

Regulating deep sea mining



Deep sea mineral exploration is one of the most tightly regulated activities in the ocean. Under international law, exploration, as distinct from marine scientific research (which is open to all States), may only be undertaken under a contract with the International Seabed Authority (ISA), an intergovernmental organization based in Jamaica and established by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

UNCLOS – the ‘constitution for the oceans’ – took the important step of setting aside the deep seabed beyond national jurisdiction and its mineral resources as the ‘common heritage of mankind’. It gave the ISA the exclusive mandate to manage deep sea mineral resources for the benefit of mankind. As a result, the deep-sea mining regime in UNCLOS is the most innovative legal regime ever designed by humankind for the equitable and sustainable use of natural resources.

This carefully balanced but comprehensive legal regime was created to prevent a scramble for resources by technologically advanced countries in the deep sea, and to ensure that scientific research, exploration and exploitation would benefit all of humanity. It was developed to ensure mining the deep sea wouldn’t take place on a first-come, first-served basis, but rather it would fall under international management with clear global environmental standards.

Over the last 25 years, ISA has developed a comprehensive set

of rules dealing with exploration for deep sea minerals. With increasing regulatory certainty, combined with rising mineral prices as demand for so-called 'green metals' (the metals needed to support the low-carbon transition such as copper, cobalt and nickel) surges, commercial interest has grown rapidly, particularly over the past five years. Presently, there are 29 active mineral exploration projects in the deep seabed, involving 22 different countries. Commercial exploitation was attempted in the 1970s on a small scale, but has not yet taken place, primarily due to the lack of agreement on international regulations.

Last week, a major step forward took place with the release by the ISA's Legal and Technical Commission, a 30-member expert body, of its proposals for a draft Mining Code that would allow for commercial exploitation of deep-sea minerals. The Mining Code, which has so far taken five years to develop, including several rounds of global stakeholder consultation, will permit exploitation of the deep sea in a way that balances the need for minerals with rigorous environmental protection. The Code will require States or mining companies planning to undertake activities in the international seabed area to carry out prior environmental impact assessments, abide by stringent environmental criteria and account for continuing compliance through oversight by independent entities. Unlike comparable activities within national jurisdiction (i.e., up to a country's 200 nautical mile on the continental shelf), which are subject to national regulation which may vary from country to country, these standards are applicable globally.

A unique feature of the regime is that it will require a portion of the financial rewards from mining to be paid to the ISA and then shared with developing countries according to 'equitable sharing criteria'. How big those rewards will be, and how much revenue will in turn flow to the ISA, is still to be decided. In any case, it is likely that profits will be

slow to roll in during the early years of exploitation, mainly as a result of the high capital costs of designing and building the specialized ships and collector vehicles that will be needed.

A big challenge here is the question of how to tackle the problem of distributing the financial rewards. UNCLOS calls for, but does not define, equity, a complex idea that resists simple formulations. For many States, the fact that deep-sea mineral resources are the common heritage of mankind suggests a redistribution of income from wealthier States to poorer States, particularly least developed and landlocked States. Others have suggested that intergenerational equity would be better served by the creation of a resource fund, like a sovereign wealth fund, that could be used to support global sustainable development goals.

The Mining Code will be reviewed by the ISA Council in July 2019. The Council, which is made up of 36 member States, has set itself a target of 2020 to finalize the Code. It is important to get it right, and it is true that complex, political, economic, technological, scientific, environmental, social, industrial and legal aspects need to be sensitively addressed to achieve a commercially viable and socially responsible industry. Nevertheless, I can think of no other activity in the ocean where we have had the chance to put the rules into place before the activity has occurred, and we should take every advantage of this opportunity.



Michael Lodge, International Seabed Authority

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