

Said Mahmoudi

The Law of Deep Sea-Bed Mining

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Due to the need for huge and risky investments in the commercial recovery of the ocean floor mineral resources and the existence of a claim by the international community because of the designation of these resources as the common heritage of mankind, the consensus of the overwhelming majority of the States concerning a certain legal order for such recovery is almost inevitable. The existence of national laws enacted by seven industrialized countries parallel with the legal régime negotiated by virtually all States of the world and incorporated in the U.N. Convention on the Law of the Sea may cast doubts on the presence of such a consensus.

The author has demonstrated that the desired legal security may be obtained only through a unified legal order. The viable alternative, in his view, is the régime embodied in the Convention, and national laws, even if enforceable, cannot provide the required security. The book also provides a careful study of the influence of the developing countries in the development of international law and its impact on the traditional pattern of international law-making which has so far been characterized by the practice of major Powers.

Said Mahmoudi, born in Teheran in 1948, served as a diplomat in the Iranian Foreign Service between 1973 and 1981. Since 1982, he has been affiliated with the Faculty of Law of Stockholm University as a researcher in public international law.

The Law of Deep Sea-Bed Mining

A Study of the Progressive Development of
International Law Concerning the Management
of the Polymetallic Nodules of the Deep Sea-Bed

by

Said Mahmoudi

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To My Parents

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Preface

Twenty years have elapsed since great hopes were expressed in the role of the deep sea-bed mineral resources in closing the gap between the rich and the poor nations. Enormous and in many ways unprecedented efforts have been made by almost all countries of the world for the realization of that hope through the establishment of a universally acceptable legal order for the management of those resources as the common heritage of mankind. Nonetheless, a number of undesired developments have transformed the strong hopes of the last two decades into despair, frustration and, at best, an attitude of wait and see. These developments include enactment of national laws for deepsea mining by some dissenting industrialized countries at a time when the consensus on the internationally negotiated legal régime was almost at hand, and the deterioration of market conditions and the fall of demand for the metals contained in the manganese nodules of the deep sea-bed.

This situation, however, cannot last; the commercial recovery of the said resources will sooner or later commence. The answers to many legal questions relating to such activities may play a significant role in the taking of decisions for commencing exploitation.

Although any isolated aspect of the legal régime for deep sea-bed mining can be the subject of a separate study, we believe that a general treatment of all legal aspects is more useful at this stage. The State practice in the form of actual recovery of the mineral resources has not yet taken place, and the law, unlike in the majority of other cases, is worked out in anticipation of such a practice. The book, therefore, aims to give a general picture of the present status of law in relation to deep sea-bed mining.

The completion of this study, which constitutes my doctoral dissertation at the Faculty of Law of Stockholm University, is thanks to the guidance, support and assistance that I have received from different people during the last five years.

I would like to express my indebtedness to my supervisor, Dr. Fariborz Nozari, who, aware of my general interest in the law of the sea, suggested the specific subject of the study. In later stages of my research, the greater part of the supervision was undertaken by Professor Lars Hjernér. Access to his broad legal knowledge is a privilege for any student of law. I would like to record my thanks to him for his unfailing interest in my work.

I am deeply grateful to Professor Louis Henkin from Columbia University School of Law and Dr. Jean-Pierre Lévy, Chief of the Ocean Economics and Technology Office of the United Nations for their useful comments. I am also indebted to Dr. Teklewold Gebrehana for reading Chapter Two of the book and giving constructive comments.

I am grateful to the staff of the libraries of Stockholm University, the Royal Swedish Ministry for Foreign Affairs, the Swedish Parliament and Dag Hammarskjöld Library in Uppsala. Without their help, access to many required materials in Sweden would have been difficult, if not impossible. My gratitude goes to Dr.Ove Bring, Miss Ann Marie Pennegård and Mr.Bertil Ruth, all from the Royal Swedish Ministry for Foreign Affairs for providing me with certain U.N. documents. I am beholden to the staff of the Fridtjof Nansen Institute in Oslo who gave me all possible assistance during my study visit in 1986. I am also obliged to Mr.Sean Gaffney for his useful advice on linguistic accuracy.

I wish to express my appreciation to the Faculty of Law of Stockholm University, the Winroth Foundation and the Tore Almén Foundation for all financial contributions which made this work possible.

Last but not least, I cannot fail to mention my appreciation for the continuous support, tolerance and understanding of my wife, Sue, and my daughters, Parisa Cecilia and Fariba Sofie.

The research for the book was completed in December 1986, and materials not available by that date have generally not been taken into account.

Danderyd, June 1987

Abbreviations

Activities	All activities of exploration for, and exploitation of, the resources of the Area
<i>A.J.I.L.</i>	American Journal of International Law
<i>Annuaire français</i>	Annuaire français de droit international
Area	Sea-bed and ocean floor and subsoil thereof beyond the limits of national Jurisdiction
Authority	International Sea-Bed Authority
<i>B.Y.I.L.</i>	British Yearbook of International Law
Conference	Third United Nations Conference on the Law of the Sea, 1973-1982
Convention	1982 United Nations Convention on the Law of the Sea
EEC	European Economic Community
EEZ	Exclusive Economic Zone
<i>Hague Recueil</i>	Académie de Droit International, Recueil des Cours
Hauser	W.Hauser, <i>The Legal Regime for Deep Seabed Mining under the Law of the Sea Convention</i> , Kluwer, Deventer, 1983.
I.C.J.	International Court of Justice
<i>I.C.L.Q.</i>	International and Comparative Law Quarterly
ICNT	Informal Composite Negotiating Text (1977)
ICNT/Rev.1	First Revision of the ICNT (Spring 1979)
ICNT/Rev.2	Second Revision of the ICNT (Summer 1980)
I.L.A.	International Law Association
I.L.C.	International Law Commission
<i>I.L.M.</i>	International Legal Material
ISNT	Informal Single Negotiating Text (1975)
Kiss	A.-C.Kiss, 'La notion de patrimoine commun de l'humanité', in 175 <i>Hague Recueil</i> (1982-II), pp.99-256.
MIT	Massachusetts Institute of Technology
<i>ODILA</i>	Ocean Development and International Law Journal
Off.Rec.	UNCLOS III Official Records
Ogley	R.C.Ogley, <i>Internationalizing the Seabed</i> , Gower, Aldershot, 1984
P.C.I.J.	Permanent Court of International Justice
Post	A.Post, <i>Deepsea Mining and the Law of the Sea</i> , Nijhoff, the Hague, 1983.
<i>Proc. A.S.I.L.</i>	Proceedings of the American Society of International Law
<i>R.G.D.I.P.</i>	Revue générale de droit international public

Rozakis	Rozakis and Stephanou (eds.), <i>The New Law of the Sea</i>, North-Holland, Amsterdam, 1983
RSNT	Revised Single Negotiating Text (1976)
SIPRI	Stockholm International Peace Research Institute
SNT	The same as ISNT
UNCLOS III	The same as Conference
UNCTAD	United Nations Conference for Trade and Development
U.N. Doc.	United Nations Document
<i>U.N.T.S.</i>	United Nations Treaty Series
<i>ZaöRV</i>	Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht

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