PART IV
CONCLUDING REMARKS

CHAPTER 11

THE PROTECTION OF COMMUNITY INTERESTS IN INTERNATIONAL LAW

Some Reflections on Potential Research Agendas

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1. INTRODUCTION

This chapter provides an analysis of the concept of 'community interests' in international law, before presenting a potential research agenda concerning three areas, namely ensuring *collective human security*, managing *collective natural resources*, and preserving *world cultural heritage*. While displaying different degrees of normative intensity and institutional development, these areas involve the provision of various important global public goods. The organized international community is facing these contemporary global challenges, while trying to end the COVID-19 pandemic and eventually prevent others from occurring. Recent decades have seen many active armed conflicts worldwide, of high, medium, or low intensity,[1] which have caused extensive loss of life and material damage as well as forced displacement. These conflicts have occurred in Syria, Afghanistan, Libya, South Sudan, and Ukraine, to mention just a few places. Tens of millions of people have received humanitarian assistance over these decades, with the numbers increasing steadily, reaching about 235 million people needing humanitarian assistance and protection in 2021.[2] Meanwhile there is growing concern about the effects of climate change,[3] the depletion of shared natural resources,[4] and major industrial accidents involving oil spills and nuclear accidents causing lasting damage, including the Chernobyl disaster in April 1986, the BP oil spill in April 2010, and the Fukushima nuclear power plants disaster in March 2011. Last but

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1 For more information, see, inter alia, Uppsala Conflict Data Program and Peace Research Institute Oslo, 'UCDP/PRIO Armed Conflict Dataset' <www.prio.org/Data/Armed-Conflict/UCDP-PRIO> accessed on 15 April 2021, and Uppsala University, Department of Peace and Conflict Research, 'Uppsala Conflict Data Program' <https://ucdp.uu.se/encyclopedia> accessed on 15 April 2021. The War Report published by the Geneva Academy informs that 13 international armed conflicts (IACs) and 36 non-international armed conflicts (NIACs) took place in 2016, 17 IACs and 38 NIACs took place in 2017, and 18 IACs and 51 NIACs took place in 2018, see Annyssa Bellal (ed), 'The War Report 2018: Armed Conflicts in 2018' (*Geneva Academy of International Humanitarian Law and Human Rights 2018*, April 2019) <www.geneva-academy.ch/research/publications/detail/471-the-war-report-2018> accessed 15 April 2021.

2 For more details, see United Nations Office of Coordination of Humanitarian Affairs (UNOCHA), 'Global Humanitarian Overview 2021' <https://gho.unocha.org> accessed 15 April 2021.

3 For more information, see, inter alia, United Nations Environment Programme at <www.unep.org/climatechange>, United Nations (UN), 'Climate Action' at <www.un.org/en/climatechange> accessed 15 February 2021, and UN, 'Global Action – Climate Change' at <www.un.org/en/global-issues/climate-change> accessed 15 April 2021.

4 See, inter alia, UN, 'EU-UN Partnership on Land, Natural Resources and Conflict Prevention' <www.un.org/en/land-natural-resources-conflict> accessed 15 April 2021.

not least, armed conflicts in the former Yugoslavia, Syria, Iraq, Yemen, Mali, and other places,[5] but also lack of attention, resources, and expertise in various countries, have caused the destruction of tangible and intangible world cultural heritage.

The question of whether and to what extent international law protects community interests stands at the centre of numerous current debates. Recent examples include those around whether community interest in the punishment of mass atrocity crimes and providing reparations to victims should supersede the immunity of senior state officials and state immunity; whether peremptory norms embodying community interest such as that of preventing and punishing genocide[6] should supersede treaty reservations to treaty enforcement mechanisms; whether states or state officials should enjoy immunity for serious violations of human rights and humanitarian law before foreign domestic courts; whether mining in the deep seabed or polar regions should be allowed, despite the risk of pollution and damage to wildlife; and whether responsibility for the deleterious effects of climate change can be adequately apportioned and, if so, how.

Doubts remain as to how far one can take a 'community interest', provided it is legally enforceable in the first place. If we consider the United Nations Security Council as empowered to enunciate and enforce common interests with binding effect for all states in the context of international peace and security, could that possibly include, under extreme circumstances, the sacrificing of the very existence of a sovereign state?[7] Should the Security Council be allowed to not intervene in a specific situation on behalf of a population at risk, when the state concerned is manifestly failing its responsibility to protect? Is economic integration of the type of the European Community, or some kind of political integration, a prerequisite for the emergence and effective protection of 'community interests'? Is the invocation of our common humanity and destiny enough for such 'community interests' to materialize and be given legal and institutional expression? Answering these difficult questions creates the potential to chart new territories in

5 For more information, see, inter alia United Nations Educational Scientific and Cultural Organization (UNESCO) 'World Heritage Centre' <http://whc.unesco.org> accessed 15 April 2021.

6 See, among others, Andreas Zimmermann, 'The Obligation to Prevent Genocide: Towards a General Responsibility to Protect' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford University Press 2011) 629–645.

7 Bruno Simma, 'From Bilateralism to Community Interest in International Law' (1994) 250 Recueil des Cours de l'Académie de Droit International 217, 253.

international law and international relations, and providing necessary guidance on important issues for policy and decision-makers.

The bilateral-minded nature of traditional international law is largely reflected in the law of state responsibility and traditional dispute-settlement mechanisms such as the International Court of Justice (ICJ), based primarily on the principle of consent and the correlative rights and obligations of its subjects.[8] The concept of 'common interest' carries the promise of transforming international law into a system which serves the interest of the collective, as opposed to solely those of states *ut singuli*.[9] The formulation of international law itself constitutes a much wider process than the formulation and acknowledgement of its 'formal sources', seeking the legitimacy of international norms through the expression of the *opinio juris communis* (going well beyond the subjective element of custom), as well as the fulfilment of the public interest and the realization of the common good of the international community as a whole.[10] The sections below will first explore the concept of community interest, and then outline briefly a research agenda for the three selected areas, namely *collective human security*, *collective natural resources*, and *world cultural heritage*, before providing some concluding remarks.

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8 See, among others, James Crawford, 'Responsibility to the International Community as a Whole' (2001) 8(2) Indiana Journal of Global Legal Studies 303, 322, stating: 'We have not yet succeeded in ridding ourselves of the notion that legal obligations in international law can always be analogized to bilateral legal obligations, and their breach to bilateral wrongs.'

9 For a pioneering and extensive discussion on the topic of 'community interest', see Simma (n 7). See also Santiago Villalpando, 'The Legal Dimension of the International Community: How Community Interests Are Protected in International Law' (2010) 21(2) European Journal of International Law 387; Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011); André Nollkaemper, 'International Adjudication of Global Public Goods: The Intersection of Substance and Procedure' (2012) 23(3) EJIL769; Wolfgang Benedek and others (eds), *The Common Interest in International Law* (Intersentia 2014); Claire Buggenhoudt, *Common Interests in International Litigation: A Case Study on Natural Resource Exploitation Disputes* (Intersentia 2017); Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (OUP 2018); Giorgio Gaja, 'The Protection of General Interests in the International Community' (2013) 364 Recueil des Cours 9. On the issue of global values, see, inter alia, Otto Spijkers, *The United Nations, the Evolution of Global Values and International Law* (Intersentia 2011). Spijkers argues that a common desire to eradicate war, poverty, inhuman treatment, and to halt the exploitation of peoples, has led to an affirmation of the values of peace and security, social progress and development, human dignity and the self-determination of all peoples.

10 Antônio Augusto Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (2nd edn, Brill | Nijhoff 2010) 638.

2. COMMUNITY INTEREST: WHAT IS IN A CONCEPT?

Although the terms 'international community' and 'community interest' occasionally surface within international law, their nature and scope remain somewhat ephemeral and vague.[11] The same can be said about such related concepts as 'global values' and the 'common challenges' facing humankind. Agreeing on what these 'global values'[12] are and what constitute the most urgent 'common challenges' presently facing the international community is not easy, and both depend on whom you ask. The concept of 'international community', on which the 'community interest' concept is based, comprises not only states but also international and regional organizations[13] and, arguably, prominent non-state actors.[14] Ultimately, despite these differences, the international community is the depository of values that transcend the state understood *ut singuli* that is being referred to.[15] That said, arguably the international community is a legal fiction comprising at least all UN member states, and it is at a minimum these states collectively that are the holders of identified 'common interests'.

Various terms are used to denote community interests. Gaja has used the term 'general interest'.[16] Villalpando and Nollkaemper have used 'global public goods'.[17] 'Goods' can be seen as problematic because common interest could include enforcing common global values, such as protecting populations through the prohibition of genocide, as well as managing

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11 See, among others, Bruno Simma and Andreas L Paulus, 'The "International Community": Facing the Challenge of Globalization' (1998) 9(2) EJIL 266; Anne-Laure Vaurs-Chaumette, 'The International Community as a Whole' in James Crawford, Alain Pellet, and Simon Olleson (eds) *The Law of International Responsibility* (OUP 2010) 1023–1028.

12 For a thorough discussion of this issue, see, among others, Spijkers (n 9) 13–59.

13 See, among others, UNGA, 'Fourth Report on State Responsibility by Mr. James Crawford, Special Rapporteur' (2 April 2001) International Law Commission fifty-third session UN Doc A/CN.4/517, para 36; Simma and Paulus (n 11); Jan Klabbers, 'What Role for International Organizations in the Promotion of Community Interests? Reflections on the Ideology of Functionalism' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (OUP 2018) 86–100.

14 See, among others, Andrea Bianchi, 'The Fight for Inclusion: Non-State Actors and International Law' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011) 39–57.

15 Anne-Laure Vaurs-Chaumette, 'Peoples and Minorities' in James Crawford, Alain Pellet, and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) 1024.

16 Gaja (n 9) 20–22.

17 See, respectively, Villalpando (n 9) 387–419; Nollkaemper (n 9).

collective material goods, such as ocean resources or the commons more generally. Moreover, the two qualities which Villalpando identifies as characterizing these public goods – they must be 'non-excludable' and 'non-rivalrous'[18] – do not easily apply to certain common interests, since access to and use of some of them can be established and maintained by some members of the international community to the detriment or even exclusion of others. This broader discussion about the emergence and protection of 'community interests' is neither theoretical nor utopian, since community interests are already being enforced at international and regional levels.[19] Many of these questions clearly have a tangible practical side: for example, those about who should profit from the melting of the Polar ice caps and who should be indemnified for the deleterious effects of climate change; who should be held responsible for not preventing or stopping ongoing mass atrocities; and who is responsible for the loss of world cultural heritage.

A correct understanding of the nature and scope of the 'international community' and 'community interest or interests' is therefore necessary in order to be able to properly assess whether and to what extent such interests are being safeguarded. This chapter confines itself to three broad areas, which can be described as *collective human security*, *collective natural resources*, and *world cultural heritage*. They are expressed in legal terms in these ways:

a) Collective human security is expressed in the concepts of human security and the responsibility to protect doctrine, and related institutional arrangements including the UN and regional and security organizations.
b) Collective natural resources management is expressed in the concept of the common heritage of mankind and shared natural resources, and the related institutional arrangements.
c) World cultural heritage is expressed in the notion of world heritage and related institutional arrangements, especially UNESCO.

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18 See Villalpando (n 9) 392, identifying 'non-excludable' as describing those goods which, once they are made available, cannot be kept away from users' consumption – anyone can have access to them – and 'non-rivalrous' as their enjoyment by one consumer does not deprive any other user of the commodity, nor does it reduce the amount of the good available for consumption by others.

19 See, among others, Simma (n 7) 217–384; Erika de Wet, 'The International Constitutional Order' (2006) 55 International & Comparative Law Quarterly 51; Villalpando (n 9) 387–419; Nollkaemper (n 9).

The following subsections critically evaluate the nature and scope of the concepts of 'international community' and 'community interests', and analyze the process through which certain issues of common international concern become 'community interests'. This process entails the elevation of a specific community interest to the level of representing common legal obligations incumbent upon the international community as a whole, and its fostering and protection through appropriate institutional mechanisms or arrangements.

2.1. TRACKING DOWN THE CONCEPTS OF 'INTERNATIONAL COMMUNITY' AND 'COMMUNITY INTEREST', MAINLY THROUGH AN ICJ LENS

As the principal international organisation, the United Nations (UN) is widely considered to represent the organised international community. Its existence and activities are intrinsically associated with the concept of international community and with the formulation and protection of community interests. The three main purposes of the UN, as expressed in Article 1 of the UN Charter, include maintaining international peace and security and developing friendly relations, solving problems of economic, social, cultural, or humanitarian character, and promoting respect for human rights and fundamental freedoms without discrimination. Additionally, from an organizational perspective, as reflected in Article 1(4) of the Charter, the UN is expected to function as a centre for harmonizing the actions of nations towards the attainment of these *common ends*. The starting point for the development of 'community interests' should therefore be tracked down to these 'common ends' of the organized international community, for whose attainment the UN serves as a centre of coordination. Article 1(4) of the Charter envisages the transformation of the society of states into a community of states, a transformation facilitated by the sharing of common goals, as well as by the means through which these goals are to be achieved (cooperation, development of friendly relations based upon certain principles, settlement of disputes, and adjustment of disputes and situations in conformity with the principles of international law and justice).[20] Admittedly, the legal formulation chosen by the drafters

[20] Rüdiger Wolfrum, 'Article '1' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary* (2nd edn, OUP 2002) 44.

of the UN Charter also leaves open the pursuance of these common ends through other mechanisms operating alongside the UN system.

Although the ICJ, a main organ and the principal legal organ of the UN, has made reference to the concept on several occasions, the nature and scope of 'common interest' remain questionable. Moreover, the 'interest' concerned has variously involved the state parties to an international treaty, the international community as a whole,[21] a people,[22] or an international organisation.[23] In its 1951 advisory opinion, the ICJ found that:

> In such a convention [Genocide Convention] the contracting States do not have any interests of their own; they merely have, one and all, a *common interest*, namely, the accomplishment of those high purposes which are the *raison d'ëtre* of the convention.[24]

In the much-celebrated dictum of the *Barcelona Traction* case, the ICJ introduced a distinction between international obligations of a bilateral and of a community interest nature by stating that:

> [A]n essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the *concern of all States*. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.[25]

The Court has identified certain principles of international law that are part of the obligations owed by individual states to the international

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21 *United States Diplomatic and Consular Staff in Tehran* (*United States of America v Iran*) (Judgment) [1980] ICJ Rep 3, 43, para 92.

22 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 56, 16 (*Namibia case)*; *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep136 *Israeli Wall* case.

23 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) [1996] ICJ Rep 66; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226; *Israeli Wall* case (n 22) 136; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403.

24 *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15, 23.

25 *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Judgment) [1970] ICJ Rep 3, 32, para 33 (*Barcelona Traction*) (emphasis added).

community as a whole, implying that there is a 'common interest' for such obligations to be properly discharged by each state. In the words of the Court:

> Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23); others are conferred by international instruments of a universal or quasi-universal character.[26]

Two other legal terms used by the Court that are inherently linked to the concept of 'common interest', if not explicitly meant to give expression to it, are 'sacred trust of civilization' and 'elementary considerations of humanity'. The term 'sacred trust of civilization' has been used in cases concerned with the process of decolonisation and the self-determination of peoples, as expressing the 'common interest' of the international community that such processes be finalized in accordance with the genuine will of the people concerned.[27] In a recent advisory opinion, the ICJ held that: 'Since respect for the right to self-determination is an obligation *erga omnes*, all states have a legal interest in protecting that right'.[28] 'Elementary considerations of humanity' was originally meant to express a basic standard of expected state conduct *vis-à-vis* all members of the international community,[29] and then extended to the substantive protection of individuals during an armed conflict under Common Article 3 to the Geneva Conventions and the fundamental general principles of humanitarian law.[30]

In a case concerning diplomatic staff protection, the Court drew the attention of 'the entire international community' to the irreparable harm that could be done by the hostage-taking of diplomatic and

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26 ibid para 34.

27 See, among others, *Namibia case* (n 22) 16. See, among others, Gentian Zyberi, 'Self-Determination Through the Lens of the International Court of Justice' (2009) 56(3) Netherlands International Law Review 429.

28 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95, 139, para 180.

29 *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v Albania)* (Merits) (Judgment) [1949] ICJ Rep 4, 22.

30 *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*) (Merits) (Judgment) [1986] ICJ Rep 14, 114, para 218; *Legality of the Threat or Use of Nuclear Weapons* (n 23) paras 79 and 95.

consular staff. It stated that such acts undermine the edifice of law that has been carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day; accordingly, it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members are constantly and scrupulously respected.[31] Here, besides emphasizing the specific value of the immunity and inviolability of diplomatic and consular staff for the maintenance of peace and friendly relations, the Court pointed to the common interest of safeguarding the system of international law itself from grossly unlawful behavior on the part of individual states.

In the *Obligation to Prosecute or Extradite* case, the ICJ found that in compliance with the relevant obligations under the Convention against Torture, the common interest implies the entitlement of each state party to the Convention to make a claim concerning the cessation of an alleged breach by another state party.[32] This finding has important consequences for the enforcement of international human rights norms that have attained a *jus cogens* status, and it can potentially be seen as a reversal of the Court's earlier position in the *South West Africa* case.[33] The Court restated a similar position concerning the prohibition of genocide in the *Application of the Genocide Convention* case, by finding that:

> In view of their shared values, all the States parties to the Genocide Convention have a *common interest* to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That *common interest* implies that the obligations in question are owed by any State party to all the other States parties to the Convention … [a]ny State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.[34]

This brief review of the ICJ's case law shows that 'community interest', especially concerning human security and accountability for mass

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31 *USA v Iran* (n 21) 43.

32 *Questions Relating to the Obligation to Prosecute or Extradite* (*Belgium v Senegal*) (Judgment) [2012] ICJ Rep 422 para 69.

33 *South West Africa* (*Ethiopia and Liberia v South Africa*) (Judgment, Second Phase) [1966] ICJ Rep 6, 32, para 44.

34 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*The Gambia v Myanmar*) (Order of 23 January 2020) ICJ Rep 69, para 41 (emphasis added).

atrocity crimes,[35] has been gaining in importance in the cases brought before the principal judicial organ of the UN.

2.2. THE NATURE AND SCOPE OF THE CONCEPTS OF 'INTERNATIONAL COMMUNITY' AND 'COMMUNITY INTEREST'

Although the term 'international community' is used frequently, debates continue around whether at this stage of organisation we can speak of an 'international community', or whether 'international society' is more appropriate.[36] The concept of 'community' presupposes that its members largely share their interests, as opposed to the looser concept of a 'society' where members have contact, but do not necessarily share common interests. Depending on the respective system established to protect the common interest in the three selected areas, namely collective human security, collective natural resources, and world cultural heritage, an assessment needs to be made about whether it is proper to speak about community interests or whether a different categorization needs to be developed and used. An example of a sufficiently organized community is the European Union, which has a complex institutional system for ensuring compliance with what are identified as community interests. At an international level, it seems suitable to speak of a 'community' and 'community interests' when the level of organization achieved is of such a degree that the relevant interest is protected through institutional mechanisms which are not voluntary and whose decisions are binding.

A definition of the 'international community' or 'community interest' does not appear in either the ICJ's findings or the work of the International Law Commission (ILC),[37] whose function is to develop and

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35 See, among others, Bruno Simma, 'Human Rights Before the International Court of Justice: Community Interest Coming to Life?' in Christian J Tams and James Sloan (eds), *The Development of International Law by the International Court of Justice* (OUP 2013) 301–325; Gentian Zyberi 'The Interpretation and Development of International Human Rights Law by the International Court of Justice' in Martin Scheinin (ed), *Human Rights Norms in 'Other' International Courts* (Cambridge University Press 2019) 28–61.

36 For a detailed discussion of this concept, see, among others, Simma and Paulus (n 11); Vaurs-Chaumette (n 11); Gaja (n 9) 26–33.

37 See Georg Nolte, 'The International Law Commission and Community Interests' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (OUP 2018) 101–117.

codify international law. In giving a tentative definition of 'community interest', Simma perceives it as a consensus according to which respect for certain fundamental values is not left to the free disposition of states individually or *inter se* but is recognized and sanctioned by international law as a matter of concern to all states.[38] Further, Simma notes that 'the identification of common interests does not derive from scientific abstraction but rather flows from the recognition of concrete problems. Besides, the articulation of community interests occupies a permanent place on the agenda of the UN and other international bodies or conferences.'[39] As Simma puts it, by sheer necessity, the quest to realize community interests has led to an even stronger institutionalization, or organisation, of international society.[40] Yet questions remain as to the breadth and depth of that institutionalisation process. The comprehensive impact of community interest visible today also reveals a fundamental tension in contemporary international law – the tension between the need to make international law express and support what are assumed to be universally held moral beliefs and the need to make it firmly reflect its political context.[41] While that tension is here to stay, the normative and institutional developments of international law, especially in the period after the end of the Cold War, that is the past three decades, provide ample ground to assess the its effects and its impact upon the emergence and subsequent protection of 'community interests'. The description of the emergence of community interests in international law requires a departure from a purely legal perspective in order to examine the social environment in which community interests have arisen – that is, how states in their mutual relations have been driven to ensure the protection of certain community interests beyond their individual sphere – and the effects which this phenomenon has had in international law.[42]

While the ICJ is perhaps more reserved than the other main organs of the UN in referring to 'international community' or 'community interests' due to the largely bilateral nature of most of the disputes brought before it, it is difficult to state with certainty in which instances the term 'international community' is used in the sense of an 'international community of states' and when it is used in a more general sense, and whether the term 'common interest' means a legally protected value or

38 Simma (n 7) 233 and footnote 15 (emphasis added).
39 ibid 235.
40 ibid.
41 ibid 249.
42 Villalpando (n 9) 390.

simply encompasses a desirable standard of state behaviour.[43] In any case, it is clear that community interest and the obligations arising under it for the concerned stakeholders are not one-way, from an individual state towards the community of states, but ultimately also impose certain obligations on the part of the latter.[44] The importance of generating a general consensus in the process of identifying and protecting 'community interests' is expressed in the 1969 Vienna Convention on the Law of the Treaties in relation to peremptory norms of international law which need to be accepted and recognized by the 'international community as a whole'.[45] All of these *jus cogens* norms, as identified by the International Law Commission in its work on the Draft Conclusions on Peremptory Norms of General International Law (*Jus Cogens*),[46] can be considered as encapsulating community interests.

2.3. WHICH INTERESTS, WHOSE, AND TO WHAT EXTENT?

A number of questions arise with regard to the process of identifying and protecting 'common interests' at an international level. How best to articulate and promote collective concerns of the international community

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43 A search for the exact words 'international community' among all documents at the official website of the ICJ yielded about 1055 results, whereas a similar search with the exact words 'common interest' yielded about 203 results (accessed 15 April 2021). The results include court decisions and individual opinions, submissions of parties to legal proceedings before the court, and speeches of the Court's presidents and vice-presidents.

44 That is clear in the 'responsibility to protect' doctrine, where the international community assumes the obligation to protect a population from genocide, war crimes, ethnic cleansing, and crimes against humanity, when a state is manifestly failing to exercise its primary responsibility. See, for more details, UN General Assembly, '2005 World Summit Outcome. Resolution Adopted by the General Assembly on 16 September 2005' (24 October 2005) UN Doc A/Res/60/1, paras 138–139.

45 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 332 (VCLT) art 53.

46 In its non-exhaustive list, the ILC includes the following *jus cogens* norms: (a) The prohibition of aggression; (b) The prohibition of genocide; (c) The prohibition of crimes against humanity; (d) The basic rules of international humanitarian law; (e) The prohibition of racial discrimination and apartheid; (f) The prohibition of slavery; (g) The prohibition of torture; (h) The right of self-determination. See UNGA, Annex to the Draft Conclusions on Peremptory Norms of General International Law (*Jus Cogens*) (Chapter V), in 'Report of the International Law Commission, Seventy-First Session, General Assembly Official Records' (29 April–7 June and 8 July–9 August 2019) UN Doc A/74/10, 208.

in a decentralized legal order focused mainly on the rights and obligations of sovereign states? Can international law mediate effectively between competing individual and collective concerns in a world where the socio-economic and political differences between states are enormous, and where the pressure on human and natural resources is steadily increasing? Despite its emphasis on the rights and duties of individual states, international law has also supported efforts aimed at encouraging and strengthening international cooperation and solidarity among states. However, as Simma rightly cautions, the rise and recognition of community interests is one thing, and their impact on the real world is quite another.[47] It also remains unclear whether those things labelled 'common interests' should command an appeal similar to that inherent in bonds such as nationality, religion, or historical ties before they could qualify as such. Villalpando argues that the late emergence of community interests historically is explained by the fact that 'communitarian' relations among states are not inspired by the same forces characterizing inter-individual communities (common blood, affection, proximity, or traditions), but rather result from an advanced stage of cooperation.[48] Villalpando thus seems to discount aspects of the complex web which ties together the international community, or constituent parts of it, and which partly laid the basis for this advanced stage of cooperation. These kinds of ties are still relevant and form the basis of certain organizations.

Is there a list of requirements to be fulfilled before an interest becomes a 'community interest', just as there are necessary requirements to be fulfilled for a legal norm to qualify as a norm of customary international law? Among other scholars, Simma cautions that there is reason to be concerned about new conceptions being grafted upon universal international law without support through, and serious attempts at, adequate institution-building.[49] In noting and explaining their importance, Simma has emphasized the potential of multilateral treaties to serve as workhorses of community interest.[50] After the 1945 United Nations Charter, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was the first significant step towards creating suitable mechanisms for fostering community interests; it subjects the seabed and ocean floor and the subsoil thereof which are

47 Simma (n 7) 247.
48 Villalpando (n 9) 393.
49 Simma (n 7) 249.
50 ibid 322–376, especially at 322–325.

beyond the jurisdiction of states to a regime designed for the benefit of the international community as a whole.[51] Other efforts at fostering community interest are those included in the Outer Space Treaty and the Antarctic Treaty System.[52] Simma points out that the intensity of such interests will not be the same everywhere due to differences in the geographical positions or economic potential of the states involved.[53] In a finding relevant to the issue of human security, the ICJ has confirmed this by asserting that the responsibility of states to prevent genocide depends on a number of factors, including

> [t]he capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State's capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide.[54]

The need for a proper understanding of 'community interest' and the ensuing rights and duties in this regard for the members of the international community is of both theoretical and practical value. A practical example is provided by the Arctic, as climate change has created a real possibility for using the natural resources in that area.

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51 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS), see, respectively, Part VII on the High Seas (arts 86–89) and Part XI, Subsection 4, on the International Sea-bed Authority (arts 156–158).

52 There are a number of UN treaties on outer space, including UNGA, 'Resolution 2222 (XXI): Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies' (adopted 19 December 1966, entered into force 10 October 1967) 610 UNTS 205, and UNGA, 'Resolution 34/68: Agreement Governing the Activities of States on the Moon and Other Celestial Bodies' (5 December 1979) 1363 UNTS 3; for the key documents of the Antarctic Treaty System, see <www.ats.aq/e/key-documents.html> accessed on 15 April 2021.

53 Simma (n 7) 242.

54 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, 221, para 430.

Numerous international institutions have been established over time with the aim of safeguarding community interests rather than the interests of individual states.[55] However, both between and within the three broad areas selected for this chapter, the comprehensiveness and strength of the legal framework and the effectiveness of the institutions created under them differ. The next section and subsections will briefly outline potential research agendas under the three areas, namely *collective human security*, *collective natural resources*, and *world cultural heritage*.

3. THE PROTECTION OF COMMUNITY INTERESTS AS A PROMISING RESEARCH AREA

International law has continuously expanded over the last century, the pace of its growth depending on the political and socio-economic circumstances prevailing at a given time. As Simma has pointedly noted, international law is finally overcoming the legal as well as moral deficiencies of bilateralism and maturing into a much more socially conscious legal order.[56] Evidently, an international law that properly formulates and adequately protects community interests carries the promise of a law of and for humankind.[57] A re-orientation of international law from co-existence and cooperation to co-progressiveness,[58] aimed at ensuring human flourishing and protecting the interest of collectives and peoples, is bound to emerge in the coming decades if the processes of globalization and further political and economic integration continue apace – including, arguably, as a response to them and their unintended consequences.

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55 With regard to institutions relevant to collective human security, we can mention the UN Security Council and the UN Peacebuilding Commission; with regard to institutions relevant to the common heritage of mankind we can mention the International Seabed Authority (established under UNCLOS), the Marine Environment Protection Committee of the International Maritime Organization (IMO) and the Regional Fishery Bodies (RFB) of the Food and Agriculture Organization of the United Nations (FAO); and, with regard to institutions relevant to common cultural heritage, we can mention the World Heritage Committee and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) of UNESCO.

56 Simma (n 7) 234.

57 ibid; See also Cançado Trindade (n 10).

58 See Sienho Yee, *Towards an International Law of Co-Progresiveness* (Martinus Nijhoff 2004) 1–26.

Several areas of common interest to the international community as a whole are readily apparent. That fact that in the areas of collective human security, collective natural resources management, and world cultural heritage community interest is not an abstract notion but already part and parcel of international law can be illustrated, among other examples, by the responsibility to protect a population against mass atrocity crimes, incumbent upon the international community when the state concerned is manifestly failing that duty; the international efforts made to address climate change and manage collective natural resources; and the international efforts to safeguard world cultural heritage through UNESCO and other means. These issues are not limited only to discussions in relevant international fora, but can potentially be brought before international (quasi) judicial mechanisms for adjudication.[59] Not so long ago there was a discussion about the possibility of Palau requesting an advisory opinion from the ICJ with regard to the joint responsibility of the international community if climate change causes some island states to disappear from the map.

The safeguarding and pursuance of community interests in the selected areas are conferred on a number of international institutions operating largely within the UN system, as well as outside it, and are also pursued at a regional level. Topics related to preventing or assigning responsibility for the transboundary harm arising through hazardous activities (for example the cross-border effects of a Chernobyl-type explosion), protecting persons in the event of disasters, the law of transboundary aquifers, and so on figure prominently in the agenda of the ILC.[60] However, as Nolte has noted, the picture which emerges from the work of the ILC is that of an institution which has accompanied the development of international law in a way which fits the narrative of 'from self-interest to community interest' only to a certain extent.[61]

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59 See, among others, Buggenhoudt (n 9) 81–147; Eyal Benvenisti, 'Community Interests in International Adjudication' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (OUP 2018) 70–85.

60 See, respectively, the topics 'Prevention of Transboundary Damage from Hazardous Activities', 'International Liability in Case of Loss from Transboundary Harm Arising out of Hazardous Activities', 'Shared Natural Resources (Law of Transboundary Aquifers)', 'Protection of Persons in the Event of Disasters', and 'Shared Natural Resources (Oil and Gas)' (discontinued). For more information, see ILC, 'Analytical Guide to the Work of the International Law Commission' <https://legal.un.org/ilc/guide/gfra.shtml> accessed 15 April 2021.

61 Nolte (n 37) 117.

It is clear that the everyone-for-their-own approach cannot solve some of the greatest challenges facing international community, such as the depletion of non-renewable natural resources and the degradation of the environment, climate change, threats to global human security, and damage to world cultural heritage. International solidarity might be a valuable starting point, but does not seem to provide a strong enough vehicle to cope with these challenges, as the COVID-19 pandemic has shown. If solidarity is understood as the common ascription to a common good, it follows that forestalling self-interested behaviour that gravely threatens the collective good can be characterized as a kind of super-self-interest.[62] Yet international solidarity seems based mainly on goodwill and not on a sense of legal obligation.

Over these three broad areas of community interests, different specific normative and procedural systems and institutional mechanisms have developed. It is important to test the adequacy and strength of these systems entrusted with safeguarding 'community interests' based on a number of variables, including considerations of system coherence, legal certainty, and suitable enforcement mechanisms. The first step in such an inquiry would be to make an inventory of the normative bases, institutional mechanisms, and oversight systems for safeguarding common interest in the three areas. The second step will be to assess the effectiveness and adequacy of existing mechanisms and procedures in protecting the common interest of the international community as a whole. The third and final step must be to provide recommendations with a view to strengthening and improving the current systems, in order to ensure that the common interest is duly formulated and protected.

Importantly, research on these issues will also have to deal head-on with double standards when dealing with the issue of adequate enforcement of 'community interest'. Why do states continue to tolerate oppression and starvation, disease and poverty, human cruelty and suffering, human misery and human indignity, of all kinds and on a scale they could not tolerate within their internal societies, and at the same time occasionally evoke community interest?[63] While double standards erode the moral bases which support claims based on common interest, the

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62 See, inter alia, Roland St John MacDonald, 'Solidarity in the Practice and Discourse of Public International Law' (1996) 8(2) Pace International Law Review 259, 301. See also Rüdiger Wolfrum and Chie Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2010).

63 See Philip Allott, *Eunomia: New Order for a New World* (OUP 2001) 248.

legal basis for such claims is established through an elaborate framework of international treaties spanning multiple areas of international law.

This in-depth exploration of the formulation and protection of community interests will have three interrelated aspects. First, the theoretical bases of 'community interest' and its understanding in the three selected international law areas need to be fully explored and explained. Second, the institutional framework and mechanisms established to protect and safeguard community interest must be analyzed and their adequacy and effectiveness assessed. Third, the research will necessarily address the challenges and prospects for ensuring community interests, be they concerned with efficiently managing public goods or with protecting common values. The three inter-related questions which thus emerge are:

1. What is community interest, how does it emerge, and does understanding of it differ from one selected area of international law to another?
2. Which regulatory framework provides for a better realisation of community interests?
3. What are the challenges and prospects of realising community interests in these three selected areas of international law?

Answering these questions will show whether the selected areas reflect real and mature 'common interests' of the international community, or whether the language of 'common interests' is simply used to conceal the inability of international law to serve as a useful tool in facing current common challenges to humankind. The institutional framework under these areas of international law should be analyzed through four dimensions: regime formation, regime attributes, regime consequences, and regime dynamics.[64] A related, subsequent part of the research in this field is to study the effectiveness of the international regimes created under the three broad areas and to measure the progress made in protecting

[64] See, among others, Marc A Levy, Oran R Young, and Michael Zürn, 'The Study of International Regimes' (1995) 1(3) European Journal of International Relations 267; Helmut Breitmeier, Oran R Young, and Michael Zürn, *Analyzing International Environmental Regimes: From Case Study to Database* (MIT Press 2006); Ronald B Mitchell and others (eds), *Global Environmental Assessments: Information and Influence* (MIT Press 2006); Olav Schram Stokke and Geir Hønneland (eds), *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building* (Routledge 2007).

identified 'community interest'.[65] To that aim, such research would need to address issues of regime formation, regime consequences, and regime effectiveness. The methodology of research in these areas would need to combine traditional international law theories and approaches with other methods, including constitutionalism and global governance, feminism, third world approaches, and legal pluralism, to mention a few.[66] The complexity of the dilemmas, involving politics, international relations, and economics, among other aspects, would necessitate, where possible, the use of mixed methods and research groups combining various backgrounds and knowledge from these fields.[67] The following subsections will briefly elaborate on the three selected topics for a research agenda, namely *collective human security*, *collective natural resources*, and *world cultural heritage*.

3.1. FIRST RESEARCH AREA: COLLECTIVE HUMAN SECURITY AND THE RESPONSIBILITY TO PROTECT

Human security is an approach that assists UN member states in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood, and dignity of their people.[68] Related to that, the current collective security system is premised on the common interest to ensure international peace and security and aims to protect that interest by concentrating force in order to induce compliance. Human security has a broad and a narrow understanding, and it is the more narrow understanding of freedom from violence which is of

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65 With regard to the issue of effectiveness, see, among others, Levy, Young, and Zürn (n 64). With regard to the issue of progress in international law, see, among others, Russell Miller and Rebecca Bratspies, *Progress in International Law* (Martinus Nijhoff 2008); Thomas Skouteris, *The Notion of Progress in International Law Discourse* (Asser Press 2010).

66 Andrea Bianchi, *International Law Theories: An Inquiry Into Different Ways of Thinking* (OUP 2016).

67 Malcolm Langford, 'Interdisciplinarity and Multimethod Research' in Bård A Andreassen, Hans-Otto Sano, Siobhán McInerney-Lankford (eds), *Research Methods in Human Rights: A Handbook* (Edward Elgar Publishing 2017) 161–191.

68 UNGA, 'Follow-up to Paragraph 143 on Human Security of the 2005 World Summit Outcome. Resolution Adopted by the General Assembly on 10 September 2012' (25 October 2012) UN Doc A/RES/66/290. More generally, see United Nations Trust Fund for Human Security, 'What is Human Security?' <https://www.un.org/humansecurity/what-is-human-security/> accessed 15 April 2021.

main concern here.[69] Primary responsibility for the maintenance of international peace and security is invested in the Security Council of the UN.[70] Regional organizations and security organizations, as the Organisation for Security and Cooperation in Europe (OSCE, civilian) and North-Atlantic Treaty Organisation (NATO, military), also have a role to play in collective security,[71] but only when there is general agreement among the international community about the necessary steps.

Sadly, the collective security system has repeatedly failed to provide adequate responses to mass atrocities committed against populations.[72] The vulnerability and the essentially fluctuating nature of the engagement of the UN and, in particular, of the Security Council for the defense of collective interests, as the perfectly random way in which it condemns certain violations of obligations arising from peremptory norms to turn a blind eye on others just as serious, structurally prohibit the pursuit of the daydream of the initial codifiers of responsibility for crimes.[73] It was this inability and failure of the organized international community to respond in a timely and efficient manner to mass atrocities unfolding in various parts of the world that gave rise to the doctrine of the responsibility to protect (RtoP) in 2001 and its subsequent adoption by the international community in the 2005 World Summit Outcome document.[74] Based on the principle of

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69 See, among others, Hisashi Owada, 'Human Security and International Law' in Ulrich Fastenrath and others (eds) *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011) 505–520; Mary Martin and Taylor Owen (eds), *Routledge Handbook of Human Security* (Routledge 2013); Cedric Ryngaert and Math Noortmann (eds), *Human Security and International Law: The Challenge of Non-State Actors* (Intersentia 2013).

70 For more information on the UN Peace and Security System, see <www.un.org/en/global-issues/peace-and-security> accessed 15 April 2021. See, among others, Thomas G Weiss (ed), *Collective Security in a Changing World* (Lynne Rienner 1993); Ademola Abass and Mashood A Baderin, 'Towards Effective Collective Security and Human Rights Protection in Africa: An Assessment of the Constitutive Act of the New African Union' (2002) 49(1) Netherlands International Law Review 1; Alexander Orakhelashvili, *Collective Security* (OUP 2011); Gary Wilson, *The United Nations and Collective Security* (Routledge 2014); Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (2nd edn, CUP 2016).

71 See Tarcisio Gazzini, 'NATO's Role in the Collective Security System' (2003) 8(2) Journal of Conflict and Security Law 231.

72 See, among others, Joseph C Ebegbulem, 'The Failure of Collective Security in the Post World Wars I and II International System' (2011) 2(2) Transcience 23.

73 Pierre-Marie Dupuy, L'Unité de l'Ordre Juridique International: Cours Général de Droit International Public (2000) 297 Recueil des Cours 9, 376–377.

74 Some of the most important documents include: International Commission on Intervention and State Sovereignty, 'Responsibility to Protect: Report of the International

complementarity, this doctrine places the primary responsibility for the protection of populations from genocide, war crimes, ethnic cleansing, and crimes against humanity upon individual states, and when a state manifestly fails in that duty, the responsibility passes on to the international community.

While a lot has been written on the RtoP since its inception in 2001, the work of the institutional mechanisms concerned with translating it into practice is in urgent need of further exploration. The main UN organs, regional and security organizations, international courts and tribunals, and regional human rights systems all have important roles to play in operationalizing RtoP and ensuring that it is transformed from promise into practice. As the process of building a suitable and acceptable model is a work in progress, taking stock of existing institutional procedures and mechanisms and designing and establishing more effective procedures and mechanisms to carry out RtoP obligations provide new challenges but also new opportunities. The RtoP operational model needs to be one in which domestic, regional, and international mechanisms are well-connected and synchronized in their actions, whereby decisions on addressing RtoP situations are taken through well-informed and meaningful deliberations, and the commitment to protect the populations at risk of mass atrocities is matched by the necessary material and human resources and political will.[75]

Commission on Intervention and State Sovereignty' (International Research Centre 2001) and 2005 World Summit Outcome (n 44), paras 138–140; UN Secretary-General Reports 2009–2020 and other key documents are available at United Nations Office on Genocide Prevention and the Responsibility to Protect, 'Key Documents' <https://www.un.org/en/genocideprevention/key-documents.shtml> accessed 15 April 2021. See, among others, Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press 2008); Jared Genser and Irwin Cotler, *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time* (OUP 2011); Julia Hoffmann and André Nollkaemper (eds), *Responsibility to Protect: From Principle to Practice* (Amsterdam University Press 2011); Gentian Zyberi (ed), *An Institutional Approach to the Responsibility to Protect* (CUP 2013); Alex J Bellamy, *Responsibility to Protect: A Defense* (OUP 2014); Susan Breau, *The Responsibility to Protect in International Law: An Emerging Paradigm* (Routledge 2016); Alex J Bellamy and Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect* (OUP 2016); Ramesh Thakur, *Reviewing the Responsibility to Protect: Origins, Implementation and Controversies* (Routledge 2018).

75 Gentian Zyberi, 'Sharing the Responsibility to Protect: Taking Stock and Moving Forward' in Gentian Zyberi (ed), *An Institutional Approach to the Responsibility to Protect* (CUP 2013) 530.

3.2. SECOND RESEARCH AREA: COLLECTIVE NATURAL RESOURCES

Adequate management of natural resources has long been an international concern.[76] The concept of the 'common heritage of mankind' is seen as one of the major advances made in international law, especially in terms of fostering 'common interests' and governing the commons.[77] Despite the old semblance given by the use of terms as *res communis humanitatis*, *res publica internationalis*, *res communis omnium*, *res extra commercium*, and *res unitas communis*, the concept of the common heritage of mankind is fairly recent. This area of international law could also be called international or common resources administration. Baslar notes that although the scope of the common heritage concept is uncertain, it is widely agreed to provide certain elements that are characteristic when applied to common space areas: (1) areas designated as common heritage shall not be appropriated; (2) use of the areas and their resources which fall under the common heritage regime will be governed and managed by an international authority; (3) benefits derived from the exploitation of the common heritage area and its resources will be actively and equitably shared; (4) the areas and resources concerned will be used peacefully; and (5) the given resources will be protected and preserved for the benefit and interest of humankind.[78] The concept of common heritage of mankind applies at a minimum to international regimes on the high seas,[79] Antarctica,[80] outer space and celestial bodies.[81] The main idea behind this concept is

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76 See, among others, Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (CUP 2015).

77 See, generally, Stephen Gorove, 'The Concept of "Common Heritage of Mankind": A Political, Moral or Legal Innovation?' (1972) 9 San Diego Law Review 390; Rüdiger Wolfrum, 'The Principle of the Common Heritage of Mankind' (1983) 43 ZaöRV/HJIL 312; Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (Martinus Nijhoff 1997) 12; Erkki Holmila, 'Common Heritage of Mankind in the Law of the Sea' (2005) 1 Acta Societatis Martensis 187. See also Benvenisti and Nolte (n 9) 121–187 (Part III Community Interests and Natural Resources, with chapters by Ranganathan, Park, Brunnée, and Casini).

78 Baslar (n 77) xx–xxi.

79 *ibid* 205–243; Holmila (n 77).

80 Baslar (n 77) 243–277.

81 ibid 159–205. Some of the relevant treaties include UNGA, Resolution 2222 (XXI) (n 52); UNGA, 'Resolution 2345 (XXII): Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space' (adopted 19 December 1967, entered into force 3 December 1968) 672 UNTS 119; UNGA, 'Resolution 2777 (XXVI): Convention on International Liability for Damage Caused by Space Objects' (adopted 29 November 1971, entered into force 1 September 1972)

the peaceful use and an equitable share of resources for the benefit of all humankind.

Oceans cover almost three-quarters of the Earth's surface, comprise nine-tenths of its water resources, and are home to over 97 per cent of all life.[82] According to the 2002 Report *Oceans: The Source of Life*, the economic value and potential of oceans is considerable: marine minerals – including offshore oil and gas, gold, tin, diamonds, sand and gravel – were estimated to generate nearly one trillion USD every year, while the combined value of ocean resources and uses was estimated to be about seven trillion USD per year.[83] Another issue which needs to be addressed in the framework of such research is the rise in the global average sea level by 10 to 25 centimetres over the past 100 years, with models projecting a further rise of 15 to 95 cm by 2100 (with the 'best estimate' at 50 cm).[84] The impact of climate change might mean that certain island states cease to exist, not to speak of the damage to densely inhabited coastal areas.[85] Climate change, loss of biodiversity, and potential for serious environmental pollution[86] require the international community to establish a viable regime for the exploration, preservation, and exploitation of collective natural resources for the benefit of all humankind and present and future generations.

An international legal basis for space activities has been built up over the last five decades.[87] The legal regime established aims to ensure use of

961 UNTS 187; UNGA, 'Resolution 3235 (XXIX): Convention on Registration of Objects Launched into Outer Space' (adopted 12 November 1974, entered into force 15 September 1976) 1023 UNTS 15; UNGA, Resolution 34/68 (n 52).

82 'Oceans: The Source of Life' Published on the Occasion of the 20th Anniversary (1982–2002) of the United Nations Convention on the Law of the Sea, 13 <www.un.org/Depts/los/convention_agreements/convention_20years/oceanssourceoflife.pdf> accessed 15 April 2021.

83 ibid.

84 ibid 14.

85 See, among others, Nico Schrijver, 'The Impact of Climate Change: Challenges for International Law' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011) 1278–1297; Human Rights Committee, *Ioane Teitiota v. New Zealand* (24 October 2019) communication No 2728/2016, CCPR/C/127/D/2728/2016, especially paras 9.10–9.12.

86 See, among others, International Tribunal on the Law of the Sea, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10.

87 See, among others, Frans G von der Dunk and Fabio Tronchetti (eds), *Handbook of Space Law* (Edward Elgar Publishing 2015); Francis Lyall and Paul B Larsen, *Space Law: A Treatise* (2nd edn, Routledge 2017). See also Vladimír Kopal, 'The Progressive Development of International Space Law by the United Nations (Lecture Series on the Law of Outer Space)' (2008) UN Audiovisual Library of International Law <http://legal.un.org/avl/ls/Kopal_LOS.html> accessed 15 April 2021.

the Moon and other celestial bodies for peaceful purposes. To that aim, Article 4 of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies provides that 'the exploration and use of the Moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.' The United Nations Office for Outer Space Affairs (UNOOSA) implements the decisions of the General Assembly and of the Committee on the Peaceful Uses of Outer Space (COPUOS) and is responsible for promoting international cooperation in the peaceful uses of outer space.[88] COPUOS was created in 1958, shortly after the launching of the first artificial satellite, Sputnik-1, and is one of the largest UN committees. The challenges facing the international community in administering the common heritage of mankind are multifaceted, and research should provide useful guidance to those professionals interested in this broad area.

3.3. THIRD RESEARCH AREA: WORLD CULTURAL HERITAGE

Several international treaties aim at protecting world cultural heritage, both tangible and intangible.[89] Diverse aspects of the protection of world

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88 For more information, visit the website of the United Nations Office for Outer Space Affairs (UNOOSA) <www.oosa.unvienna.org> accessed 15 April 2021.

89 Namely, Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 215; Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 358; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004) 2253 UNTS 172; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970, entered into force 24 April 1972) 823 UNTS 231); Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 (adopted 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151 (UNESCO World Heritage Convention); Convention on the Protection of the Underwater Cultural Heritage 2001 (adopted 2 November 2001, entered into force 2 January 2009) 2562 UNTS 3 (UNESCO Underwater Heritage Convention); Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered

cultural heritage are dealt with in the literature.[90] Besides cooperation at an international level, mainly under the framework of the United Nations Education, Scientific and Cultural Organization (UNESCO),[91] there is also regional cooperation in the framework of ASEAN, the Council of Europe, the EU, and so on. A lot of world cultural heritage has been damaged and looted due to armed conflicts in former Yugoslavia, Iraq, Afghanistan, and elsewhere. In 2012, UNESCO frequently urged all warring parties to respect and protect Syria's great cultural legacy, which constitutes a source of identity and fulfilment for its people, and to abide by their international obligations in the area of culture.[92] The Operational Guidelines for the Implementation of the World Heritage Convention aim to facilitate the implementation of the Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO World Heritage Convention) by setting forth the procedure for: (a) the inscription of properties

into force 20 April 2006) 2368 UNTS 3 (UNESCO Intangible Heritage Convention); Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007) 2240 UNTS 346; Council of Europe Framework Convention on the Value of Cultural Heritage for Society (adopted 27 October 2005, entered into force 1 June 2011) CETS No 199.

90 See, among others, Guido Camarda and Tullio Scovazzi (eds), *The Protection of the Underwater Cultural Heritage: Legal Aspects* (Giuffrè 2002); Kevin Chamberlain, *War and Cultural Heritage: An Analysis of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and Its Two Protocols* (Institute of Art and Law 2004); Janet E Blake, *Commentary on the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage* (Institute of Art and Law 2006); Francesco Francioni (ed), *The 1972 World Heritage Convention: A Commentary* (OUP 2008); James AR Nafziger and Tullio Scovazzi (eds), *The Cultural Heritage of Mankind* (Martinus Nijhoff 2008); Francesco Francioni and James Gordley *Enforcing International Cultural Heritage Law* (OUP 2013); Janet E Blake, *International Cultural Heritage Law* (OUP 2015); Lucas Lixinski, *International Heritage Law for Communities: Exclusion and Re-Imagination* (OUP 2019); Francesco Francioni and Ana Filipa Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law* (OUP 2020); Lorenzo Casini, 'Cultural Sites Between Nationhood and Mankind' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (Oxford University Press 2018). See also Judge Abdulqawi A Yusuf, 'The Notion of Cultural Heritage in International Law (Lecture Series on Cultural Heritage)' UN Audiovisual Library of International Law <http://legal.un.org/avl/ls/Yusuf_CH.html> accessed 15 April 2021.

91 For more information on the activity of the World Heritage Centre of UNESCO, see <http://whc.unesco.org> accessed 15 April 2021.

92 See, for instance, UNESCO WHC, 'The Director-General of UNESCO Appeals for the Protection of the World Heritage City of Aleppo' (27 July 2012) <https://whc.unesco.org/en/news/915> accessed 15 April 2021, and UNESCO WHC, 'UNESCO Director-General Deplores Continuing Destruction of Ancient Aleppo, a World Heritage Site' (24 April 2013) <https://whc.unesco.org/en/news/1002/> accessed 15 April 2021.

on the World Heritage List and the List of World Heritage in Danger; (b) the protection and conservation of World Heritage properties; (c) the granting of International Assistance under the World Heritage Fund; and (d) the mobilization of national and international support in favor of the Convention.[93] The challenges facing UNESCO and its member states in protecting world cultural heritage are multifaceted, and research on these issues would be beneficial for them and other relevant actors working in this field.

4. CONCLUDING REMARKS

At a time when public expectations for global justice are high and the challenges for meeting these expectations substantial,[94] a critical need exists for further developing and entrenching a novel understanding of international law as a means for articulating and protecting community interests and providing global public goods. An international law based on furthering community interests engages a broader set of common goods and values, which better represent the interests of states, international organizations, and non-state actors operating on the international stage.[95] Such an approach will move the discipline of international law in a new direction and toward an understanding which better reflects the present needs of the international community. One potential impact of further research in this field is a major shift towards and further elaboration of an international law of collectives and a system of global governance guided by an enlightened self-interest based on the proper articulation and protection of community interests. A major contribution of such research concerns answering the question of whether international law can serve as

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93 UNESCO WHC, 'Operational Guidelines for the Implementation of the World Heritage Convention' (2012) <http://whc.unesco.org/archive/opguide12-en.pdf> accessed 15 April 2021.

94 See, inter alia, Simon Caney, *Justice Beyond Borders: A Global Political Theory* (OUP 2005); Jeffrey L Dunoff and Joel P Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (CUP 2009); Charlotte Ku, *International Law, International Relations, and Global Governance* (Routledge 2012); Carlo Focarelli, *International Law as Social Construct: The Struggle for Global Justice* (OUP 2012); Malcolm Langford and others (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2013).

95 See, among others, Steven R Ratner, *The Thin Justice of International Law: A Moral Reckoning of the Law of Nations* (OUP 2015) 415–434.

the *gentle civilizer* of nations[96] and if community interests are the vehicle which could facilitate that major societal transformation towards a just and peaceful global order.

The protection of community interests should encourage closer cooperation, solidarity, and cohesion among states and more widely within the international community, while at the same time facilitating systemic changes of the international legal order. However, rivalries among big powers and normative and institutional deficiencies may negatively affect these developments and possibly even reverse some of the positive developments achieved in more recent decades, at least temporarily. Community interest has already manifested itself at the heart of several major areas of contemporary international law, such as state responsibility, environmental law, and international criminal law, and underpins successful new concepts invoked in contemporary debates on collective human security, the responsibility to protect, and the international rule of law.[97] Despite the increasingly central place community interest has come to occupy in contemporary international law, fundamental questions remain about what it is, how it emerges, and whether its understanding differs from one selected area of international law to another. What regulatory frameworks are necessary for an effective realization of community interests? And what are the challenges and prospects of realizing community interests in the three selected areas of international law? The increasing pressure on scarce natural resources, technological advances, climate change, an ageing population, and other relevant factors are going to require a set of decisions that strike the right balance between the individual and collective interests of states. As suggested by Judge Simma in the preface, research based on international law theories, combined with multi- or inter-disciplinary approaches on the processes of formulation and protection of community interests, can provide useful insights and answers to these important questions for the future of humankind.

96 See, generally, Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (CUP 2004).

97 See, among others, Villalpando (n 9) 389.