

106th American Society of International Law Annual Meeting Confronting Complexity

Joint Roundtable Proposal by International Environmental Law and Law of the Sea Interest Groups

by Don Anton and Coalter Lathrop

Regulating the “Race to the Bottom”: Governing the Sustainable Exploitation of Deep Sea-Bed Resources

In a world of increasing scarcity and improving technical feasibility, the international community stands on the cusp of significant exploitation of deep seabed energy and mineral resources beyond national jurisdiction -- a large seabed area defined by the Law of the Sea Convention as “the Common Heritage” of all humankind. The potential benefits to be derived from exploitation are great, but the risks to our Common Heritage are enormous too. Yet, the deep seabed is still relatively unexplored, both literally and legally. It is thus an opportune moment to consider the adequacy of the international legal framework that ought to make possible access to these resources and, at the same time, ensure that the environment of the Common Heritage is effectively protected. Some tentative steps have been taken by the International Tribunal for the Law of the Seas in its 2010 Advisory Opinion regarding the responsibilities and obligations of States sponsoring activities in this area, but much more work remains to be done before applications for plans of work proliferate, exploration increases and exploitation begins.

Accordingly, this roundtable will draw attention to the emerging legal framework for the deep seabed beyond national jurisdiction (our Common Heritage) in the context of advancing technologies for exploitation of the resources it holds. In particular, it will focus on the complex synergies developing between the Law of the Sea framework and International Environmental Law. Discussants will comprise a variety of view-points, including those of international regulators, leading scholars, mining interests, and international environmental NGOs. The Roundtable will examine growing complicated linkages between the Law of the Sea’s regime of seabed mining and International Environmental Law in addressing emerging environmental issues, including pollution issues related to the exploitation of mineral resources, biodiversity issues linked to ecosystems around hydro-thermal vents, and fisheries issues related to seamounts. The discussion promises to illuminate our understanding of challenges and gaps in the legal framework.

Moderators: Cymie Paye , Don Anton or Coalter Lathrop

(Co-Meeting Organizer & Co-Chairs of IELIG and LOSIG Respectively)

Possible Roundtable Discussants:

- Don Anton or Coalter Lathrop (Co-Chairs of IELIG and LOSIG Respectively)
- Michael Lodge (Legal Counsel, International Seabed Authority)
- Rüdiger Wolfrum (Judge, International Tribunal for the Law of the Sea; Director, Max Planck Institute for Comparative Public Law and International Law)
- David Freestone (Lobingier Visiting Professor of Comparative Law and Jurisprudence, George Washington University)

- Natalie Klein (Dean, Macquarie University Law School, Sydney)
- Rosemary Rayfuse (Professor of Law, University of New South Wales)
- Duncan Currie (Legal Counsel, Greenpeace International)
- Peter Jacob (First Secretary, Nauru High Commission in Suva)
- Robert Haydon (representing private mining concerns)
- Dr. Margaret Young (Senior Lecturer, University of Melbourne)
- Joanna Mossop (Senior Lecturer, Victoria University at Wellington, Faculty of Law)