHURCHILL, R. The 1982 United Nations Convention on the Law of the Sea. *In*: ROTHWELL, D. *et al.* (ed.). *The Oxford handbook of the law of the sea.* [*S. l.: s. n.*], 2015. p. 37.

[6] CHURCHILL, R. The 1982 United Nations Convention on the Law of the Sea. *In*: ROTHWELL, D. *et al.* (ed.). *The Oxford handbook of the law of the sea.* [*S. l.: s. n.*], 2015. p. 37.

[7] Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (adopted on 28 July 1994, entered into force 28 July 1996), 1836 UNTS 3 (Part XI agreement), Art 2(1).

[8] UNCLOS (n 1) Art 140(1).

[9] ISA. *Equitable sharing of financial and other economic benefits from deep-sea mining*. 2022. Available at: https://www.isa.org.jm/wp-content/uploads/2022/06/policy_brief_benefit_sharing_01_2022-1.pdf.

larly attention. With the prospective beginning of exploitation of the Area,[10] the question of benefit-sharing and the identity of the beneficiaries from operations in the Area would become critical. Thus, there is a need to examine who is included in the legal term 'mankind' under the LOS framework.

The structure of the article is as follows: section 2 analysis the term 'mankind' in accordance with the rules of treaty interpretation in international law. Section 3 provide comparative analysis to other regimes concerning the management of the global commons that reflect or address the CHM principle. Section 4 addresses possible practical issues concerning the term 'mankind' and the implementation of the CHM principle. Section 5 discusses possible implications of the analysis in the previous chapters. Section 6 concludes.

2 Who is 'mankind'?

The term 'mankind' is a vague and general term, which does not address specific subjects of international law. Thus, there is a need for a legal interpretation of the term, to determine who exactly are the beneficiaries of the CHM principle. In accordance with the rules on treaty interpretation, to understand the term 'mankind' in UNCLOS, one should look at the ordinary meaning, their context, and the object and purpose of the Convention.[11]

The dictionary defines 'mankind' as including every human being, i.e., all individuals in the world.[12] However, looking at the object and purpose of UNCLOS it seems that, while there is a reference to all people of the world, states are the ones that have rights and claims under UNCLOS.[13] Thus, the link between 'mankind' and rights over the resources in the Area[14] indicate that the subjects included in 'mankind' are essentially states.

The context also does not provide clear answer: on the one hand, UNCLOS recognizes that 'persons' may also have a claim, at least to the minerals in the Area.[15] Furthermore, comparing to similar provisions, the use of the term 'mankind' may be intentional. Consider for example Article 82 that governs coastal States' payments for exploitation of the extended continental shelf. The Article specifically provides that payments should be through the ISA to *States Parties*.[16] Comparing Article 82 to Part XI may imply that the choice of the term 'mankind' is intentional and has broader interpretation than just states. On the other hand, Part XI refers mostly to states' rights and obligations.[17] In addition, as mentioned above, the term 'mankind as a whole' is immediately followed by reference to states and self-governing entities.[18] In other words, the focus is on states and state-like entities who are a party to the Convention.[19]

Interpretation of the context can rely on any agreement relating to UNCLOS which was made between all the parties.[20] The ISA 'Mining Code' is one such instrument. The Mining Code is a legally binding set of rules, regulations and procedures issued by ISA to regulate prospecting, exploration and exploitation of marine minerals in the Area. The ISA developed the Mining Code within the legal framework of UNCLOS Part XI and the 1994 Agreement relating to the implementation of Part XI of UNCLOS.[21]

The regulations on exploration of the Area address the general principle that the Area should be explored and exploited for the benefit of 'mankind as a whole.'[22]

[10] See ROSENBERG, D. The legal fight over deep-sea resources enters a new and uncertain phase. *EJIL*: Talk! Blog, 22 Aug. 2023.; JAECKEL, A. *et al.* Sharing benefits of the common heritage of mankind: is the deep seabed mining regime ready?. *Marine Policy*, v. 70, p. 199, 2016.

[11] UNITED NATIONS. Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), Art 31.

[12] MANKIND. *Merriam-Webster dictionary*. Available at: https://www.merriam-webster.com/dictionary/mankind.

[13] UNCLOS (n 1) Preamble.

[14] Art 137(2).

[15] Art 137(3).

[16] Art 82(4).

[17] Art 138, 139.

[18] N 8.

[19] UNCLOS (n 1) Art 305.

[20] VCLT (n 10) Art 31(2).

[21] See ISA. *The Mining Code*. Available at: https://www.isa.org.jm/the-mining-code/.; BLANCHARD, C. *Nauru and deep-sea minerals exploitation*: a legal exploration of the 2-year rule. 2021. Available at: https://site.uit.no/nclos/2021/09/17/nauru-and-deep-sea-minerals-exploitation-a-legal-exploration-of-the-2-year-rule/.

[22] The ISA developed so far regulation only with respect to exploration of the Area. See Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISA, 19th Sess, UN Doc ISBA/19/C/17 (22 July 2013) (Polymetallic Nodules regulations), Annex; Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, ISA, 18th Sess, UN Doc ISBA/18/A/11 (22 October 2012) (Cobalt Crusts regulations), Annex; Regulations on prospecting and exploration for polymetallic sulphides in the Area, ISA,16th Sess, UN Doc ISBA/16/A/12/Rev.1 (15 November 2010) (Polymetallic Sulphides regulations), An-

However, there is no specification as to who the beneficiaries are. The draft regulations concerning exploitation of the Area include more reference to the term 'mankind' but likewise does not specify who the beneficiaries are.[23]

2.1 Subsequent Agreement and Practices in the Application of the Treaty

Interpretation of the context can also rely on any subsequent agreement of the parties or practice in the application of the treaty which establishes the agreement of the parties regarding an interpretation.[24] Thus, documents of the ISA, which represents the parties to UNCLOS, concerning its work as the trustee of the CHM principle, and the protocols of the Meeting of the States Parties (SPLOS) to UNCLOS, which reflects states' positions, may provide insights concerning the interpretation of the beneficiaries of the CHM principle within LOS.

2.1.1 ISA documents

ISA documents also seem to indicate that the beneficiaries of the CHM principle are states; referring to all states, but especially developing states and self-governing entities recognized in UNCLOS.[25]

However, the ISA also recognizes that the global political situation is different from the situation in the 1980s, when UNCLOS was adopted. The formal rules do not provide for the participation of non-state actors (NSAs) as beneficiaries, although in practice they might be considered as such. Although the ISA seems to promote a broad interpretational approach, to include NSAs as beneficiaries, it also raises a question concerning the ability to ensure that these beneficiaries actually receive the benefits in practice.[26] Practical issues aside, the ISA acknowledges that each individual may have an equal claim to the benefits from activities in the Area.[27] Furthermore, the ISA recognizes the need to consider future generations' rights and possible economic welfare in the context of benefit-sharing.[28]

However, it is not clear what is the legal basis for such assertion. While some delegates supported broad interpretation of the term 'mankind' and the inter-temporal notion and the need for such considerations during UNCLOS III negotiations, ultimately these considerations were rejected and were not included in the final text.[29] In addition, while UNCLOS confers upon the ISA competence to establish a mechanism for benefit-sharing,[30] this mandate does not include the competence to decide who the beneficiaries are.

2.1.2 The meeting of the states parties (SPLOS)

The Meeting of the States Parties (SPLOS) to UNCLOS is a body established in the Convention that was entrusted to elect the members of the International Tribunal for the Law of the Sea (ITLOS) and members of the Commission on the Limits of the Continental Shelf (CLCS). SPLOS also deals with budgetary and administrative matters, receives information provided by the Secretary-General of the International Seabed Authority and the Chairman of the CLCS on the activities of these bodies.[31] Although SPLOS has no formal interpretive competences, in practice it influences the development and interpretation of UNCLOS.[32] SPLOS is also a forum where states address different issues, thus it reflects their positions through their delegations and representatives. Considering the informal competences of this body, its protocol may provide useful insights as to the interpretation of the CHM principle and the identity of the beneficiaries.

Within SPLOS framework, some states express their position concerning the CHM principle. Some states maintained that the beneficiaries of this principle are states, whether developed or developing.[33] However, in

nex.

[23] Draft Regulations on Exploitation of Mineral Resources in the Area, ISA, 25th Sess, UN Doc ISBA/25/C/WP.1 (22 March 2019).

[24] VCLT (n 10) Art 31(3).

[25] ISA Study No. 31 (n 2) 25.

[26] 26, 28.

[27] 31, 65.

[28] 27, 28, 33.

[29] See discussion in section 2.3.2 below concerning UNCLOS III negotiations.

[30] N 2.

[31] See UNITED NATIONS. *Meetings of States Parties to the 1982 United Nations Convention on the Law of the Sea.* Available at: https://www.un.org/depts/los/meeting_states_parties/meeting_states_parties.htm.

[32] See e.g., UNITED NATIONS. SPLOS, 16th Mtg., UN Doc SPLOS/148 (28 July 2006), paras 81, 93; SPLOS, 19th Mtg., UN Doc SPLOS/203 (24 July 2009), paras 11, 73, 114.

[33] See e.g., Chile's note verbal, SPLOS, 32nd Sess, UN Doc

some instances, some delegations highlighted that the CHM principle includes ideas such as "social justice for all people of the world."[34] Although it is unclear whether this reflects a concrete legal principle or just a moral position. Some delegations noted that equitable sharing have "an intergenerational dimension," although without explaining the basis for this concept.[35] Still, the distribution of resources and associated benefits seems to be only between states.[36]

2.2 Relevant Rules of International Law

In accordance with the rules of treaty interpretation, there are other elements that can be considered together with the context for the purpose of the interpretation of a treaty; one of which is relevant rules of international law applicable in the relations between the parties of that treaty.[37]

2.2.1 International treaty law

For example, relevant rules could be other rules in the Vienna Convention on the Law of Treaties (VCLT), not just the provisions on treaty interpretation. The VCLT provides that a treaty between states cannot create rights or obligations for third states without their consent.[38] If states cannot grant rights to other states that are not parties to a treaty, even if they are recognized subjects of international law, then *a fortiori* they cannot grant rights to other actors that are not parties and are not necessarily recognized as subjects of international law or have a more limited legal personality.[39] In other words, UNCLOS can obligate (states) parties to consider the interests of other NSAs, such as future generations or individuals, but it cannot grant rights to such entities.[40] Even if such entities have an interest under UNCLOS, they don't necessarily have a right or standing to enforce its implementation.[41]

It is noteworthy that human rights law (IHRL) is the exception to the analysis above; IHRL does address the rights of individuals, however this framework mostly addresses the protection of such rights by creating obligations for states to promote and protect individuals' rights that can be enforced in national courts and international institutions.[42] Furthermore, IHRL creates rights that are mostly negative rights (i.e., freedoms) or standards for conditions of living. Still, even the exception of IHRL does not create a specific right for individuals to own resources. In other words, there is no obligation or duty to provide individuals with resources under international law.[43]

2.2.2 International property law

While there is no concrete and unified framework for "international property law", there are specific frameworks that create property rights in international law.[44] However, there is a question regarding what property these frameworks address. For example, while

SPLOS/32/14 (17 June 2022), Annex, p. 2; position paper submitted by Australia, Fiji, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu, SPLOS, 11th Mtg., UN Doc SPLOS/67 (10 May 2001).

[34] UNITED NATIONS. SPLOS, 22nd Mtg., UN Doc SPLOS/251 (11 July 2012), para 103.

[35] UNITED NATIONS. SPLOS, 24th Mtg., UN Doc SPLOS/277 (14 July 2014), para 18; SPLOS, 26th Mtg., UN Doc SPLOS/303 (2 August 2016), para 95.

[36] UNITED NATIONS. SPLOS/277 (n 34) para 18; SPLOS, 27th Mtg., UN Doc SPLOS/316 (10 July 2017), paras 46, 103.

[37] VCLT (n 10) Art 31(3)(c).

[38] VCLT (n 10) Art 34, 36.

[39] See e.g., NIJMAN, J. E. *Non-state actors and the international rule of law*: revisiting the 'realist theory' of international legal personality. 2009. Available at: https://ssrn.com/abstract=1522520.; TOMUSCHAT, C. International organizations as third parties under the law of international treaties. *In*: CANNIZZARO, E. (ed.). *The law of treaties beyond the Vienna Convention*. [*S. l.: s. n.*], 2011.

[40] This argument leaves aside the question of international organizations. First, international law recognizes them as subjects with legal personality and the ability to bear rights and obligations (although more limited than states). See e.g., TOMUSCHAT, C. International organizations as third parties under the law of international treaties. *In*: CANNIZZARO, E. (ed.). *The law of treaties beyond the Vienna Convention*. [*S. l.: s. n.*], 2011.; PROELSS, A. Article 34. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018. p. 661. Second, the issue of the beneficiaries of the CHM principle does not specifically address rights of international organizations but rather of 'mankind', i.e., individuals and peoples.

[41] PROELSS, A. Article 34. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018. p. 671.

[42] See e.g., SHELTON, D.; GOULD, A. Positive and negative obligations. *In*: SHELTON, D. (ed.). *The Oxford handbook of international human rights law*. [*S. l.: s. n.*], 2013.; RYNGAERT, C. Non-state actors: carving out a space in a state-centred international legal system. *Neth. Int. Law Rev.*, v. 63, 2016.

[43] SHELTON, D.; GOULD, A. Positive and negative obligations. *In*: SHELTON, D. (ed.). *The Oxford handbook of international human rights law*. [*S. l.: s. n.*], 2013.

[44] SPRANKLING, J. G. *The international law of property*. [*S. l.: s. n.*], 2014. p. 3.

IHRL may create individuals' rights for property, there is no indication that such rights include resources or property that is global commons. IHRL addresses states obligations with respect to property under national law.[45]

UNCLOS does create property rights in the global commons, providing that "rights in the resources of the Area are vested in mankind."[46] However, the context of this provision is the status of the resources, rather than the definition of the beneficiaries. In addition, this phrasing does not mean that it creates private property rights for individuals. While private companies can exploit the Area, it is under the auspices of a state.[47] Furthermore, this framework does not mean that other NSAs have right to receive benefits, i.e., property, from the companies' exercise of rights.

It is noteworthy that UNCLOS Article 140 does not grant ownership rights to the global commons, but a right to enjoy or use benefits from such resources. This is similar to usufruct in national civil law; a right to enjoy things that are owned by others.[48] Under such framework, NSAs such as individuals may be secondary beneficiaries of the CHM principle, but states are the owners or primary beneficiaries.

2.2.3 Sources of international law

The rules concerning the sources of international law (i.e., where to find legal rules concerning rights and obligations), may also be relevant to the interpretation of the term 'mankind' to determine who are the beneficiaries of the CHM principle. Judicial decisions and academic literature are not included in the relevant materials under the laws on treaty interpretation. However, these materials are subsidiary source of international law, which can help identify international rules and their content.[49] Thus, these sources can be used for interpretation of the CHM principle as relevant rules of international law.

2.2.3.1 Case-law

There is scarce case-law concerning the CHM principle. However, there are few references that may provide some insights regarding the beneficiaries of the principle. Some judges recognized that the term "common heritage of mankind" in UNCLOS is not defined in a clear and precise manner.[50] In the advisory opinion on responsibilities of states with respect to activities in the Area, ITLOS's Seabed Dispute Chamber (SDC) focused on examining states obligations in conducting such activities, rather than who benefits from such activities. However, within this analysis, the SDC focused on the rights of developing states.[51] Thus, the focus of the advisory opinion might imply that the beneficiaries of the CHM principles are indeed states, rather than 'all people.'[52]

2.2.3.2 Scholarship on CHM

There is scarce reference to the question of the beneficiaries of the CHM principle in the current literature. Out of the existing literature that does address this issue, while there are those who maintain that the beneficiaries are states,[53] most scholars seem to agree

[45] SPRANKLING, J. G. *The international law of property.* [*S. l.: s. n.*], 2014. p. 10-26. See also section 2.2.1.

[46] UNITED NATIONS. UNCLOS (n 1) Art 137(2).

[47] UNITED NATIONS. UNCLOS Annex III, Art 4.

[48] SPRANKLING, J. G. *The international law of property.* [*S. l.: s. n.*], 2014. p. 29.

[49] Statute of the International Court of Justice, San Francisco, 24 October 1945, Article 38(1)(d) (ICJ Statute).

[50] See e.g., Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar) (Judgment of 14 March 2012) ITLOS Reports 2012, Separate Opinion of Judge Gao, para 85.

[51] Responsibilities and obligations of States with respect to activities in the Area (Advisory Opinion of 1 February 2011) ITLOS Reports 2011, para 157.

[52] This is supported by states and international organizations' written statements to the Tribunal, see e.g., INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the Republic of Nauru.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_Nauru.pdf., paras. 5, 16; INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the International Union for Conservation of Nature.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_IUCN.pdf., para. 86 and footnote 58. ICUN refers to benefits that are "internationally shared." The term 'international' implies states rather than a broader meaning. See also INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the People's Republic of China.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_China.pdf., para. 11; INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the United Nations Environment Programme.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_UNEP.pdf. p. 2.

[53] RANA, H. S. The common heritage of mankind and the final frontier: a revaluation of values constituting the international legal regime for outer space activities. *Rutgers L. J.*, v. 231, n. 26, 1994.

that 'mankind' is a broader term that includes not only states, especially in more recent scholarship.

Some scholars argue that the CHM principle by reference to the term 'mankind' apply not only to present generation (represented by states) but also to future generations.[54] Not only that, but the CHM principle reflect the idea of inter-generational equity.[55] Others compare the terms 'mankind' and 'states' to argue that the beneficiaries could also be individuals, although they acknowledge that the term 'mankind' may refer to the collective goods rather than the beneficiaries.[56]

Some scholars argue that NSAs, including future generations, are not only entitled to benefits from activities in the Area, but they are subjects of international law.[57] However, individuals are generally not the subject of international law. Individuals may have some rights, but the exercise of these rights are generally through states as the mechanism.[58]

These positions do not give any legal reason to such interpretation embedded in modern international law. Some scholars refer to religious law and philosophy or roman property law as a basis for the broader interpretation of the term 'mankind'.[59] While these sources are important for the development of international law, the modern framework relies on other sources as formal sources of law (e.g., treaties and customary rules). Other sources can be considered secondary sources that can used for interpretation;[60] however, in case of contradiction, the later sources prevail (i.e., treaties and customary law), as states are bound by them.[61] As indicated above, current legal development in modern international law may contradict these reasonings regarding the rights of NSAs.

Some scholars base their argument on linguistic interpretation. For example, the rights of future generations denote from the term 'heritage',[62] or the inclusion of individuals derives from the term 'mankind'.[63] However, these arguments do not address weather such interpretation applies in the context of international law or means granting *legal rights and obligations* to all these NSAs. As analyzed above, a linguistic interpretation in accordance with the rules of treaty interpretation does not yield a clear answer. In addition, recognizing NSAs as subjects in international law does not necessarily mean that they automatically have *all* the rights that states have.[64] Such argument needs to be based in international law, meaning there should be evidence that states, as the law-makers in international law, support this interpretation and perceive it as legally binding.

[54] See reference to Proelss in Robb (n 21). The author claims this position is 'commonly accepted'. Although it is noteworthy that this post only addresses states, whether of current generation or of future ones. See also e.g., BOURREL, M. *et al.* The common of heritage of mankind as a means to assess and advance equity in deep sea mining. *Marine Policy*, v. 313, n. 95, 2018.; WILDE, D. *et al.* Equitable sharing of deep-sea mining benefits: more questions than answers. *Marine Policy*, v. 2, n. 151, 2023.

[55] TLADI, D. The common heritage of mankind and the proposed treaty on biodiversity in areas beyond national jurisdiction: the choice between pragmatism and sustainability. *Yearbook of International Environmental Law,* v. 25, n. 1, p. 127, 2015.

[56] WILDE, D. *et al.* Equitable sharing of deep-sea mining benefits: more questions than answers. *Marine Policy*, v. 2, n. 151, 2023. See also SQUIRES, D. *Sharing the benefits from the deep sea*: presentation for the webinar "Benefit sharing and the common heritage of humankind: what constitutes equitable distribution?". Available at: https://www.resolve.ngo/benefitsharing_commonheritage.htm.

[57] Although this position seems to also address states. As cited in VAN DOORN, E. Environmental aspects of the mining code: preserving humankind's common heritage while opening Pardo's box?. *Marine Policy*, v. 70, p. 193, 2016.

[58] See also WANG, C.; CHANG, Y. C. A new interpretation of the common heritage of mankind in the context of the international law of the sea. *Ocean and Coastal Management,* v. 3, n. 191, 2020. In addition, individuals and peoples have no duties or obligations under international law, which is pertinent to having international legal personality. Influence does not necessarily mean international personality. Arguably, individuals have been recognized in the context of Human Rights Law and International Criminal Law. See SHAW, M. N. *International law*. 9th. ed. [*S. l.: s. n.*], 2021. p. 235-236. However, there is nothing to suggest that such actors are subjects in the context of the Law of the Sea.

[59] See in VAN DOORN, E. Environmental aspects of the mining code: preserving humankind's common heritage while opening Pardo's box?. *Marine Policy*, v. 70, p. 193, 2016.

[60] ICJ Statute (n 49).

[61] Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission, 58th Sess, UN Doc A/CN.4/L.702 (18 July 2006). See also VCLT (n 10) Art 30, 59.

[62] JOYNER, C. C. Legal implications of the concept of the common heritage of mankind. *International and Comparative Law Quarterly*, v. 35, n. 195, 1986. p. 127.

[63] TANAKA, Y. *Protection of community interests in international law*: the case of the law of the sea. [*S. l.*]*:* Max Planck Yearbook of United Nation Law, 2011. p. 339-340.

[64] See e.g., the ICJ statement with respect to international organizations. Reparation for injuries suffered in the service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174, at 180. With respect to individuals, they have certain rights under international human rights law. However, there is nothing in international law that suggest they have rights to marine resources independently from their states.

2.3 Supplementary Means of Interpretation

Treaty interpretation can also rely on supplementary means such as the preparatory work of the treaty and the circumstances of its conclusion, to confirm the interpretation resulting from the application of Article 31 of the VCLT.[65] Therefore, UNCLOS's negotiation protocols and the materials used to prepare the drafts for negotiations, can assist in determining the meaning of the term 'mankind'.

Previous practice

The CHM principle in UNCLOS is based on the UN General Assembly (UNGA)'s resolution concerning the seabed beyond national jurisdiction.[66] The resolution determines that exploration and exploitation of the seabed beyond national jurisdiction shall be for the benefit of mankind as a whole. However, after the term 'mankind', the resolution refers to states.[67] Furthermore, the resolution addresses the need to establish a new international treaty for the management of the Area and its resources. The resolution specifically and explicitly mentions that such treaty would "ensure the equitable sharing by States in the benefits derived therefrom…".[68] States' positions, reflected in the protocol of this resolution, also support the conclusion that states are the beneficiaries of the CHM principle.[69]

The protocols of the Ad-Hoc Committee for Sea--Bed and Ocean Floor Study, on which work the UNGA's resolution is based, does not give clear answer as to who are the beneficiaries of the CHM principle. While the UN Secretary-General (UNSG) mentions that the exploitation of the seabed is for "the benefit of all mankind,"[70] the activities themselves should be in accordance with the "purposes and principles of the Chart of the United Nation."[71] In other words, the context suggests States as bearers of rights and obligations.

The *note verbale* from the permanent mission of Malta to the UN, which triggered the process leading to the above UNGA's resolution, supports the conclusion that the term 'mankind' referred to states, at least in the 1960s. The *note verbale* addressed the need to declare the seabed beyond national jurisdiction as CHM and drafting a new treaty that would reflect several relating principles. One of these principles is to "safeguarding the interests of mankind."[72] However, the following sentence maintained that benefits for exploitation of this zone would primarily go to "poor countries."[73] Furthermore, Malta envisioned the creation of an international agency (what would become the ISA) that would act as trustee "for all countries."[74]

The analysis above indicates that previous materials regarding the Area, which were used as preparatory materials for UNCLOS, imply that the term 'mankind' refers to states, as the beneficiaries of the CHM principle, in accordance with the international rules on treaty interpretation.

[65] VCLT (n 10) Art 32.

[66] UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/RES/2749(XXV) (17 December 1970).

[67] UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/RES/2749(XXV) (17 December 1970). para 7.

[68] UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/RES/2749(XXV) (17 December 1970). para 9.

[69] UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/PV.1933 (17 December 1970). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N73/770/01/PDF/N7377001.pdf?OpenElement. paras 87, 105, 171, 175.

[70] UNITED NATIONS. *Statement by the Secretary-General*. 1968. Available at: https://search.archives.un.org/uploads/r/united-nations-archives/c/7/3/c735473b40cc2c3e8812db970ebe70d4094ca020de3d3a30ccec83088a4c205a/S-0885-0001-01-00001.PDF. p. 4 of the file.

[71] UNITED NATIONS. *Statement by the Secretary-General*. 1968. Available at: https://search.archives.un.org/uploads/r/united-nations-archives/c/7/3/c735473b40cc2c3e8812db970ebe70d4094ca020de3d3a30ccec83088a4c205a/S-0885-0001-01-00001.PDF. p. 4 of the file.

[72] Request for the Inclusion of a Supplementary Item in the Agenda of the Twenty-Second Session: Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-Bed and of the Ocean Floor, Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind, 22nd Sess, UN Doc A/6595 (18 August 1967). p. 2, para 3(c).

[73] Request for the Inclusion of a Supplementary Item in the Agenda of the Twenty-Second Session: Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-Bed and of the Ocean Floor, Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind, 22nd Sess, UN Doc A/6595 (18 August 1967). p. 2, para 3(c).

[74] Request for the Inclusion of a Supplementary Item in the Agenda of the Twenty-Second Session: Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-Bed and of the Ocean Floor, Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind, 22nd Sess, UN Doc A/6595 (18 August 1967). p. 3, para 4.

2.3.1 UNCLOS negotiation process

During the negotiation process it seems that most references to the 'common heritage of mankind' or 'mankind as a whole' were done without explanation to whom these terms refer, just accepting the existence of the principle as part of international law.[75] Despite this, most of the little reference that does address the scope of 'mankind' indicates that UNCLOS's drafters envisioned the term 'mankind' as referring to states.[76] In other words, states are the beneficiaries of CHM.[77]

Additional indications may support the conclusion that 'mankind' equals states. For example, some delegates stressed that the principle of CHM addresses those who in the past could not participate in resources exploitation.[78] While not specifically explaining who is included in the beneficiaries of this principle, this position implies that the focus is on states as they have the right to explore and exploit marine resources under LOS.[79] Other delegates addressed the scope of 'mankind' through negative definition, emphasizing that this principle does not include multinational corporations.[80] This suggests that 'mankind' does not include at least some NSAs, although it is silent on the question of other types of NSAs such as individuals. Some delegates held the view that the CHM principle should include also states not parties to the future convention. However, some argue that the right of participation should be reserved to those legally bound by the future convention.[81] Despite being vague, the above examples refer mostly to states as the beneficiaries of the CHM principle.

However, there are some indications that at least some delegates perceived the term 'mankind' as including other actors beside states. Some delegations indicated that 'mankind' also include 'people' or 'human beings' and not only states, and thus should receive their share of the benefits.[82] Furthermore, some delegations supported the position that 'mankind' include also future generations.[83]

Still, this interpretation appeared to be the minority in the overall discourse during the negotiations. Most references address states as the bearer of rights and the beneficiaries of the Area. In addition, reference to individuals was mostly with respect to the definition of CHM itself, but there was almost no regard to their specific right to receive benefits. In other words, there seems to be a distinction between the CHM principle that defines the Area, and the question of benefit-sharing. And lastly, there was no consensus during the negotiation on the scope and meaning of the term CHM itself.[84] Thus, the broader interpretation of the term

[75] UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 11th Mtg, UN Doc A/CONF.62/C.1/SR.11 (6 August 1974), para 35; UNCLOS III, 1st Cmte, 2nd Sess, 17th Mtg, UN Doc A/CONF.62/C.1/SR.17 (27 August 1974), para 23; UNCLOS III, 1st Cmte, 3rd Sess, 20th Mtg, UN Doc A/CONF.62/C.1/SR.20 (28 April 1975), para 35; UNCLOS III, 1st Cmte, 5th Sess, 37th Mtg, UN Doc A/CONF.62/C.1/SR.37 (14 September 1976), para 12; UNCLOS III, Resumed 9th Sess, 138th Plen Mtg, UN Doc A/CONF.62/SR.138 (26 August 1980), para 29.

[76] See for example, UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 2nd Mtg, UN Doc A/CONF.62/C.1/SR.2 (11 July 1974), para 3; UNCLOS III, 1st Cmte, 2nd Sess, 4th Mtg, UN Doc A/CONF.62/C.1/SR.4 (15 July 1974), paras 1, 10; UNCLOS III, 1st Cmte, 2nd Sess, 5th Mtg, UN Doc A/CONF.62/C.1/SR.5 (16 July 1974), paras 36, 56; UNCLOS III, 1st Cmte, 2nd Sess, 6th Mtg, UN Doc A/CONF.62/C.1/SR.6 (16 July 1974), para 16; UNCLOS III, 1st Cmte, 2nd Sess, 7th Mtg, UN Doc A/CONF.62/C.1/SR.7 (17 July 1974), paras 45, 60; UNCLOS III, 1st Cmte, 2nd Sess, 8th Mtg, UN Doc A/CONF.62/C.1/SR.8 (17 July 1974), paras 27, 35, 41; UNCLOS III, 1st Cmte, 2nd Sess, 13th Mtg, UN Doc A/CONF.62/C.1/SR.13 (8 August 1974), para 18; UNCLOS III, 1st Cmte, 3rd Sess, 19th Mtg, UN Doc A/CONF.62/C.1/SR.19 (26 March 1975), para 9; UNCLOS III, Reports of the Committees and Negotiating Groups, Reports of the Committees and Negotiating Groups on negotiations at the resumed 7th Sess, UN Doc A/CONF.62/RCNG/1 (19 May 1978), p. 26.

[77] UNITED NATIONS. UNCLOS III, 1st Sess, 1st Plen Mtg, UN Doc A/CONF.62/SR.1 (3 December 1973), para 16.

[78] A/CONF.62/C.1/SR.5 (n 76) paras 25, 40.

[79] See UNITED NATIONS. UNCLOS (n 1) Art 56, 77, 87 and Part XI. While non-state actors can conduct activities in the Area, it has to be under the auspices of a state. See, Art 153.

[80] A/CONF.62/C.1/SR.6 (n 76) para 23.

[81] A/CONF.62/C.1/SR.17 (n 75) para 9. See also reference to parties, UNCLOS III, 1st Cmte, 5th Sess, 30th Mtg, UN Doc A/CONF.62/C.1/SR.30 (27 August 1976), para 16.

[82] See for example UNITED NATIONS. UNCLOS III, 2nd Sess, 37th Plen Mtg, UN Doc A/CONF.62/SR.37 (11 July 1974), para 49; A/CONF.62/C.1/SR.2 (n 76) para 10; A/CONF.62/C.1/SR.7 (n 76) para 40; UNCLOS III, 1st Cmte, 3rd Sess, 22nd Mtg, UN Doc A/CONF.62/C.1/SR.22 (28 April 1975), para 25; UNCLOS III, 1st Cmte, 5th Sess, 36th Mtg, UN Doc A/CONF.62/C.1/SR.36 (14 September 1976), para 11, 50. See also reference to "develop of world economy", which indicate that not only states should benefit from activities in the Area, A/CONF.62/C.1/SR.5 (n 76) para 78; UNCLOS III, Resumed 11th Sess and Final Part 11th Sess and Conclusion, 188th Mtg, UN Doc A/CONF.62/SR.188 (7 December 1982), para 167.

[83] UNITED NATIONS. UNCLOS III, 1st Cmte, 3rd Sess, 21st Mtg, UN Doc A/CONF.62/C.1/SR.21 (28 April 1975), para 39; UNCLOS III, 2nd Sess, 36th Plen Mtg, UN Doc A/CONF.62/SR.36 (10 July 1974), para 57.

[84] For example, UNITED NATIONS. UNCLOS III, 8th Sess, 116th Plen Mtg, UN Doc A/CONF.62/SR.116 (27 April 1979), pa-

'mankind' was ultimately not reflected in the final text of UNCLOS.

Considering the analysis above, there are more indications that UNCLOS's drafters perceived the term 'mankind' as referring to states, as the beneficiaries of the CHM principle. This, in turn, affects the interpretation of the term 'mankind' in accordance with the rules of treaty interpretation in international law.

3 Comparison to other legal regimes concerning the CHM

An inquiry concerning the beneficiaries of the CHM principle in UNCLOS could benefit from comparison to other legal regimes that addressed the management and benefits from activities concerning common interests and resources and specifically mention the CHM principle. These regimes, some prior to UNCLOS and some a progression of the Convention, may help identifying relevant positions and practices that may provide new insights to the meaning of the term 'mankind' and to the possible beneficiaries of the CHM principle.[85]

3.1 Outer Space

The CHM principle was articulated prior to UNCLOS III, in the 1950s, with respect to outer space but it was not a concrete legal principle until the 1960s.[86] The 1967 Outer Space Treaty recognized the interest of 'all mankind' and believed that the use of outer space should be for the benefit of *all people*.[87] However, its operable provisions determine that the beneficiaries of benefits from exploration and use of outer space are states, while the area is defined as "province of all mankind."[88] The outer space treaty relied on the UNGA's resolution that provided that states are the beneficiaries,[89] although the resolution also referred to 'mankind' as beneficiaries.[90] At that time, scholars noted that the term 'mankind' was sometimes used for to say 'all states' and sometime to indicate 'all people'.[91]

The 1979 Moon Treaty supports the argument that states are the beneficiaries of activities on the moon by referring to the UN Charter and the interests of states parties,[92] and by specifically providing that while the moon is 'province of all mankind', the benefits (and interests) would be for states.[93] This interpretation may also affect the interpretation of the Outer Space Treaty regarding the "province of all mankind." The treaty also provides that the interests of current and future generations should be considered.[94] Thus, the Moon Treaty recognized the interests of entities other than

ras 128, 132.

[85] It is noteworthy that the legal regime concerning Antarctica will not be addressed in this research. First, while the legal regime concerning Antarctica may be relevant as it reflects some aspects of the CHM principle, it addresses an area that might be under national jurisdiction of several states. This is opposite to the CHM principle in UNCLOS, which addresses an area beyond national jurisdiction. See e.g., submissions of Chile and Argentina to extended continental shelf in Antarctica's areas, UNITED NATIONS. Division for Ocean Affairs and the Law of the Sea. *Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982*. Available at: https://www.un.org/depts/los/meeting_states_parties/meeting_states_parties.htm. The Antarctic treaty recognizes sovereignty claims made before the treaty entered into force. In addition, the treaty recognizes the existence of claims to territorial sovereignty in Antarctica but does prevent exercise of such claims in practice. See the Antarctic Treaty. Available at https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf, Article 4. In addition, while mentioning the "interests of all mankind", the Antarctic framework does not address the question of the beneficiaries. See SECRETARIAT OF THE ANTARCTIC TREATY. *Compilation of key documents of the Antarctic Treaty System*. 3rd. ed. 2017. Available at: https://documents.ats.aq/atcm40/ww/ATCM40_ww014_e.pdf. Furthermore, environmental law is also outside the scope of this research. While this legal regime addresses management of common interests, it concerns the protection of a common resource for mankind, rather than sharing concrete and physical benefits.

[86] WOLFRUM, R. *Common Heritage of Mankind*. [*S. l.*]: Max Planck Encyclopedia of Public International Law, 2009. para. 5.

[87] Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies (adopted on 1 January 1967, entered into force 10 October 1967) 610 UNTS 205 (outer space treaty), preamble.

[88] Art 1; RANA, H. S. The common heritage of mankind and the final frontier: a revaluation of values constituting the international legal regime for outer space activities. *Rutgers L. J.*, v. 231, n. 26, p. 240, 1994.

[89] UNITED NATIONS. UNGAOR, 1280th Plan. Mtg., UN Doc A/RES/1962 (XVIII) (13 December 1963), preamble, para 6.

[90] UNITED NATIONS. UNGAOR, 1280th Plan. Mtg., UN Doc A/RES/1962 (XVIII) (13 December 1963), preamble, para 1.

[91] FASAN, E. 'The Meaning of the Term Mankind in Space Legal Language'. *J. Space L.* v. 128, n. 2, p. 130, 1974.

[92] Agreement governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Treaty), Art 2.

[93] Agreement governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Treaty), Art 4(1).

[94] Agreement governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Treaty),

states. However, as indicated above, it seems that only states would have rights or entitlement to benefits under the Moon Treaty.[95] In 1997 the UNGA clarified that the exploration and use of outer space is for the benefit of *all states*.[96] This was also reflected in more recent resolutions.[97]

Considering the above, it seems that the beneficiaries of the CHM principle in space law are states. One argument in the context of space law was that mankind (at that time) was not a legal subject, and thus not entitled to property rights, since it did not have an administrative body to represent and exercise rights in its name.[98] In contrast, within LOS, there is now an institution that can exercise rights in the name of 'mankind' (the ISA), however this does not mean that humankind is now a legal subject in international law. At most, like outer space law, UNCLOS recognizes that this collective entity has an interest regarding resources beyond national jurisdiction.[99] However, having an interest is not equal to having rights or entitlements to these resources or benefits derive from them.

3.2 The 1958 LOS Conventions

In 1957, the UNGA decided to convene the first United Nations Conference on the Law of the Sea (UNCLOS I). Four separate conventions were adopted by the Conference: The Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas (HSC); the Convention on Fishing and Conservation of the Living Resources of the High Seas; and the Convention on the Continental Shelf (CSC).[100]

The HSC and the CSC were essentially copied into UNCLOS. During the negotiations of these conventions the term 'mankind' was addressed and mentioned several times. Thus, it may be useful to compare UNCLOS to other instruments within LOS framework, to determine who the beneficiaries of the CHM principle are. It is noteworthy that the CHM as a legal principle may not have existed during the HSC's negotiations, still the interpretation of the term 'mankind' in past practices may help here, even if it goes beyond the rules of treaty interpretation concerning past practices.[101]

While the 'benefit of all mankind' was addressed several times during the conference, there was almost no reference to the possible subjects included in this term. The scarce reference to the scope of 'mankind' does not yield clear answer. Most of the references that do exist indicate that 'mankind' refers to states.[102] However, some states differentiate between 'mankind' and 'coastal States.[103] This could imply that the term 'mankind' includes not only states. however, this could also imply that the distinction is between 'coastal States' and 'all states.' Thus, there is still a question regarding the beneficiaries of the CHM principle, although there are more indications that the beneficiaries of the CHM principle are states.

[95] Agreement governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Treaty), Art 11(7)(d).

[96] Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries, UNGAOR, 51st Sess, UN Doc A/RES/51/122 (4 February 1997).

[97] While the resolution refers to benefits of all humankind, it also explicitly refers to states as beneficiaries, see Declaration on the fiftieth anniversary of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, UNGAOR, 72nd Sess, UN Doc A/RES/72/78 (14 December 2017), paras 6, 14.

[98] FASAN, E. The meaning of the term mankind in space legal language. *J. Space L.*, v. 128, n. 2, p. 131, 1974.

[99] See also with respect to the outer space regime, RANA, H. S. The common heritage of mankind and the final frontier: a revaluation of values constituting the international legal regime for outer space activities. *Rutgers L. J.*, v. 231, n. 26, p. 229, 1994.

[100] See UNITED NATIONS. Office of Legal Afairs. *Homepage*. Available at: https://www.un.org/ola/en. Access on: 30 abr. 2025.

[101] See section 2.3 above. Only past practices that relate to the preparatory work of UNCLOS would be considered under the rules of treaty interpretation.

[102] See e.g., UNITED NATIONS. UNCLOS I, Vol. I, UN Doc A/CONF.13/5 and Add. 1 to 4 (23 October 1957), p. 98; UNCLOS I, Vol. III, 5th Mtg., UN Doc A/CONF.13/C.1/SR.1-5 (5 March 1958), para 18, although it was in the 1st Committee relating to the territorial sea and Contiguous Zone. See also UNCLOS I, Vol. III, 6th Mtg., UN Doc A/CONF.13/C.1/SR.6-10 (6 March 1958), para. 1, referring to 'mankind' obligated by customary law, i.e., states (as only states are bound by such rules unless specifically provided otherwise). See also reference to the "community of nations", UNCLOS I, Vol. III, 13th Mtg., UN Doc A/CONF.13/C.1/SR. 11-15 (13 March 1958), para 17. See also the interchangeable use between 'mankind' and coastal States with respect to the exploitation of the continental shelf, UNCLOS I, Vol. VI, 13th Mtg., A/CONF.13/C.4/SR.11-15 (20 March 1958), para 4.

[103] UNITED NATIONS. UNCLOS I, Vol. I, UN Doc A/CONF.13/5 and Add. 1 to 4 (23 October 1957), p. 106; UNCLOS I, Vol. V, 7th Mtg., UN Doc A/CONF.13/C.3/SR.6-10 (13 March 1958), para 12; UNCLOS I, Vol. V, 22nd Mtg., UN Doc A/CONF.13/C.3/SR.21-25 (3 April 1958), para 2; UNCLOS I, Vol. VI, 8th Mtg., UN Doc A/CONF.13/C.4/SR.6-10 (12 March 1958), para 16.

3.3 The BBNJ

On June 19, 2023 the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ or the treaty) was adopted.[104] Although the treaty is not in force yet,[105] it may provide useful insights concerning the current interpretation of the CHM principle.

The BBNJ specifically refers to the CHM principle only as a theoretical concept or a general principle in UNCLOS, rather than an operational rule in the context of the BBNJ.[106] Instead, the treaty provides that activities regarding marine genetic resources (MGRs) are for the benefit of "all humanity."[107] While the interests and needs of developing states are addressed after the term 'humanity', it seems broader, in terms of the beneficiaries, than the relevant provision in UNCLOS.[108] The BBNJ does not define the terms 'mankind' (or 'humankind' as it appears in the treaty) or 'humanity'. However, it does address some elements of the CHM principle such as benefit-sharing. Thus, we can infer who the beneficiaries are.

Unlike previous legal regimes, there seems to be a distinction between different benefits, which may be intended for different beneficiaries. For example, capacity-building is intended for states.[109] In addition, the beneficiaries of monetary benefits, such as funding, are states, and specifically developing states.[110] In contrast, the beneficiaries of non-monetary benefits, such as access to MGRs, may also include other actors, although the language of the BBNJ is vague and contradictory on this issue.[111]

Despite the progressive approach of the BBNJ, it is not clear who the beneficiaries of the CHM principle or its elements. However, it seems that there are more indications that states are the beneficiaries, and particularly developing states, especially with respect to monetary benefits and capacity-building.

4 Practical constrains concerning the term 'mankind'

The analysis above reveals that while there is no clear and definite answer regarding the beneficiaries of the CHM principle under UNCLOS, there are more indications that the legal regime considers as the beneficiaries rather than all people. Even if we accept that the term 'mankind' includes individuals, peoples, and other NSAs, there may be institutional constraints that would affect the practical implementation of this term. Thus, while the doctrinal analysis above is not conclusive, although strongly indicative, practical constraints may tip the scale and provide support to the indication above (i.e., that the beneficiaries under the legal regime are states).

The main obstacle for a broad interpretation of the term 'mankind' is that it raises a question concerning the participation of NSAs in the decision-making process at the ISA. The interest of individuals and peoples are usually represented by NGOs. While some of these actors have been granted an observer status at the ISA, they don't have a right to vote and participate in the decision-making process beyond raising awareness of specific issues. They are also excluded from certain meetings, which limits their influence.[112] If individuals and other NSAs are the beneficiaries but cannot parti-

[104] Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, UNGAOR, Further resumed 5th Sess, UN Doc A/CONF.232/2023/4 (19 June 2023) (BBNJ agreement).

[105] In accordance with article 68(1), the agreement will enter into force 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession. As of February 2024, there are only 86 signatories and 1 ratification. See the UNITED NATIONS. *Law of the sea*. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en.

[106] BBNJ agreement (n 104) preamble, Art 7(b). See also UNITED NATIONS. *AOSIS textual submission on president's revised text*. 2 feb. 2020. Available at: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/textual_proposals_compilation_-_15_april_2020.pdf. p. 61.

[107] BBNJ agreement (n 104) Art 10(6).

[108] Especially comparing to earlier drafts that are more similar to UNCLOS Art 140 than the final text, see Draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, 3rd Sess, UN Doc A/CONF.232/2019/6 (17 May 2019), Art 9(4); UNCLOS (n 1) Art 140(1).

[109] BBNJ agreement (n 104) Art 9(b), 14(2)(f), 52(3).

[110] BBNJ agreement, Art 14(5), 52(12)-52(14).

[111] See reference to "current international practice", but also to possible preferential treatment of developing states. Art 14(2), 14(4).

[112] BOURREL, M. *et al*. The common of heritage of mankind as a means to assess and advance equity in deep sea mining. *Marine Policy*, v. 313, n. 95, 2018.

cipate in decisions on the division of benefits, it would hinder the implementation of the CHM principle. In practice, the representation problem essentially means that states are the beneficiaries that would act as trustees for [hu]mankind.[113]

A second practical issue is the division mechanism. Even if we accept that NSAs are entitled to the benefits from activities in the Area, it does not mean that they can directly receive them. First, while future generations may have interest that should be considered, physically they are not here to directly receive the benefits, nor do they have representatives that could accept the benefits in their name. While NGOs may represent the interests of NSAs, including future generations, they are not competent to hold 'property' belonging to others. Such competence would require consent from every NSA in the world and also future ones, which of course would not be able to give their consent. In any case, this would require a legal operation that may not be possible.

It is noteworthy that the possibility that the term 'mankind' includes only states is not without practical problems. As mentioned in the introduction, there is a question whether the beneficiaries include only states and semi-states that are parties to UNCLOS, or also those who are not. As mentioned above, Part XI is not considered as customary law and thus cannot obligate non-parties.[114] Furthermore, as mentioned, a treaty cannot create rights or obligations for third states without their consent.[115] However, in the case of a treaty that grant *rights* to third states or to all states, the consent is presumed unless indicated otherwise.[116] Thus, while obligations can only apply to parties or to third parties (states) under customary law, rights can apply to non-parties unless they explicitly objected.

The assertion above relies on the distinction between right and benefit, implying that the need for consent (and the ability to confer upon third-parties to begin with) would not apply to the latter.[117] However, given that the ISA has obligation to distribute benefits from activities in the Area, this means that someone has a right (entitlement) to receive these benefits.[118] It is noteworthy that with respect to NSAs, the argument above addressed their possible interests rather than a right to the benefits. The difference between states and NSAs in this context may be the ability to enforce the right, where NSAs might not be able to do so as such actors do not have standing in relevant tribunals.[119]

5 Implications for the implementation of the chm principle

As analyzed above, there are more indications that the term 'mankind' within the framework of LOS refers to states. In other words, states are the beneficiaries of the CHM principle and should receive the benefits from activities in the Area. This conclusion may affect the implementation of the CHM principle in the context of deep-sea mining and other activities in the Area in practice and may also affect the competence of the ISA to distribute the benefits as provided in UNCLOS.

The ISA, implementing the CHM principle, must provide a mechanism to distribute benefits from activities in the Area to the beneficiaries, i.e. mankind.[120] The identity of the beneficiaries could affect the mechanism for benefit-sharing. In essence, if states are indeed the beneficiaries of the CHM principle, then any benefits, especially monetary benefits, should be directly distributed or paid to states.[121]

Considering this, the ISA's Financial Committee's suggestion to create a fund ('Sustainability Fund') that would accumulate the benefits from activities in the

[113] WOLFRUM, R. *Common Heritage of Mankind*. [*S. l.*]: Max Planck Encyclopedia of Public International Law, 2009. paras 15, 27.

[114] N 5.

[115] N 38; VILLIGER, M. E. *Commentary on the 1969 Vienna Convention on the Law of Treaties*. [*S. l.: s. n.*], 2009. p. 467.

[116] VCLT (n 10) Art 36(1); PROELSS, A. Article 36. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018.

[117] See PROELSS, A. Article 34. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018. p. 671.

[118] On the link between rights, obligations, and other legal concepts see HOHFELD, W. N. Fundamental legal conceptions as applied in judicial reasoning. *The Yale Law Journal,* v. 26, n. 8, 1917. This research, although not contemporary, is considered a basic material in legal philosophy on this issue and is the basis for more recent scholarship. See also Proelss (n 116) 718; VILLIGER, M. E. *Commentary on the 1969 Vienna Convention on the Law of Treaties*. [*S. l.: s. n.*], 2009. p. 484.

[119] See discussion in PROELSS, A. Article 34. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018. p. 671.

[120] UNCLOS (n 1) Art 140(2), 160(2)(f)(i).

[121] WILDE, D. *et al.* Equitable sharing of deep-sea mining benefits: more questions than answers. *Marine Policy*, v. 2, n. 151, 2023.

Area for various purposes and investments,[122] may not be within the competence of the ISA. Such action would require explicit consent of all states (parties and non-parties) not just for the creation of the fund, but also for the ISA's role as a trustee and holder of the benefits. This legal construction may require an amendment of UNCLOS or a decision of SPLOS, as the Convention provides that the ISA is competence to create a mechanism for benefit-sharing, but not to hold or manage the benefits.

Furthermore, even if such fund is with the competence of the ISA, it may pose a challenge in terms of distribution of the benefit to the beneficiaries (i.e., states). At least some of the intended purposes of the fund, such as research or environmental protection and rehabilitation, would not reach states directly. In addition, such purposes would be enjoyed by other actors that are not the designated beneficiaries, which essentially conflicts with UNCLOS. In contrast, other purposes, such as capacity-building, would only benefit some states (mainly developing states), and thus not all beneficiaries would receive the benefits as prescribed in UNCLOS.

6 Concluding Remarks

This paper critically analyzed the term 'mankind' to determine who are the beneficiaries of the CHM principle as prescribed in UNCLOS. First, the paper followed the relevant rules of treaty interpretation in international law. Second, the paper offered a comparative analysis to other legal regimes that govern the global common and address benefits for 'mankind'. While there is no definite answer as to whom are the beneficiaries in accordance with the term 'mankind', there are more indications that the term should be interpreted narrowly to include only states (whether parties to UNCLOS or not).

Despite contrary claims, mostly in the literature, there is nothing in current international law that suggest that there is an entity of '[hu]mankind' that has rights and obligations, i.e., is a subject of international law, independently from specific NSAs that were recognized as having legal personality in specific contexts within international law. Furthermore, while UNCLOS recognizes the *interest* of individuals and groups that comprise 'mankind', this does not mean that such actors have *right* to the benefits from activities in the Area under UNCLOS, as there is no specific obligation for such distribution of the benefits.[123]

The paper also addressed practical constrains to the broader interpretation of the term 'mankind' as promoted in the literature, i.e., that 'mankind' includes all people. A broad interpretation would create problems for the implementation of the CHM principle, mostly in term of participation or lack of participation of the intended beneficiaries in the decision-making process concerning their rights.

Lastly, the paper discussed possible effects of the narrow interpretation of the term 'mankind' as reflected in the analysis. The interpretation of the term 'mankind' may affect the mechanism for benefit-sharing. If states are indeed the only beneficiaries, then any mechanism established by the ISA must distribute the benefits directly to them. This poses a challenge to the current suggestions for a fund that would hold the benefits in trust and utilize it in a way that would not distribute the benefits directly to individual states, or to all states.

Considering the above, support for a broad interpretation of the term 'mankind' or obligations for states on how to utilize the benefits would require an amendment to UNCLOS or an explicit decision on the issue in a forum that can provide broad participation and consideration of all relevant issues, such as SPLOS. Alternatively, an explicit decision to determine the interpretation of the term 'mankind', especially if it is broad interpretation, or obligations for states on what to do with the benefits, may affect other regimes of the global commons that reflect the CHM principle. As such, any decision on the issue should be within a forum that allows the broadest participation, including NSAs (at least as observers), such as the UNGA. While the UNGA's resolutions are generally not binding, unanimous resolution may indicate a development of binding customary rules.

[122] ISA. Technical Study No. 31, Equitable sharing of financial and other economic benefits from deep-seabed mining (2021) (ISA Study No. 31). p. 64-67.

[123] On the different between rights, duties, and interests see e.g., WENAR, L. The nature of rights. *Philosophy and Public Affairs,* v. 33, n. 3, 2005. See also SCHAUER, F. A comment on the structure of rights. *Georgia Law Review,* v. 27, 1993.

References

Agreement governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Treaty).

Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (adopted on 28 July 1994, entered into force 28 July 1996), 1836 UNTS 3 (Part XI agreement).

Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, UNGAOR, Further resumed 5th Sess, UN Doc A/CONF.232/2023/4 (19 June 2023) (BBNJ agreement).

BLANCHARD, C. *Nauru and deep-sea minerals exploitation*: a legal exploration of the 2-year rule. 2021. Available at: https://site.uit.no/nclos/2021/09/17/nauru-and-deep-sea-minerals-exploitation-a-legal-exploration-of-the-2-year-rule/.

BOURREL, M. *et al.* The common of heritage of mankind as a means to assess and advance equity in deep sea mining. *Marine Policy*, v. 313, n. 95, 2018.

CHURCHILL, R. The 1982 United Nations Convention on the Law of the Sea. *In*: ROTHWELL, D. *et al.* (ed.). *The Oxford handbook of the law of the sea.* [*S. l.: s. n.*], 2015. p. 37.

Continental Shelf (Libyan Arab Jamahiriya/Malta) (Merits) [1985] ICJ Rep 13.

Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Merits) [1982] ICJ Rep 18.

Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries, UNGAOR, 51st Sess, UN Doc A/RES/51/122 (4 February 1997).

Declaration on the fiftieth anniversary of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, UNGAOR, 72nd Sess, UN Doc A/RES/72/78 (14 December 2017).

Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar) (Judgment of 14 March 2012) ITLOS Reports 2012, Separate Opinion of Judge Gao.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Merits) [1984] ICJ Rep 246.

Draft Regulations on Exploitation of Mineral Resources in the Area, ISA, 25th Sess, UN Doc ISBA/25/C/WP.1 (22 March 2019).

Draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, 3rd Sess, UN Doc A/CONF.232/2019/6 (17 May 2019), Art 9(4).

FASAN, E. The meaning of the term mankind in space legal language. *J. Space L.*, v. 128, n. 2, 1974.

Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission, 58th Sess, UN Doc A/CN.4/L.702 (18 July 2006).

Gender and the Law of the Sea (Irini Papanicolopulu ed, 2019).

HOHFELD, W. N. Fundamental legal conceptions as applied in judicial reasoning. *The Yale Law Journal,* v. 26, n. 8, 1917.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the International Union for Conservation of Nature.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_IUCN.pdf.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the People's Republic of China.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_China.pdf.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the Republic of Nauru.* Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_Nauru.pdf.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Written Statement of the United Nations Environment Programme.* Available at: https://www.itlos.

org/fileadmin/itlos/documents/cases/case_no_17/C17_Written_Statement_UNEP.pdf.

ISA. *Equitable sharing of financial and other economic benefits from deep-sea mining*. 2022. Available at: https://www.isa.org.jm/wp-content/uploads/2022/06/policy_brief_benefit_sharing_01_2022-1.pdf.

ISA. Technical Study No. 31, Equitable sharing of financial and other economic benefits from deep-seabed mining (2021) (ISA Study No. 31).

ISA. *The Mining Code*. Available at: https://www.isa.org.jm/the-mining-code/.

JAECKEL, A. *et al.* Sharing benefits of the common heritage of mankind: is the deep seabed mining regime ready?. *Marine Policy*, v. 70, p. 199, 2016.

JOYNER, C. C. Legal implications of the concept of the common heritage of mankind. *International and Comparative Law Quarterly*, v. 35, n. 195, 1986.

MANKIND. *Cambridge dictionary*. Available at: https://dictionary.cambridge.org/dictionary/english/mankind.

MANKIND. *Merriam-Webster dictionary*. Available at: https://www.merriam-webster.com/dictionary/mankind.

NIJMAN, J. E. *Non-state actors and the international rule of law*: revisiting the 'realist theory' of international legal personality. 2009. Available at: https://ssrn.com/abstract=1522520.

Position paper submitted by Australia, Fiji, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu, SPLOS, 11th Mtg., UN Doc SPLOS/67 (10 May 2001).

PROELSS, A. Article 34. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018.

PROELSS, A. Article 36. *In*: DÖRR, O.; SCHMALENBACH, K. (ed.). *Vienna Convention on the Law of Treaties*: a commentary. [*S. l.: s. n.*], 2018.

RANA, H. S. The common heritage of mankind and the final frontier: a revaluation of values constituting the international legal regime for outer space activities. *Rutgers L. J.*, v. 231, n. 26, 1994.

Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, ISA, 18th Sess, UN Doc ISBA/18/A/11 (22 October 2012) (Cobalt Crusts regulations).

Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISA, 19th Sess, UN Doc ISBA/19/C/17 (22 July 2013) (Polymetallic Nodules regulations).

Regulations on prospecting and exploration for polymetallic sulphides in the Area, ISA,16th Sess, UN Doc ISBA/16/A/12/Rev.1 (15 November 2010) (Polymetallic Sulphides regulations).

Reparation for injuries suffered in the service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174.

Request for the Inclusion of a Supplementary Item in the Agenda of the Twenty-Second Session: Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-Bed and of the Ocean Floor, Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind, 22nd Sess, UN Doc A/6595 (18 August 1967).

Responsibilities and obligations of States with respect to activities in the Area (Advisory Opinion of 1 February 2011) ITLOS Reports 2011.

ROBB, S. *Bolstering the area's benefits to humankind*. 2023. Available at: https://site.uit.no/nclos/2023/02/28/bolstering-the-areas-benefits-to-humankind/.

ROSENBERG, D. The legal fight over deep-sea resources enters a new and uncertain phase. *EJIL*: Talk! Blog, 22 Aug. 2023.

RYNGAERT, C. Non-state actors: carving out a space in a state-centred international legal system. *Neth. Int. Law Rev.*, v. 63, 2016.

SCHAUER, F. A comment on the structure of rights. *Georgia Law Review,* v. 27, 1993.

SECRETARIAT OF THE ANTARCTIC TREATY. *Compilation of key documents of the Antarctic Treaty System*. 3rd. ed. 2017. Available at: https://documents.ats.aq/atcm40/ww/ATCM40_ww014_e.pdf.

SHAW, M. N. *International law*. 9th. ed. [*S. l.: s. n.*], 2021.

SHELTON, D.; GOULD, A. Positive and negative obligations. *In*: SHELTON, D. (ed.). *The Oxford handbook of international human rights law*. [*S. l.: s. n.*], 2013.

SPRANKLING, J. G. *The international law of property*. [*S. l.: s. n.*], 2014.

SQUIRES, D. *Sharing the benefits from the deep sea*: presentation for the webinar "Benefit sharing and the common heritage of humankind: what constitutes equitable distribution?". Available at: https://www.resolve.ngo/benefitsharing_commonheritage.htm.

Statute of the International Court of Justice, San Francisco, 24 October 1945, Article 38(1)(d) (ICJ Statute).

TANAKA, Y. *Protection of community interests in international law*: the case of the law of the sea. [*S. l.*]*:* Max Planck Yearbook of United Nation Law, 2011.

THE ANTARCTIC Treaty. Available at: https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf.

TLADI, D. The common heritage of mankind and the proposed treaty on biodiversity in areas beyond national jurisdiction: the choice between pragmatism and sustainability. *Yearbook of International Environmental Law,* v. 25, n. 1, p. 127, 2015.

TOMUSCHAT, C. International organizations as third parties under the law of international treaties. *In*: CANNIZZARO, E. (ed.). *The law of treaties beyond the Vienna Convention*. [*S. l.: s. n.*], 2011.

Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies (adopted on 1 January 1967, entered into force 10 October 1967) 610 UNTS 205 (outer space treaty).

TRINDADE, A. A. Cançado. *International law for humankind*: towards a new jus gentium. 3rd. ed. [*S. l.: s. n.*], 2020.

UNITED NATIONS. *AOSIS textual submission on president's revised text*. 2 feb. 2020. Available at: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/textual_proposals_compilation_-_15_april_2020.pdf.

UNITED NATIONS. Division for Ocean Affairs and the Law of the Sea. *Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982*. Available at: https://www.un.org/depts/los/meeting_states_parties/meeting_states_parties.htm.

UNITED NATIONS. Office of Legal Afairs. *Homepage*. Available at: https://www.un.org/ola/en. Access on: 30 abr. 2025.

UNITED NATIONS. SPLOS, 16th Mtg., UN Doc SPLOS/148 (28 July 2006).

UNITED NATIONS. SPLOS, 19th Mtg., UN Doc SPLOS/203 (24 July 2009).

UNITED NATIONS. SPLOS, 22nd Mtg., UN Doc SPLOS/251 (11 July 2012).

UNITED NATIONS. SPLOS, 24th Mtg., UN Doc SPLOS/277 (14 July 2014).

UNITED NATIONS. SPLOS, 26th Mtg., UN Doc SPLOS/303 (2 August 2016).

UNITED NATIONS. SPLOS, 27th Mtg., UN Doc SPLOS/316 (10 July 2017).

UNITED NATIONS. SPLOS, 32nd Sess, UN Doc SPLOS/32/14 (17 June 2022).

UNITED NATIONS. *Statement by the Secretary-General*. 1968. Available at: https://search.archives.un.org/uploads/r/united-nations-archives/c/7/3/c735473b40cc2c3e8812db970ebe70d4094ca020de3d3a30ccec83088a4c205a/S-0885-0001-01-00001.PDF.

UNITED NATIONS. *Treaty collection (UNTC)*. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en.

UNITED NATIONS. Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS).

UNITED NATIONS. UNCLOS I, Vol. I, UN Doc A/CONF.13/5 and Add. 1 to 4 (23 October 1957).

UNITED NATIONS. UNCLOS I, Vol. I, UN Doc A/CONF.13/5 and Add. 1 to 4 (23 October 1957).

UNITED NATIONS. UNCLOS I, Vol. III, 13th Mtg., UN Doc A/CONF.13/C.1/SR. 11-15 (13 March 1958).

UNITED NATIONS. UNCLOS I, Vol. III, 5th Mtg., UN Doc A/CONF.13/C.1/SR.1-5 (5 March 1958).

UNITED NATIONS. UNCLOS I, Vol. III, 6th Mtg., UN Doc A/CONF.13/C.1/SR.6-10 (6 March 1958).

UNITED NATIONS. UNCLOS I, Vol. V, 22nd Mtg., UN Doc A/CONF.13/C.3/SR.21-25 (3 April 1958).

UNITED NATIONS. UNCLOS I, Vol. V, 7th Mtg., UN Doc A/CONF.13/C.3/SR.6-10 (13 March 1958).

UNITED NATIONS. UNCLOS I, Vol. VI, 13th Mtg., A/CONF.13/C.4/SR.11-15 (20 March 1958).

UNITED NATIONS. UNCLOS I, Vol. VI, 8th Mtg., UN Doc A/CONF.13/C.4/SR.6-10 (12 March 1958).

UNITED NATIONS. UNCLOS I. Available at: https://legal.un.org/diplomaticconferences/1958_los/.

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 11th Mtg, UN Doc A/CONF.62/C.1/SR.11 (6 August 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 13th Mtg, UN Doc A/CONF.62/C.1/SR.13 (8 August 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 17th Mtg, UN Doc A/CONF.62/C.1/SR.17 (27 August 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 2nd Mtg, UN Doc A/CONF.62/C.1/SR.2 (11 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 4th Mtg, UN Doc A/CONF.62/C.1/SR.4 (15 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 5th Mtg, UN Doc A/CONF.62/C.1/SR.5 (16 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 6th Mtg, UN Doc A/CONF.62/C.1/SR.6 (16 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 7th Mtg, UN Doc A/CONF.62/C.1/SR.7 (17 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 2nd Sess, 8th Mtg, UN Doc A/CONF.62/C.1/SR.8 (17 July 1974).

UNITED NATIONS. UNCLOS III, 1st Cmte, 3rd Sess, 19th Mtg, UN Doc A/CONF.62/C.1/SR.19 (26 March 1975).

UNITED NATIONS. UNCLOS III, 1st Cmte, 3rd Sess, 20th Mtg, UN Doc A/CONF.62/C.1/SR.20 (28 April 1975).

UNITED NATIONS. UNCLOS III, 1st Cmte, 3rd Sess, 21st Mtg, UN Doc A/CONF.62/C.1/SR.21 (28 April 1975).

UNITED NATIONS. UNCLOS III, 1st Cmte, 3rd Sess, 22nd Mtg, UN Doc A/CONF.62/C.1/SR.22 (28 April 1975).

UNITED NATIONS. UNCLOS III, 1st Cmte, 5th Sess, 30th Mtg, UN Doc A/CONF.62/C.1/SR.30 (27 August 1976).

UNITED NATIONS. UNCLOS III, 1st Cmte, 5th Sess, 36th Mtg, UN Doc A/CONF.62/C.1/SR.36 (14 September 1976).

UNITED NATIONS. UNCLOS III, 1st Cmte, 5th Sess, 37th Mtg, UN Doc A/CONF.62/C.1/SR.37 (14 September 1976).

UNITED NATIONS. UNCLOS III, 1st Sess, 1st Plen Mtg, UN Doc A/CONF.62/SR.1 (3 December 1973).

UNITED NATIONS. UNCLOS III, 2nd Sess, 36th Plen Mtg, UN Doc A/CONF.62/SR.36 (10 July 1974).

UNITED NATIONS. UNCLOS III, 2nd Sess, 37th Plen Mtg, UN Doc A/CONF.62/SR.37 (11 July 1974).

UNITED NATIONS. UNCLOS III, 8th Sess, 116th Plen Mtg, UN Doc A/CONF.62/SR.116 (27 April 1979).

UNITED NATIONS. UNCLOS III, Reports of the Committees and Negotiating Groups, Reports of the Committees and Negotiating Groups on negotiations at the resumed 7th Sess, UN Doc A/CONF.62/RCNG/1 (19 May 1978).

UNITED NATIONS. UNCLOS III, Resumed 11th Sess and Final Part 11th Sess and Conclusion, 188th Mtg, UN Doc A/CONF.62/SR.188 (7 December 1982).

UNITED NATIONS. UNCLOS III, Resumed 9th Sess, 138th Plen Mtg, UN Doc A/CONF.62/SR.138 (26 August 1980).

UNITED NATIONS. UNGAOR, 1280th Plan. Mtg., UN Doc A/RES/1962 (XVIII) (13 December 1963).

UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/PV.1933 (17 December 1970). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N73/770/01/PDF/N7377001.pdf?OpenElement.

UNITED NATIONS. UNGAOR, 1933rd Plen Mtg, UN Doc A/RES/2749(XXV) (17 December 1970).

UNITED NATIONS. Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

VAN DOORN, E. Environmental aspects of the mining code: preserving humankind's common heritage while opening Pardo's box?. *Marine Policy*, v. 70, p. 193, 2016.

VILLIGER, M. E. *Commentary on the 1969 Vienna Convention on the Law of Treaties.* [*S. l.: s. n.*], 2009.

WANG, C.; CHANG, Y. C. A new interpretation of the common heritage of mankind in the context of the international law of the sea. *Ocean and Coastal Management,* v. 3, n. 191, 2020.

WENAR, L. The nature of rights. *Philosophy and Public Affairs,* v. 33, n. 3, 2005.

WILDE, D. *et al.* Equitable sharing of deep-sea mining benefits: more questions than answers. *Marine Policy*, v. 2, n. 151, 2023.

WOLFRUM, R. *Common Heritage of Mankind.* [*S. l.*]: Max Planck Encyclopedia of Public International Law, 2009.

Acknowledgements

This research is part of the DEEP REST project that was funded through the 2020-2021 Biodiversa and Water JPI joint call for research projects, under the BiodivRestore ERA-NET Cofund (GA N°101003777), with the EU and the following funding organisations: Agence Nationale de la Recherche (ANR-21-BIRE-0003), France, Ministry of Agriculture, Nature and Food Quality (LNV), Netherlands, Research Foundation – Flanders (FWO), Belgium, German Federal Ministry of Research (BMBF) through VDI/VDE-IT, Germany, Environmental Protection Agency (EPA), Ireland, Fundação para a Ciência e a Tecnologia (FCT), Portugal, Fundo Regional para a Ciência e Tecnologia (FRCT), Portugal-Azores and State Research Agency (AEI), Spain.

Para publicar na Revista de Direito Internacional, acesse o endereço eletrônico www.rdi.uniceub.br ou www.brazilianjournal.org.
Observe as normas de publicação, para facilitar e agilizar o trabalho de edição.