



NON-STATE ACTORS AND HUMAN SECURITY IN NAVIGABLE SPACES

17 GENNAIO 2022

The International Seabed Authority's
Contribution to Human Security
Standard-Setting

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Abstract [En]: This paper argues that ISA's mandates, in accordance with UNCLOS and the 1994 Implementing Agreement, are unavoidable interlinked to a people-centred approach to international peace and sustainable development. Such an approach characterizes, at the same time, the core concept of human security. This paper focuses on the extent and limits of the ISA's contribution to enhancing human security standard-setting, while supporting the implementation of the 2030 Agenda for Sustainable Development.

Abstract [It]: Il presente studio muove dalla convinzione che le competenze dell'Autorità internazionale dei fondi marini, conformemente alla CNUDM ed all'Accordo Applicativo del 1994, si sono venute sviluppando in linea con un approccio alla pace ed allo sviluppo sostenibile che pone la persona umana, intesa anche come collettività, al centro delle relazioni internazionali. Tale approccio riflette l'essenza del concetto di sicurezza umana. Questo articolo si propone, dunque, di studiare la portata ed i limiti del contributo dell'Autorità nel migliorare la definizione degli standard di sicurezza umana, promuovendo al contempo la realizzazione dell'Agenda 2030 per lo Sviluppo Sostenibile.

Keywords: International Seabed Authority; Common Heritage of Mankind; Human Security; Sustainable Development; Areas Beyond National Jurisdiction

Parole chiave: Autorità internazionale dei fondi marini; patrimonio comune dell'umanità; sicurezza umana; sviluppo sostenibile; aree al di là della giurisdizione nazionale

Summary: **1.** Introduction. **2.** Common Heritage of Mankind, Sustainable Development, and Human Security. **3.** The ISA in a Global Context. **3.1.** ISA Operational Evolution. **3.2.** The Strategic Plan 2019-2023. **4.** The ISA as *Sui Generis* Actor in Ensuring Human Security. **4.1.** The ISA and the Economic Dimension of Human Security. **4.2.** The ISA and the Environmental Dimension of Human Security. **5.** Conclusions.

1. Introduction

The International Seabed Authority (hereinafter, 'ISA' or 'Authority') is an autonomous international organization through which Parties to the United Nations Convention on the Law of the Sea (hereinafter, 'UNCLOS' or 'Convention'), organize and control activities related to the exploration and exploitation of mineral resources located in the International Seabed Area (hereinafter, 'Area') for the benefit of mankind.¹

* Articolo sottoposto a referaggio.

¹ United Nations Convention on the Law of the Sea, *adopted* on 10 December 1982, entered into force on 16 November 1994; *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 provisionally on 16 November 1994, in accordance with Article 7, par. 1, and definitively on 28 July 1996, in accordance with Article 6, par. 1. The ISA came into existence on

Even today, just over twenty-five years after the entry into force of the UNCLOS and the establishment of the ISA, no exploitation activities have so far been undertaken in the Area, but only exploration activities.²

It might seem paradoxical, at first sight, to speak of the contribution of the ISA to the benefit of humanity, including in terms of human security, as it is not yet fully operational. However, this paper argues that such contribution is appreciable within ISA' recent commitments to the timely and effective implementation of the 2030 Agenda for Sustainable Development, specifically its Goal 14, 'Life below Water,' related to conserve and sustainably use the oceans, seas and marine resources.³

Unsustainability creates vulnerability and risks to environmental hazards that are often intensified by other associated societal threats and challenges, including poverty and resource scarcity, which have led to the progressive securitisation of international socio-economic and environmental matters.

Indeed, with changes in the understanding of security according to the modern perspective of international peace and development, the related concepts of security threats and challenges have also changed within the planning framework of human security approach. Issues associated with a human security approach include economic security and environmental security which call for a more comprehensive and preventive response from the UN system,⁴ to which the ISA does belong.

International practice opens innovative research on human security, which suggests new research questions, including those related to ISA role in enhancing peace and development.

It is certain that despite the difficulties of implementation, today the ISA may be considered a very *sui generis* example of a non-State actor which has ambitious mandates to enhance the sustainably use of the deep seabed for the benefit of mankind, as well as to promote the effective protection of the marine environment and of human life.

16 November 1994, upon the entry into force of UNCLOS. It sits in Jamaica. All Parties to UNCLOS are automatically members of ISA (Article 156, par. 2, UNCLOS). Currently, Parties to UNCLOS, including the European Union, are 168, in accordance with Article 4 of the 1994 Implementing Agreement which reads as follows: 'After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.'

² In its original version of 1982, Part XI codified a so-called 'parallel' exploitation mechanism, according to which the exploitation of the Area had to take place according to an equivalent competition between States, together with the enterprises sponsored by them, and the ISA. The latter had the task of ensuring that the exploitation took place in the interest of humanity through its commercial arm, the Enterprise. The Enterprise is not operational yet. Until seabed mining becomes a commercial reality, the functions of the Enterprise are to be carried out by the ISA Secretariat. Currently, the Authority is focusing on the development of a regulatory regime for exploitation of mineral resources, see *infra* Sections 3 and 4.

³ See, *Transforming our world: the 2030 Agenda for Sustainable Development*, UN General Assembly Resolution, UN Doc. A/RES/70/1, 21 October 2015 and other relevant documents. See, M.H. NORDQUIST, J.N. MOORE, R. LONG (eds.), *The Marine Environment and United Nations Sustainable Development Goal 14: Life below Water*, Brill Nijhoff, Leiden/Boston, 2018.

⁴ See, *2005 World Summit Outcome*, UN General Assembly Resolution, UN Doc. A/RES/60/1, 25 October 2005; and, ID., A/RES/64/291, 16 July 2010, and subsequent documents.

This paper argues that, while implementing its mandates, the ISA is inescapably contributing to the human security standard-setting at global level.

Section 2 will analyse the concepts of common heritage of mankind, sustainable development, and human security, with the aim at showing interlinkages between them. Following this analysis, Section 3 will focus on the ISA role in a global context, highlighting current developments in the exercise of its mandates, attributed to it by UNCLOS and the 1994 Implementing Agreement. More specifically, Section 3 is divided into two subsections. They will explore the ISA operational evolution,⁵ which are of relevance in enhancing a people-centred approach to international peace and development according to the ISA Strategic Plan 2019-2023.⁶

Starting from the presumption that people-centred approach characterizes, at the same time, the core concept of human security, and once the ISA role in a global context is explored, Section 4 will focus specifically on the ISA as *sui generis* actor in ensuring human security. Specific attention will be paid on its contribution on two dimensions of the broader concept of human security: on one hand, the economic dimension,⁷ and, on the other hand, the environmental dimension of human security.⁸

Finally, the last Section will deal with concluding reflections on the extent and limits of the ISA's contribution to enhancing human security standards-setting, while supporting the implementation of the 2030 Agenda for Sustainable Development.⁹

2. Common heritage of mankind, sustainable development, and human security

In 1970 the UN General Assembly referred, for the first time, to seabed, ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as to its resources, as common heritage of mankind.¹⁰

⁵ See *infra* Subsection 3.1.

⁶ See *infra* Subsection 3.2.

⁷ See *infra* Subsection 4.1.

⁸ See *infra* Subsection 4.2.

⁹ See *infra* Section 4.

¹⁰ UN General Assembly Resolution, UN Doc. 2749 (XXV), 17 December 1970. See, amongst other, A. PARDO, *Common Heritage: Selected Papers on Oceans and World Order: 1967-1974*, International Ocean Institute, Occasional Paper, n. 3, Malta, 1975; I. BROWNLIE, *Legal Status of Natural Resources in International Law (Some Aspects)*, *Recueil des cours*, vol. 162, 1979-I, pp. 245-318; R.J. DUPUY, *La gestion des ressources pour l'humanité: le droit de la mer*, in *Académie de Droit International de la Haye, Colloque 29-31 October 1981*, The Hague, 1982; R. WOLFRUM, *The Principle of Common Heritage of Mankind*, in *Heidelberg Journal of Int. Law*, vol. 43, 1983, n. 2, pp. 312- 337; C.C. JOYNER, *Legal Implications of the Concept of the Common Heritage of Mankind*, in *Int. and Comparative Law Quarterly*, vol. 35, 1989, n. 1, pp. 190-199; K. BLASAR, *The Concept of the Common Heritage of Mankind in International Law*, Martinus Nijhoff, The Hague/Boston/London, 1998; J.M. PUREZA, *O património comum da humanidade: Rumo a um direito internacional da solidariedade*, Edições Afrontamento, Porto, 1998; J.A. CARRILLO-SALCEDO, *Le concept de patrimoine commun de l'humanité*, in *Société française pour le droit international (ed.), Hommage à R. J. Dupuy. Ouvertures en Droit international*, Pendone, Paris 2000, pp. 55-66; C.W. PINTO, *The Common Heritage of Mankind: Then and Now*, in *Recueil des cours*, vol. 361, 2013, pp. 9-129; A.A. CANÇADO

Today as then, the relevance of the introduction of the common heritage of mankind concept in international law may be appreciated in terms of an institutionalized multilateral regime, one of a kind, for the benefit of mankind as a whole, codified by the Part XI UNCLOS and the 1994 Implementing Agreement.¹¹

Although the legal scope of the common heritage of mankind principle is limited to the international regime of the Area, its contents reflect a general perspective of protection of common interests of the international community which, even today, is a source of inspiration for multilateral regulatory frameworks to protect common interests. In such terms, the general purpose that the common heritage of mankind concept intends to pursue is that of protecting general interests of individuals as collectivity, i.e. humanity, which has nevertheless contributed to elaborating further pathways towards international peace and development.¹²

Alongside the codification process of the common heritage of mankind regime, international cooperation in the protection of human rights and fundamental freedoms, together with the process of institutionalization of control mechanisms at the universal and regional level, certainly reflect an example of the limits placed on the classic State-centred international law system.¹³ Even the international protection of the environment, as a 'living space' for human beings, is now an unavoidable issue.¹⁴

Indeed, two years after the introduction of the concept of common heritage of mankind in international law, the 1972 UN Conference on the Human Environment broadly introduced the concept of sustainable development.¹⁵ It was the first world Conference to make the environment a major issue, thus

TRINDADE, *International Law for Humankind: Towards a New Jus Gentium*, Martinus Nijhoff Publishers, revised edition, Leiden/Boston, 2020.

¹¹ Between 1959 and 1979 various expressions were codified which introduced the general concept of safeguarding the interests of humanity in the use of spaces not subject to national jurisdiction. Indeed, the label 'interest of all mankind' has been used in treaty-practice, e.g. the 1957 Antarctica Treaty and the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, as a sort of 'acknowledgement' that has left, to some extent, Antarctica and outer space legally governed by the principle of freedom as has the high seas. For a recent analysis on international spaces, see, C. CINELLI, *La disciplina degli spazi internazionali e le sfide poste dal progresso tecnico- scientifico*, G. Giappichelli Editore, Torino, 2021.

¹² Ivi, p. 54 ss.

¹³ W. FRIEDMANN, *The Changing Structure of International Law*, Stevens & Sons, London, 1964.

¹⁴ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 June 1986, par. 29.

¹⁵ *Report of the United Nations Conference on the Human Environment*, UN Doc. A/CONF.48/14, 5-6 June 1972. See, P. SANDS, *International Law in the Field of Sustainable Development*, in British Yearbook of Int. Law, vol. 65, 1994, pp. 303-381; V. LOWE, *Sustainable development and unsustainable arguments*, in A. BOYLE and D. FREESTONE (eds.), *International Law and Sustainable Development: Past Achievements and Future Challenges*, Oxford University Press, Oxford, 1999, pp. 19-37; M.C. SEGGER, A. KHALFAN, *Sustainable Development Law: Principles, Practices and Prospects*, Oxford University Press, Oxford, 2004; N.J. SCHRIJVER, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status*, Brill Nijhoff, Leiden/Boston, 2008; V. BARRAL, P.M. DUPUY, *Sustainable development through integration*, in J.E. VIÑUALES (ed.), *The Rio Declaration on Environment and Development: A Commentary*, Oxford University Press, Oxford, 2015, pp. 157-179; C. VOIGT, *Environmentally sustainable development and peace: the role of international law*, in C.M. BAILLIET (ed.), *Research handbook on international law and peace*, Edward Elgar Publishing, Cheltenham, 2019, pp. 219-243.

highlighting the indissoluble link between economic development and ecosystem protection. This link was later confirmed by the 1987 Brundtland report, well-known as Our Common Future.¹⁶

A few years later, the 1992 United Nations Conference on Environment and Development underlined how different social, economic and environmental factors are interdependent and recognized that integrating and balancing economic, social and environmental dimensions required a new approach for ensuring sustainability for development.¹⁷ The interlinkages between peace, development and human rights, which equally considers civil, political, economic, social and cultural rights, together with the concept of benefit-sharing for mankind, were revolutionary for its time spanning a new perception towards an emerging process of ‘humanization’ of international law.¹⁸

This process, inevitably, also involved the review of the classic concept of peace and international security. The emerging awareness that security lies in development, and not (only) in arms, fully entered in the policy and academic debates which put people at the centre of development.

It is against this background that in 1994 the UN Human Development Report took a major step forward.¹⁹ It introduced new dimensions of security, stressing the perception that the peace agenda and the development agenda must be finally integrated according to a people-centred approach.²⁰ In such terms, human security emerged over the years as a central tool for achieving the objective of sustainable development. This involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable and peaceful use of natural resources and the protection of the environment.²¹

It is under this new paradigm of a people-centred approach to the modern international legal order, that the concepts of the common heritage of mankind, of sustainable development and of human security have been essential components of the changing process of the classic State-based international law system.

¹⁶ *Report of the World Commission on Environment and Development: Our Common Future*, UN Doc. A/42/427, 4 August 1987.

¹⁷ *Report of the United Nations Conference on Environment and Development*, UN. Doc. A/CONF.151/26, 3-14 June 1992.

¹⁸ J.A. CARRILLO-SALCEDO, *Soberanía de los Estados y derechos humanos*, Tecnos, Madrid, 2001, p. 14.

¹⁹ United Nations Development Programme, [UN Human Development Report](#), cit. According to the Report, human security concerns ‘how people live and breathe in a society, how freely they exercise their many choices, how much access they have to market and social opportunities and whether they live in conflict or in peace’ (p. 23). In other words, human security means that people can exercise their ‘choices safely and freely-and that they can be relatively confident that the opportunities they have today are not totally lost tomorrow’ (ibid.).

²⁰ ID., *Foreword*, p. iii and p. 23 ss.

²¹ International Law Association, *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, adopted by New Delhi Conference, October 2002. Moreover, according to Amina J. Mohammed, UN Deputy Secretary-General, ‘[t]he human security approach is instrumental to sustainable development, inclusive peace, justice and the well-being and dignity of all people. It is in fact central to the 2030 Agenda.’ See, [Deputy Secretary-General's remarks at Chiefs of Defense Conference](#), on 7 July 2017.

However, despite the enthusiasm of the Nineties, no institutional reform was reached that would guarantee the effectiveness of legally binding instruments for achieving sustainable development and ensuring human security. On the other hand, as for the common heritage of mankind legal regime codified by Part XI UNCLOS, it constituted an obstacle for the industrialized States accession to the UNCLOS itself. In 1994, before its entry into force, the Part XI UNCLOS was indeed amended, but not aborted, by the 1994 Implementing Agreement which removed, in part, such obstacle, whilst maintaining the focus on the benefit of humanity.²²

Current international practice shows that the common heritage of mankind legal regime has failed to gain traction beyond the quite limited success within the UNCLOS. At the end of the last century, the exploitation of the seabed lost much of the previously hypothesized economic significance due to the high costs of exploring the deep seabed and subsoil. Furthermore, the definition and legal status of humankind in international law is still unclear.

Nevertheless, since the beginning of the new millennium, the ISA has in fact entered into various contracts with States and/or with companies sponsored by State Parties that intend to carry out exploration activities in various international areas of the seabed.²³ At the same time, the growing need to initiate intergovernmental processes to facilitate the process of achieving peace and development led to the launch of numerous international and national initiatives on issues considered crucial for the future of humanity, above all in terms of sustainable development and human security.²⁴

We must bear in mind that the only legally binding instruments for States are those related to the implementation of the common heritage of mankind legal regime through the ISA. It is not negligible that the exercise of ISA's mandates needs to reflect the common heritage of mankind principle in a manner that contributes to the sustainable use of the oceans, considering all available knowledge and reflecting the spirit of the 2030 Agenda, strengthening a human security approach. There is, indeed, an

²² In line with the main rules of free market economies, the 1994 Implementing Agreement has substantially changed, *inter alia*, the system of financing the activities in the Area and the functioning of the Enterprise, and introduced innovations relating to the criteria for the adoption of the acts of the various bodies of the Authority (i.e. the collective veto). See, U. LEANZA, *Il diritto degli spazi internazionali. Le nuove frontiere*, vol. II, G. Giappichelli Editoriale, Torino, pp. 101-102; Y. TANAKA, *The International Law of the Sea*, Cambridge University Press, Cambridge, 3rd ed., 2019, p. 224.

²³ Information on exploration activities is available on the [Authority's web page](#), together with the recent intelligence gathering deep data, i.e. the *Deepdata*, inaugurated by the United Nations Secretary-General on the occasion of the Authority's 25th anniversary. See *infra* Section 3.

²⁴ UN Trust Fund for Human Security, [Human Security and Agenda 2030](#), 2017. According to its par. 1: 'Echoing human security principles, the 2030 Agenda emphasizes a "world free of poverty, hunger, disease and want ... free of fear and violence ... with equitable and universal access to quality education, health care and social protection ... to safe drinking water and sanitation ... where food is sufficient, safe, affordable and nutritious ... where habitats are safe, resilient and sustainable ... and where there is universal access to affordable, reliable and sustainable energy"'. See also, for a more general view on the concept of human security, ID., [Humna Security in Theory and Practice. Application of the Human Security Concept and the United Nations Trust Fund for Human Security](#) 2009.

indissoluble link between the common heritage of mankind, sustainable development, and human security: progress in one area enhances the chances of progress in the other; but failure in one area also heightens the risk of failure in the other.

3. The ISA in a global context

In an ever-changing global context, ISA is required, through institutional development, to adequately allow the material scope of its mandates to evolve. This Section is aimed at showing the ISA operational evolution,²⁵ while focusing on the Strategic Plan 2019-2013, adopted by the ISA Assembly, which details, amongst others, the ISA mission in the global context.²⁶

3.1. ISA operational evolution

Because of the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI UNCLOS, the complete setting up of the ISA will require several years.²⁷ The commercial organ of the ISA, i.e. Enterprise, for example, is not yet operational.²⁸

According to the 1994 Implementing Agreement, the setting up and the functioning of ISA organs and subsidiary bodies is based on an evolutionary approach, considering the functional needs of the organs and subsidiary bodies concerned, in order that they may effectively discharge their respective responsibilities at various stages of the development of activities in the Area.²⁹

Currently, it comprises three main operational organs, i.e., the Assembly, the Council and the Secretariat.³⁰ The Assembly is the ‘supreme organ’ which consists of all ISA members, and it is entitled to establish general policies within the competence of the Authority.³¹ The Council is the executive organ of the Authority, empowered to establish specific policies, and it consists of thirty-six members.³² The

²⁵ See *infra* Subsection 3.1.

²⁶ See *infra* Subsection 3.2.

²⁷ As for the history of ISA, see, J.-P. LÉVY, [International Seabed Authority: 20 Years](#), 2014, p. 4 ss.

²⁸ *Ibidem*. See *supra* Section 2.

²⁹ Section 1, par. 3, Annex to 1994 Implementing Agreement.

³⁰ Article 156, par. 4, and 158, par. 1, UNCLOS. In addition, under the Convention, legal disputes relating to seabed matters covered by Part XI are to be handled by a Seabed Disputes Chamber established by the International Tribunal for the Law of the Sea (Articles 186-191 and 287 UNCLOS). Only the Council may institute proceedings before the Chamber on behalf of the Authority in cases of non-compliance.

³¹ Articles 159-160 UNCLOS. The Assembly also has the following powers: it elects the members of the Council and other bodies, as well as the Secretary-General; it sets the two-year budgets of ISA as well as the rates by which Parties contribute towards the budget, based on the assessment scale established by the UN for that body’s activities; following adoption by the Council, it approves the rules, regulations and procedures that ISA may establish from time to time, governing prospecting, exploration and exploitation in the Area; and, it examines reports from other bodies, notably the annual report by the Secretary-General on the work of ISA.

³² Articles 161-162 UNCLOS. The Council has two advisory bodies, the Legal and Technical Commission (LTC) and the Finance Committee. The LTC is an organ of the Council and currently consists of 30 members who are elected by the Council for a period of 5 years (starting from 1 January 2017) from among the candidates nominated by the States.

Secretariat comprises the Secretary-General, who heads the Secretariat itself, and the administrative and technical staff, which are independent and neutral from any government or from any other officials external to the ISA. The Secretariat also exercises interim functions until the Enterprise is operational.³³ Alongside the institutional dimension of the evolutionary approach, there is also a substantive dimension and ineluctability related to ISA mandates towards the progressive development and implementation of the common heritage of mankind legal regime.³⁴

The ISA's mandates are those expressly conferred upon it by UNCLOS and its 1994 Implementing Agreement. These include the adoption of core policy actions related to, on one hand, ensuring that activities in the Area are carried out for the benefit of mankind as a whole, and that such benefits are shared equitably, with specific attention to the effective participation of developing States.³⁵ Complementary, on the other hand, ISA is conferred to ensure the effective protection of the deep-sea marine environment; and to promote deep-sea marine scientific research.³⁶

In addition, ISA has also incidental mandates, consistent with UNCLOS and its implementation, and are implicit in, and necessary for, the exercise of all those powers with respect to activities in the Area.³⁷

Principal features related to ISA mandates have to be firstly addressed in relation to its *ratione loci* limitation. The Area is defined as 'the seabed and subsoil thereof beyond the limits of national jurisdiction',³⁸ which is estimated to represent around 50 per cent of the total area of the world's oceans.³⁹ The ISA jurisdictional limitation *ratione loci* specifically depends on the establishment by States of the limits of their national jurisdiction, including the delineation of the continental shelf extending beyond 200 nautical miles from the baseline of the territorial sea.⁴⁰

It proposes technical and environmental regulations to the Council and advises the Council on all matters relating to the exploration and exploitation of non-living marine resources, such as polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. It also exercises the function of the Economic Planning Commission which is not currently operational. The Finance Committee (composed by 15 members) deals with budgetary and related matters. As for the composition of the Council 2019-2024, Italy would relinquish its seat in group A (i.e. the group composed by China, Italy, Japan and Russian federation) in favour of the United States of America if the United States became a member of the Authority; this does not prejudice the position of any country with respect to any intervening election to the Council.

³³Articles 166-169 UNCLOS.

³⁴ G. LE GURUN, *Some Reflections on the Evolutionary Approach to the Establishment of the International Seabed Authority*, in M. LODGE and M. H. NORDQUIST (eds.) *Peaceful Order in World's Oceans. Essays in Honor of Satya N. Nandan*, Martinus Nijhoff, Leiden, 2014, pp. 249-264.

³⁵ Articles 150-155 UNCLOS; Section 6 Annex to 1994 Implementing Agreement.

³⁶ Articles 145, 209 UNCLOS and Section 1, par. 5 (g), Annex to the Implementing Agreement.

³⁷ Article 157 UNCLOS and Section I, par. 1, Annex to the 1994 Implementing Agreement.

³⁸ Article 1, par. 1 (1), UNCLOS.

³⁹ [UN Factsheet: People and Oceans](#), 2017

⁴⁰ Coastal States are obliged to give due publicity to charts or lists of geographical coordinates of points and, in the case of those indicating the outer limit lines of the continental shelf, to deposit a copy of such charts or lists with the ISA Secretary-General (Article 84, par. 2, UNCLOS).

Once clarified the spatial limitation of the ISA jurisdiction, as with the material scope of ISA policies and mandates (i.e. *ratione materiae*), they have no general nature, but are limited in essence to organise, carry out and control activities in the Area.⁴¹

The exploitation in favor of humanity provided for by the regime of the Area has undergone significant amendments with respect to its original formulation and has not yet obtained full application.⁴² The Area legal regime became operational in 2001, when the ISA signed contracts with a group of seven organizations and governments to explore the Area for polymetallic nodules. In recent years there has been a considerable increase in activities⁴³ that raise important issues in relation to to achieve appropriate balance between emerging multiple objectives of the current international legal order, including those related to sustainable development and human security.

That cannot be achieved without an operational evolution of the implementation process of its explicit and implicit mandates. According to general rules of interpretation, the 1969 Vienna Convention on the Law of Treaties, which reflects customary law,⁴⁴ establishes to take into account, for the purposes of the interpretation of the treaties, every relevant rule of international law applicable to relations between Parties.⁴⁵

This opens, therefore, two scenarios at least. The first is that of a formal coordination mechanism of interpretation between treaties that theoretically could come to configure an obligation of coordination upon States where they are Parties to more legally binding instruments which contain mutually relevant rules.

The second scenario is that of an informal coordination mechanism of interpretation between treaties and other relevant normative instruments, binding or not, that does not envisage an obligation upon interested States, but rather an interpretative orientation, i.e. an evolutionary interpretation.⁴⁶

⁴¹ In its 2011 Advisory Opinion, the Seabed Disputes Chamber specified that ‘activities in the Area’ means a complex set of operations in the context of exploration and exploitation ranging from drilling to dredging, including coring and excavation of the seabed or subsurface. Also, it includes the disposal, dumping and discharge into the marine environment of sediments, waste, or other effluents, as well as the construction and management or maintenance of plants, pipelines and other devices related to the operations in question (*Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, List of cases no. 17, 1 February 2011, paragraphs 87-95).

⁴² See *supra* Section 1.

⁴³ As to the date, ISA has entered into 15-year contracts for exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the deep seabed with 22 contractors. Nineteen of these contracts are for exploration for polymetallic nodules: seventeen in the Clarion-Clipperton Fracture Zone; one in the Central Indian Ocean Basin and one in Western Pacific Ocean. Then, there are seven contracts for exploration for polymetallic sulphides in the South West Indian Ridge, Central Indian Ridge and the Mid-Atlantic Ridge and five contracts for exploration for cobalt-rich crusts in the Western Pacific Ocean. More details are available at [ISA website](#).

⁴⁴ Vienna Convention on the Law of Treaties adopted in Vienna on 23 May 1969. See, R. GARDINER, *Treaty Interpretation*, Oxford University Press, 2nd ed., Oxford, 2015, spec. part II.

⁴⁵ Article 31, par. 3(c), Vienna Convention on the Law of Treaties.

⁴⁶ E. CANNIZZARO, *Diritto Internazionale*, G. Giappichelli Editore, 5 ed., Torino, 2020, pp. 238-239.

The evolutionary interpretation technique adapts the interpretation to international community evolution. The need for such an adjustment was made explicit on the occasion of the commemoration of ISA 25th anniversary in 2019. It was underlined that the priorities and concerns of States have changed respect to what there were in 1982, when UNCLOS was adopted, and even compared to 1994, when ISA was established. Therefore, ISA needs to change as well, and becomes vitally important that the work of ISA is made consistent with the aspirations of the 2030 Agenda for Sustainable Development.⁴⁷ More specifically, the objective of sustainable development acquires the role of interpretative orientation of Part XI UNCLOS and its 1994 Implementing Agreement, having the suitable characteristics to be considered the expression of the evolutionary approach to the ISA mission for the next years according to the Strategic Plan 2019-2023.

3.2. The Strategic Plan 2019-2023

At the United Nations Ocean Conference held in New York in June 2017, ISA announced voluntary commitments to advance the 2030 Agenda. Such commitments were initially related to the achievement of the most relevant Sustainable Development Goal to ISA, i.e. the Goal n. 14 on ‘Conserve and sustainably use the oceans, seas and marine resources for sustainable development.’⁴⁸

Two years later, ISA adopted the Strategic Plan for the Period 2019-2023, which outlines its main mission as that to develop and maintain a comprehensive regulatory mechanism, including that of equitable benefit-sharing for the mankind as a whole, which incorporates effective protection of the marine environment and of human health and safety (and, consequently, of human security as well).⁴⁹

Specifically, the Strategic Plan includes several Strategic Directions, among which the Strategic Direction n. 1 is related to realize the role of ISA in a global context, and its sub-strategic direction n. 1.1 is specifically devoted to aligning ISA programmes and initiatives towards the realization of those sustainable development goals relevant to its mandates and policy actions.⁵⁰

In addition, Annex I put aside the 2017 ISA voluntary commitments and underlines how the mentioned Goal n. 14 on the conservation and sustainable use of oceans and its resources is deeply interconnected to other Goals, which also have significance to the work of ISA.⁵¹ Therefore, the Strategic Plan and the Annex I are based on the perception that the lack of ISA progress on the Goal 14 hinders progress on others at global level.

⁴⁷ A special [commemorative session](#) was held at the ISA Assembly in Kingston, Jamaica on 25 July 2019.

⁴⁸ [ISA Voluntary Commitments to Support Implementation of SDG14](#)

⁴⁹ ISA Assembly, Doc. ISBA/24/A/10, 26 July 2018, p.10

⁵⁰ Ivi, p. 8.

⁵¹ Ivi, p. 15.

The perception of the existence of interlinkages between general interests and needs of the international community, including in terms of development and human security, is not new. The rationale behind was already very clear before the adoption of the 2030 Agenda and related initiatives directed to ensure development and human security. It is sufficient to remind that the UNCLOS Preamble affirms the desirability of establishing a legal order of oceans and seas is that to ‘contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries [...],’⁵² and solemnly recalls the principle of the common heritage of mankind to be applied to the Area for the benefit of mankind as a whole, irrespective of the geographical location of States.⁵³

By implementing the common heritage of mankind regime, the ISA is doing its part at global level to the strengthening of international peace, security, cooperation and friendly relations among States and to promote the economic and social advancement of humanity.⁵⁴

From the adoption of the UNCLOS until today, the advancement of an evolutionary approach to the sustainable use of mineral resources in the Area for the benefit of mankind as a whole is moving to a people-centred approach consistent with UNCLOS Part XI and its 1994 Implementing Agreement, and international law.

More specifically, ISA contribution to the achievement of Goal 14 might be appreciated in terms of adoption of specific programmes devoted to increase marine scientific knowledge and research capacity in the general interest of humanity, and the transfer of marine technology.

The sustainable use of oceans resources has inevitably an impact on the international economic order, including in terms of reduction of poverty. Therefore, the Sustainable Goal n. 1, ‘End poverty in all its forms everywhere,’⁵⁵ is specifically interconnected with the sustainable use of oceans resources in the Area. The distribution of payments received by ISA in accordance with the common heritage of mankind legal regime and, therefore, with equitable benefit-sharing criteria,⁵⁶ might be considered as one of the operational tools for reduction of poverty. At the same time, the distribution of payments acquires importance in the human security context, being chronic and persistent poverty a security threat.

Specular to the reduction of poverty, and to the reduction of human insecurity, is the ISA support of a sustainable economic growth. It guarantees the access for least developed countries to the Area and its

⁵² UNCLOS Preamble, paragraph 5.

⁵³ Ivi, paragraph 6.

⁵⁴ Ivi, paragraph 7.

⁵⁵ A/RES/70/1, cit., p. 14.

⁵⁶ Article 140, par. 2, UNCLOS. Similar rules, regulations and procedures must also be adopted for the distribution of payments made through ISA under Article 82, pars. 1 and 4, UNCLOS, in respect of the exploitation of non-living resources on the continental shelf beyond 200 nautical miles.

resources,⁵⁷ while, at the same time, takes action to improve the technological capabilities of developing countries,⁵⁸ including through the promotion of the transfer of skills and knowledge as well as of training programmes and scholarships.⁵⁹

The economic growth cannot disregard pursuit environmental dimensions of sustainability. In such terms, ISA encourages sustainable production practices⁶⁰. In addition, according to the importance of the UNCLOS for the protection and preservation of the marine environment and of the growing concern for the global environment,⁶¹ ISA promotes actions to combat climate change and its impacts, thus developing specific research programmes designed to improve the assessment of essential ecological functions of the deep-sea oceans through long-term underwater oceanographic observatories in the Area.⁶²

ISA is building transformative partnerships for ocean sustainability which is aligned to both Goal n. 16 on issues related to peace, justice and rule of law,⁶³ and Goal n. 17, on issues related to global partnership for achieving sustainable development.⁶⁴

As for the Goal n. 16, ISA provides responsive, inclusive, participatory and representative decision-making process at the ISA organs, especially its Assembly, the Council and the Secretariat⁶⁵. That also implies the respect of the rule of law which has a significant interrelation with human security aspects. They are mutually reinforcing in order to avoid the exacerbation of international tensions between industrialized coastal States and landlocked and geographically disadvantaged States, and small island developing States that are heavily reliant on the ocean and its resources for economic development.⁶⁶

⁵⁷ A/RES/70/1, cit., p. 14, Sustainable Development Goal n. 8, ‘Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.’

⁵⁸ Ivi, Sustainable Development Goal n. 9, ‘Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.’

⁵⁹ Ivi, Sustainable Development Goal n. 4, ‘Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all;’ and Sustainable Goal n. 5, ‘Achieve gender equality and empower all women and girls.’

⁶⁰ Ivi, Sustainable Development Goal n. 12, ‘Ensure sustainable consumption and production patterns.’

⁶¹ 1994 Implementing Agreement, Preamble, paragraph 3.

⁶² A/RES/70/1, cit., p. 14, Sustainable Goal n. 13, ‘Take urgent action to combat climate change and its impacts.’

⁶³ Ivi, Sustainable Goal n. 16, ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all level.’

⁶⁴ Ivi, Sustainable Goal n. 17, ‘Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development.’

⁶⁵ See *supra* Subsection 3.1.

⁶⁶ Most actions have been taken by consensus, in an effort to reach solutions acceptable to all groups of States. This is in line with the Section 3, pars. 2 and 3, Annex I to 1994 Implementing Agreement: ‘As a general rule, decision-making in the organs of the Authority should be by consensus. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, par. 8, of the Convention.’ The Authority has followed a pattern of annual sessions during which all of its bodies meet generally for a period of two weeks. These meetings take place at the Authority’s headquarters in Kingston, Jamaica.

As for the Goal n. 17, the ISA is fostering strategic partnerships, including with the World Bank and the International Monetary Fund to enhance the Global Partnership for Sustainable Development.⁶⁷ In addition, ISA and UNESCO's Intergovernmental Oceanographic Commission (IOC-UNESCO) have joined forces to harness the potential of deep-sea exploration and contribute to the objectives of the UN Decade of ocean science and sustainable development (2021-2030), by improving mapping of the seabed and enhancing ocean observing networks.⁶⁸ Surely, the UN Decade provides an ideal opportunity for the ISA to reinforce its global commitment towards increased efforts in deep-sea research, to deliver a more sustainable ocean for generations to come and, consequently, to reduce security threats while contributing to economic and environmental dimensions of human security standard setting.

4. The ISA as *sui generis* actor in ensuring human security

No other natural resource is managed in this way. The distinctive elements of the common heritage of mankind essentially concern three aspects. These consist, first, in the prohibition of national appropriation of the Area and of the resources *in situ* as all rights over them are vested in mankind as whole, on whose behalf the ISA acts;⁶⁹ secondly, in the peaceful use of the Area to the strengthening of peace, security, cooperation and friendly relations in accordance with the purposes and principles of the United Nations as set forth in the Charter;⁷⁰ and, finally, in the development of an international legal system which guarantees the ISA management and control over the mineral activities carried out and the equal distribution of benefits obtained from the exploitation of natural resource of the Area, especially taking into account the special needs of developing States.⁷¹

The primary means by which the Authority is required to organize, carry out and control activities in the Area on behalf of mankind as a whole, is to adopt and uniformly apply rules, regulations and procedures.⁷² Furthermore, it is stipulated in the 1994 Agreement that rules, regulations and procedures relating to the conduct of activities in the Area are to be adopted as those activities progress.

As the next step in the development of the Strategic Plan, the Assembly requested the ISA Secretary-General, *inter alia*, 'to prepare a high-level action plan and to include key performance indicators and a list of outputs for the next five years, taking into account available financial and human resources.'⁷³

⁶⁷ Speech, [Deep-sea Innovation for a Sustainable Ocean](#) by International Seabed Authority Secretary-General, Mr Michael W Lodge, 11 August 2020.

⁶⁸ [UN Decade for Ocean Sciences \(2021-2030\)](#)

⁶⁹ Articles 136 and 137 UNCLOS.

⁷⁰ Article 141 UNCLOS.

⁷¹ Articles 1, par. 1, 140, 152, 153, 160, par. 2(f)(i), UNCLOS.

⁷² Articles 156 and 157 UNCLOS; Section 1, par. 5(f), Annex to 1994 Implementing Agreement.

⁷³ ISBA/24/A/10, cit., point 3; Id., Doc. ISBA/25/A/15, 24 July 2019.

In order to pursue the realization of the ISA role in a global context, key performance indicators are mostly related to the number of programmes and initiatives that contribute to the achievement of relevant goals and targets of the 2030 Agenda for Sustainable Development, as well as a number of strategic alliances and partnerships established with regional and global organizations to improve cooperation in the conservation and sustainable use of ocean resources.⁷⁴

Such prospects for sustainable exploitation of seabed mineral resources have the potential to contribute to human security standard setting. According to a multi-sectoral understanding of insecurities at global level, the economic security and the environmental security are both of relevance for the ISA work.

4.1. The ISA and the economic dimension of human security

The challenge now is to strengthen the regulatory framework for activities in the Area, especially to adopt sound and balanced regulations for economic exploitation.

Since the beginning of this century, the ISA has developed regulations, including provisions relating to environmental protection, which govern exploration of mineral resources. The Regulation on Prospecting and Exploration for Polymetallic Nodules in the Area was approved in 2000 and revised in 2013,⁷⁵ followed by that relating to polymetallic sulphides and manganeseiferous crusts, respectively, of 2010 and 2012.⁷⁶ These Regulations are legally binding for all contracting parties (including, therefore, the European Union), and make up a part of the so-called ‘Mining Code’ which, for the moment, has not yet been completed, as a draft regulation relating to extraction and exploitation is being prepared.⁷⁷

In addition to the complexity of the extraction and exploitation activities and the various problems that they raise in the context of the protection of the marine environment, the main difficulties that the Authority is encountering in completing the Code seem to derive from the fact that there are no regulatory precedents from which to draw inspiration or, in any case, from which to borrow specific generally accepted international standards.

According to the Strategic Plan 2019-2023, its strategic direction n. 2 is, in fact, related to strengthen the regulatory framework for activities in the Area. Consequently, ISA has identified four main performance indicators for measuring the implementation of the mentioned strategic direction n. 2. The first indicator

⁷⁴ ISBA/25/A/15, cit., p. 3 ss.

⁷⁵ Decision of the Council of the International Seabed Authority relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters, Doc. 2013 ISBA/19/C/17, 22 July 2013.

⁷⁶ Decision of the Assembly of the International Seabed Authority relating to the regulations on prospecting and exploration for polymetallic sulphides in the Area, Doc 2010 ISBA/16/A/12 Rev. 1, 15 November 2010; Decision of the Assembly of the International Seabed Authority relating to the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, Doc. 2012 ISBA/18/A/11, 22 October 2012.

⁷⁷ [ISA Mining Code](#)

for tracking the performance is the adoption of the rules, regulations and procedures for the conduct of activities in the Area and progress towards the adoption of the associated standards and guidelines necessary for their effective implementation⁷⁸.

In addition three other indicators are considered important by the ISA Secretary General: the number of sponsoring States that have enacted deep seabed-related laws that govern and administer contractors' activities in the Area; the number of technical workshops, including virtual workshops held convened to support Parties in the implementation of the legal regime governing deep seabed activities in the Area; and finally, the number of programmes and initiatives implemented by the Authority that contribute to addressing the specific challenges faced by international community, with special reference to developing States.⁷⁹

That is strictly interrelated to the strategic direction n. 7, which is aimed at performing equitable sharing of financial and other economic benefits. The main performance indicator for this direction reflects the obligation of the Authority to adopt rules, regulations and procedures for the equitable sharing of financial and other economic benefits derived from activities in the Area as well as potential benefits that may be received.⁸⁰ The ISA capacity to discharge this obligation is assessed through the adoption of an institutional mechanism that provides for the equitable sharing of financial and other economic benefits. According to such performance indicator, and despite difficulties, the ISA has today the opportunity to reconsider which benefits draw from the Area and how they might be measured according to its operational evolution and current challenges that international community is facing.⁸¹ The increase in scientific knowledge about the deep ocean and the progress on renewable energy technologies over the past four decades have shown the benefit of mineral supply as necessary for the transition to green economy thus reducing carbon emissions. Metals found in the deep seabed such as nickel, copper, manganese and cobalt, have the potential to meet the current demand for clean energy technologies.⁸² This promises to be very profitable by creating new opportunities to diversify economic benefits from activities in the Area and setting new standards to further promote the economic dimension of human security. In particular, the ISA contribution to human security standard-setting within its economic dimension might include the elaboration of benefit-sharing formulae to ensure adaptive implementation of the Area regime and the identification of a set of priority issues as agreed and desired outcomes to achieve equity in a deep-sea mining context. More specifically, as for the economic dimension of human

⁷⁸ ISBA/25/A/15, cit., p. 4 ss.

⁷⁹ *Ibidem*.

⁸⁰ *Ivi*, p. 9.

⁸¹ See *supra* Section 3.

⁸² *Deep Innovation for Sustainable Development*, cit.

security, the ISA contribution seems destined to acquire ever more impact at global level according to the need of increase mineral supply for a growing population as well as the shift to a green economy.

Those standards would be relevant also for third States. It has been authoritatively affirmed that at least the essential normative components of the principle on which the legal regime of the common heritage of humanity of the Area is based would have acquired a customary nature, including in particular the prohibition of State appropriation of the mineral resources located there.⁸³ The *opinion iuris* in this sense could be derived from the large number of States representing the international community which, together with the European Union, have ratified or accessed the 1982 Convention and the 1994 Implementing agreement.

Indeed, a third State that proceeds to carry out activities of extraction of the mineral resources located in the Area, but refrains from further unilateral actions likely to violate the prohibition of State appropriation in line with customary law, could proceed, for example, with regard to commercial exploitation, to the stipulation of *ad hoc* international agreements with the Authority, consistent with its Regulations and standard-setting frameworks.⁸⁴

It should be emphasized that, in addition to the regulatory function, Part XI of the 1982 Convention and its Annex III also attribute a control function to the Authority. From this it follows that the Authority can adopt directly effective control measures towards natural or legal persons, who have the nationality of the States Parties and who carry out activities in the Area.⁸⁵

Therefore, the Authority's control measures are not enforceable against third Parties, except in the case that it is not provided for by any *ad hoc* international agreements entered between the Authority and the non-Party State.

Nothing, however, seems to prohibit the carrying out of control activities by the Authority towards non-Party States, the outcome of which should be accounted for in reports and/or declarations by its Secretariat: it would be a soft mechanism of 'social sanction' towards third Parties who violate the interests of humanity. The relevance of these control measures is indeed appreciable in terms of implementing human security standard setting.

⁸³ For an analysis on that point, see, C. CINELLI, *La disciplina degli spazi internazionali e le sfide poste dal progresso tecnico scientifico*, op. cit., p. 82 ss.

⁸⁴ Ivi, pp. 83-84.

⁸⁵ Article 18 Annex III to UNCLOS establishes that a 'contractor's rights under the contract may be suspended or terminated only in the following cases: (a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority; or (b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him [...].'

4.2. The ISA and the environmental dimension of human security

As for the environmental dimension of human security, the ISA contribution is related to promoting compliance with the standards of behavior dictated by the best environmental practices. The Seabed Disputes Chamber, in its aforementioned Advisory Opinion, indicates a series of obligations regarding environmental protection for the States that sponsor the activities of private individuals.⁸⁶

In particular, it reaffirms, in accordance with the jurisprudence of the International Court of Justice, the obligations of due diligence which include, among others, a so-called precautionary conduct.⁸⁷ These obligations also provide for compliance with the rules and regulations adopted by the Authority, which specify numerous measures necessary to effectively ensure the protection of the marine environment from the harmful effects that could result from exploration activities.⁸⁸

Although the Authority's Regulations are applicable only to States Parties (and to the European Union), the customary rules reproduced or referred to in them are *erga omnes* enforceable and, therefore, also to third States. The latter, in fact, did not particularly oppose the rules relating to the protection and preservation of the marine environment.⁸⁹

According to the Strategic Plan 2019-2023, its strategic direction n. 3 is devoted to protecting the marine environment, which is the core component of the Authority's mandate. One of the matters on which the Authority needs to concentrate during this time between the entry into force of the Convention and the approval of the first plan of work for economic exploitation

⁸⁶ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, cit., par. 135.

⁸⁷ International Court of Justice, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment on 2 February 2018, par. 151; ID., *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* Judgment on 16 December 2015, par. 104; ID., *Gabcikoko-Nogymaros Project (Hungary v. Slovakia)*, Judgment 25 September 1997, pars. 53 e 140; ID., *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment on 20 April 2010, par. 101. The judge Cañado Trindade affirmed that: '[t]he applicable law [...] is, in my understanding, not only the 1975 Statute of the River Uruguay, but the Statute together with the relevant general principles of law, encompassing the principles of International Environmental Law. These latter are, notably, the principles of prevention, of precaution, and of sustainable development with its temporal dimension, together with the long-term temporal dimension underlying inter-generational equity. The Hague Court, also known as the World Court, is not simply the International Court of Law, it is the International Court of Justice, and, as such, it cannot overlook principles' (Dissenting Opinion, par. 220).

⁸⁸ Articles 145, 146, 150 and 209 UNCLOS.

⁸⁹ On the contrary, some of them, such as Turkey, have recently stated, on the occasion on the negotiation on international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly Resolution 72/249), that the decision not to accede to the 1982 Convention cannot be interpreted as an objection to all its provisions, in particular those relating to the protection of the marine environment and sustainable use of oceans and their resources. See, P. RICARD, *Marine biodiversity beyond national jurisdiction: The launch of an intergovernmental conference for the adoption of a legally binding instrument under the UNCLOS*, in [MarSafeLaw Journal](#), n. 4, 2018-19, pp. 84-102; E.M. VÁZQUEZ-GÓMEZ, *La protección de la diversidad biológica marina más allá de la jurisdicción nacional. Hacia un nuevo acuerdo de aplicación de la Convención de Naciones Unidas sobre el Derecho del mar*, in *Revista Electrónica de Estudios Internacionales*, vol. 37, 2019, pp. 1-29.

is the adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment.⁹⁰

Indeed, the ISA contribution to enhancing human security standard-setting from environmental aspects is appreciable in relation to ISA obligations to ensure the effective protection of the marine environment and human safety.⁹¹ That reflects the ISA legal capacity to develop, implement and keep under review rules, regulations and procedures that are based on the best available science, the precautionary approach and best environmental practices for the environmentally responsible management of activities in the Area.

Such contribution is consistent with the performance indicators of the strategic direction n. 3. They also include the ISA commitment to adopt and implement environmental management plans⁹². In such terms the promotion of environmental security standards seems to lie within the ISA capacity to monitor the number of areas of environmental interest that are established after being identified on the basis of the best available scientific information in the context of the design and adoption of regional environment management plans. In a complementary way, ISA ensures the collaborative and transparent collection and sharing of environmental data.⁹³ Public access to environmental information can help to improve environmental security.

5. Conclusion

ISA has a unique function that is to administer mineral resources of the Area for the benefit of mankind as a whole. With its mandates and through its various programmes, the Authority has the possibility to promote significantly to sustainable growth of ocean economies, according to the historic significance of UNCLOS as an important contribution to the maintenance of peace, justice and progress for all peoples of the world.⁹⁴ Then, it does not seem completely paradoxical to speak of ISA's contribution in promoting human security standard-setting.

On the second half of the past century, the institutionalization process of the common heritage of mankind legal regime was a precursor of a new direction in the international legal order aimed at protecting the general interests of humanity by actors who, although non-State actors, have a full international legal personality, as the ISA has. Even though the legal position of ISA, being an

⁹⁰ Section 1, par. 5 (g), Annex to 1994 Implementing Agreement.

⁹¹ *Ibidem*. See also Articles 145-146, 194, par. 5, and 209 UNCLOS and by the associated environmental standards and guidelines.

⁹² ISBA/25/A/15, cit., pp. 5-6.

⁹³ *Ibidem*.

⁹⁴ UNCLOS, Preamble, paragraph. 1.

international organization, is primarily derived from State will and thus continues to be at their discretion, the international political and legal context in which States operate is certainly altered.⁹⁵

Nevertheless, the increasing number of international organizations which deal with economic and environmental issues at global level seem not to have displaced sovereign States. Rather, they have consolidated the predominantly inter-State structure of international law, although, at the same time, have been a channel for the transformation of the international legal order in the setting of, at least minimum, agreed standards whose application go beyond particular interest of each single State.

The emergence of common values and interests of the international community reflects an undoubted slow, but continuous, process of transformation of the international law which increasingly leads to look at individuals taken both individually and collectively. It marks the pathways towards the affirmation of a new paradigm which put people at the centre of the general aims towards which the international community is moving to.

The people-centred approach to the modern international legal order unites the concepts of the common heritage of mankind, of sustainable development and of human security.⁹⁶ The evolutionary approach of ISA functioning, institutionally and substantially speaking, reflects the people-centred approach to international development and peace, placing humanity at the centre of its mandates and strategic programmes.

The ISA operational evolution is, as a matter of fact, consistent with the emergence of the sustainable development concept. Better said, the sustainable development may be understood as an interpretive orientation criterion of ISA mandates. That is made clear by the Strategic Plan 2019-2023 which shows ISA commitments to play a relevant role in contributing to the achievement of Sustainable Development Goals, underling also how they are interlinked, each influencing the others.⁹⁷

Human security is surely at stake, being the human security concept based on the unavoidable connection between security and development. This means, for example, that poverty reduction strategies by ISA through the mechanism of share-benefit for mankind, as envisaged by the UNCLOS Part XI and the 1994 Implementing Agreement, as well as the preservation and protection of the marine environment from harmful effects that may arise from activities undertaken in the Area, are attuned to root causes and remedial solutions to stem international tensions and other forms of insecurity, and stop their negative impact on the achievement of 2030 Agenda.

⁹⁵ M. LACHS, *Le rôle des organisations internationales dans la formation du droit international*, in *Mélanges offerts à Henri Rolin: Problèmes de droit des gens*, Éditions A. Pedone, Paris, 1964, pp. 157-171.

⁹⁶ See *supra* Section 2.

⁹⁷ See *supra* Section 3.



That is why it is so important to understand and contextualized human security as the bedrock and the core of ISA commitments to 2030 Agenda. As the current processes of implementation of the common heritage of mankind legal regime show, the main constraints that ISA might face to act effectively on behalf of mankind and, therefore, to enhance human security, ultimately lie with States because, in any event, they are primarily ISA ‘lords and masters.’

Not only one single State, however, but precisely a great number of States, currently 167, plus one international regional organization, the EU, which, by being UNCLOS Parties and, *ipso facto*, full members of the ISA,⁹⁸ reflect the awareness of the need to act together as security and development are no longer only a particular interest of a single international entity, but a general interest of humanity.

To ensure the effective implementation of its Strategic Plan, ISA provides performance indicators to comply with its mandates, especially economic and environmental mandates, through the development of rules, regulations, procedures, guidelines, and standards.⁹⁹ In this way, the ISA is inescapably contributing to the human security standard-setting which is consistent with its mission within a global context.

⁹⁸ See *supra* note n. 1.

⁹⁹ See *supra* Section 4.