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THE INTERNATIONAL SEABED AUTHORITY AND THE PRECAUTIONARY PRINCIPLE

Balancing Deep Seabed
Mineral Mining and Marine
Environmental Protection

Aline L. Jaeckel

The International Seabed Authority and the Precautionary Principle

*Balancing Deep Seabed Mineral Mining and Marine
Environmental Protection*

By

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Of course, all errors remain my own. This study is current as of 25 July 2016.

Sydney, July 2016

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List of Abbreviations

ABNJ	Areas beyond national jurisdiction
AIS	Automatic Identification System
APEI	Areas of Particular Environmental Interest
ATS	Australian Treaty Service
BBNJ Working Group	United Nations Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity Beyond Areas of National Jurisdiction
CBD	Convention on Biological Diversity
CCZ	Clarion-Clipperton Zone
CenSeam	Census of Marine Life on Seamounts
CIA	Central Intelligence Agency
CLCS	Commission on the Limits of the Continental Shelf
cm	Centimetre
COP	Conference of the Parties
GRAMRA	Convention on the Regulation of Antarctic Mineral Resource Activities
Crusts Exploration Regulations	Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area
DNA	Deoxyribonucleic acid
DOALOS	Division for Ocean Affairs and the Law of the Sea at the United Nations
DOSI	Deep Ocean Stewardship Initiative
EC	European Community
ECJ	European Court of Justice
ECOSOC	United Nations Economic and Social Council
ECR	European Court Reports
EIA	Environmental impact assessment
EMP	Environmental management plan
EMP-CCZ	Environmental Management Plan for the Clarion-Clipperton Zone
EU	European Union
FAO	Food and Agricultural Organisation of the United Nations

FSA	Fish Stocks Agreement (Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks)
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
GIS	Geographic Information System
IA	Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
ICRW	International Convention for the Regulation of Whaling
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
IMF	International Monetary Fund
IMO	International Maritime Organisation
IO	International organisation
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for the Conservation of Nature
km	Kilometres
LOSC	United Nations Convention on the Law of the Sea
LTC	Legal and Technical Commission
MIDAS	Managing Impacts of Deep-sea resource exploitation (research project)
MPA	Marine protected area
NEAFC	North-East Atlantic Fisheries Commission
NGO	Non-governmental organisation
NIEO	New International Economic Order
Nodules Exploration Regulations	Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area
OECD	Organisation for Economic Co-operation and Development

OPCW	Organisation for the Prohibition of Chemical Weapons
Part XI	Part XI of the United Nations Convention on the Law of the Sea
RFMO	Regional Fisheries Management Organisations
SDC	Seabed Disputes Chamber
SEA	Strategic environmental assessment
SPC	Secretariat of the Pacific Community
Sulphides Exploration Regulations	Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCLOS III	Third United Nations Law of the Sea Conference
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNTS	United Nations Treaty Service
US	United States of America
USD	United States Dollars
WHO	World Health Organisation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation
WWF	World Wildlife Fund
WWII	World War II

List of Cases

International Case Law

International Court of Justice

Barcelona Traction Case (Belgium v Spain) (Second Phase) [1970] ICJ Rep. 3

Case Concerning the Pulp Mills on the River Uruguay (Argentina v Uruguay) (Provisional Measures) [2006] ICJ Rep. 113

Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) (Judgment) [1997] ICJ Rep. 78

Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt (Advisory Opinion of 20 December 1980) [1980] ICJ Rep. 73

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. 31

Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment) [2010] ICJ Rep. 71

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M/V 'Louisa' Case (Saint Vincent and the Grenadines v. Kingdom of Spain) (Provisional Measures) (ITLOS Case No. 18, 23 December 2010)

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World Trade Organisation

WTO, *Canada—Measures Affecting the Export of Civilian Aircrafts*, WT/DS70/AB/R (2 August 1999)

WTO, *European Communities—Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291–293/INTERIM (29 September 2006)

Domestic Case Law

Land and Environment Court of New South Wales

Nicholls v Director-General of National Parks and Wildlife (1994) 84 LGERA 397

List of Treaties and Declarations

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- 1944 *Articles of Agreement of the International Monetary Fund* (adopted on 22 July 1944, entered into force 27 December 1945) (as amended) 2 UNTS 39
- 1944 *Convention on International Civil Aviation* (adopted 7 December 1944, entered into force 4 April 1947) 15 UNTS 295
- 1945 *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) [1945] ATS 1
- 1946 *Constitution of the World Health Organization* (as amended), (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 185
- 1946 *International Convention for the Regulation of Whaling* (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72
- 1947 *General Agreement on Tariffs and Trade* (adopted 30 October 1947, entered into force provisionally 1 January 1948) 55 UNTS 187
- 1956 *Statute of the International Atomic Energy Agency* (adopted 23 October 1956, entered into force 29 July 1957, amended 23 February 1989) 276 UNTS 3
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- 1960 *Convention on the Organisation for Economic Co-Operation and Development* (adopted 14 December 1960, entered into force 30 September 1961) 888 UNTS 179
- 1967 *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* (adopted 27 January 1967, entered into force 10 October 1967) 610 UNTS 205
- 1967 *Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean* (adopted 16 February 1976, amended 10 June 1995, entered into force 9 July 2004) 1102 UNTS 27
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- 1972 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (adopted 29 December 1972, entered into force 30 August 1975) 1046 UNTS 120
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- 1981 *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986), 21 ILM 58 (1982)
- 1982 *Agreement Concerning Interim Arrangements Relating to Polymetallic Nodules on the Deep Sea Bed between France, the Federal Republic of Germany, the United Kingdom and the United States* (adopted 2 September 1982, entered into force 2 September 1982) 1871 UNTS 276
- 1982 *United Nations Convention on the Law of the Sea* (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3
- 1984 *Provisional Understanding Regarding Deep Sea-bed Matters among Belgium, France, Germany, Italy, Japan, Netherlands, United Kingdom and United States* (adopted 3 August 1984, entered into force 2 September 1984) XXIII ILM 1354
- 1988 *Convention on the Regulation of Antarctic Mineral Resource Activities* (opened for signature 2 June 1988, not in force) 27 ILM (1988)
- 1991 *Convention on Environmental Impact Assessment in a Transboundary Context* (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309
- 1991 *Protocol on Environmental Protection to the Antarctic Treaty* (adopted 4 October 1991, entered into force on 14 January 1998) 30 ILM 1455 (1991)
- 1992 *Convention on the Protection of the Marine Environment of the Baltic Sea* (adopted 9 April 1992, entered into force 17 January 2000) 1507 UNTS 167
- 1992 *United Nations Framework Convention on Climate Change* (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107
- 1992 *Convention on Biological Diversity* (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79
- 1992 *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction* (adopted 3 September 1992, entered into force 29 April 1997) 1974 UNTS 45
- 1992 *Convention for the Protection of the Marine Environment of the North-East Atlantic* (adopted 22 September 1992, entered into force 25 March 1998) 2354 UNTS 67

- 1994 *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea* (adopted 28 July 1994, entered into force 28 July 1996) 1836 UNTS 3
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- 1995 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (adopted 4 August 1995, entered into force 11 Dec. 2001) 2167 UNTS 3
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- 2000 *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (adopted 29 January 2000, entered into force 22 September 2003) 2226 UNTS 208
- 2001 *Convention on Persistent Organic Pollutants* (adopted 22 May 2001, entered into force 17 May 2004) 2256 UNTS 119

Declarations

- 1972 *Stockholm Declaration (Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/Conf.48/14/Corr. 1, 11 ILM 1416 (1972))*
- 1987 *Declaration on the Second International Conference on the Protection of the North Sea* (London, 24–25 November 1987)
- 1990 *Ministerial Declaration of the Third International Conference on the Protection of the North Sea* (The Hague, 8 March 1990)
- 1992 *Rio Declaration on Environment and Development* (adopted 14 June 1992) 31 ILM 874
- 2012 *The Future We Want* (Outcome document of the United Nations Conference on Sustainable Development), UN Doc A/Res/66/288 (27 July 2012)

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