

Book Reviews

Routledge Handbook of Seabed Mining and the Law of the Sea

Edited by **Virginie TASSIN CAMPANELLA**

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Marine Spatial Planning (MSP) is one of the frontiers for planning theory and practice, but it is usually constrained to the territorial seas or 200nm Exclusive Economic Zones (EEZ). Beyond the EEZ lies the extended Continental Shelf and then “The Area”, the seabed beyond national continental shelf jurisdictions. These concepts, defined in the United Nations Convention on the Law of the Sea (UNCLOS), marked key developments in the enclosure of marine space and established the necessary jurisdictions to allocate rights to explore and exploit the seabed. In the process, UNCLOS also establishes the regime for planners to engage in extending MSP to become oceanic planning and that will require planners to become familiar with oceanic regulatory regimes.

One of the primary activities that shaped the long running negotiations over UNCLOS was the potential for deep seabed mining (DSM). Industrialised countries with their technology and developing countries, due to the location of the minerals, saw the opportunities to extract wealth if they could set up the right jurisdictional mechanisms. This led to the concept of the seabed being the common heritage of mankind. The benefits would be shared. UNCLOS established the International Seabed Authority (ISA) to administer the arrangements beyond national jurisdictions, and the International Tribunal of the Law of the Sea (ITLOS) in turn has established a Seabed Disputes Chamber.

These institutions do not act in isolation. The deliberations and actions of the UNCLOS institutions are influenced by other international agreements and domestic law and by the social and biophysical systems that affect, and are affected by, the oceans. As editor Virginie Tassin Campanella explains, in a touching memorial, in 2017 the New Zealand barrister (and Fellow of the Lincoln University Centre for Land Environment and People) the late Robert Makgill conceived of a book that would provide an original analysis of the law of the sea and DSM. He intended it to be of use to a wide audience and reached out to Tassin Campanella to join him. Makgill and Tassin Campanella had been engaged in the 2011 advisory opinion of the Seabed Disputes Chamber; Tassin Campanella in the Legal Office of ITLOS and Makgill as counsel arguing the case on behalf of the IUCN. This, and their subsequent experiences with international and domestic marine law and seabed mining, provided an excellent basis for drawing together a multidisciplinary team of authors for this volume in Routledge’s Handbooks in Law series. Unfortunately, the demands on Makgill’s time meant he had to eventually withdraw from editing the book, but as Tassin Campanella and co-authors of his two posthumously published chapters make clear, his vision and drive were key to the direction and content of the book and chapters.

The book's aim is "to provide a global overview of the national, regional and international regulatory frameworks applicable to exploration and exploitation on the continental shelf and the Area, as well as the related state of science on the matter" (p.6). This original aim is shaped by the "exploration and exploitation" objectives of the 1958 Geneva Convention on the Continental Shelf and, as Tassin Campanella, Cissé and Tladi explain in Chapter II.1 'Rights and obligations of States on the Continental Shelf and the Area'. This has remained a foundation for the UNCLOS approach, which preceded the concept of sustainable development by decades. However, Tassin Campanella wisely delayed completion of this book to enable the inclusion of implications of the 2023 UNCLOS Agreement on Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement, sometimes inaccurately referred to as the High Seas Treaty).

The BBNJ Agreement has added an ecosystem approach to the continental shelf provisions of UNCLOS. As Nilüfer Oral discusses (Chapter. I.2 'The Common Heritage of Mankind under international law'), this gives effect to the common heritage concept as originally used by José Leon Suarez in 1927 in expressing concern for the threat of extinction of marine living resources without international regulation. Oral provides an interesting discussion of the differences between the Suarez's concept and the decolonising cause that drove the more popularly known 1967 expression of common heritage by Ambassador Arvid Pardo. Rather than being concerned about protecting ecosystems, Pardo recognised that newly independent States were not well placed to utilise their resources and that an equitable sharing of the benefits of seabed mineral resources was needed to enable their development. Oral's chapter highlights the development of the concept as a counter to Hugo Grotius' 1609 *Mare Liberum* (Freedom of the Seas) which constructed oceans as an open access resource where 'first in, first to develop' applied. Oral usefully draws comparisons with the concept as applied to international agreements on the Moon, Outer Space, Antarctica, Plant Genetic Resources and World Heritage.

Oral's Chapter is the second of three chapters forming the book's Part I "Global Perspectives". The first chapter provides a sound introduction to the scientific challenges of DSM and the third reviews implementation of the precautionary approach for seabed mining in New Zealand, Australia, Canada and the United Kingdom. These are useful scene setters. The diagrams in Chapter I.1 usefully aided the text and more such diagrams may have aided the non-lawyer reader. Chapter I.3 added granular substance that hallmarks several of the other chapters. It discusses the New Zealand Trans Tasman Resources sand mining litigation, which is referred to by authors in other chapters, highlighting the contribution of our domestic courts to the international understanding of applying precautionary principles and addressing the vexed issue of adaptive management. These two chapters would be of particular assistance to New Zealand planners, policy makers and consent officers, whereas Oral's chapter is of more general interest.

Part II looks at Party State rights, obligations and responsibilities and here the extensive international legal experience and understanding of Tassin Campanella, Yacouba Cissé, Dire Tladi and Cymie Payne is clearly displayed. These chapters cover the present but also look forward at matters not yet tested, with Payne explicitly addressing Non-State actors. Part III focuses on the Continental Shelf beyond the EEZ, but still within State jurisdiction. In addition to a helpful explanation of the delineation of Shelf boundaries, Øystein Jensen and Bjarni Már Magnússon pose challenging questions about the continental slope, while Clive Schofield and Joanna Mossop specifically discuss the implementation of systems for sharing payments for exploitation of a State's Continental Shelf. In the New Zealand context this is much more straightforward than, say, off the coast of Newfoundland where the interplay of Provincial and Federal jurisdictions creates significant conundrums.

The three chapters in Part IV focus on The Area and the challenges faced by the ISA in administering it. It includes an incisive critique of the ISA by Aline Jaekel. Part V: Dispute Settlement, includes three chapters that describe processes and institutions for settling disputes, but really highlights that they have yet to be seriously tested.

Part VI provides a miscellany of shorter chapters split into those describing practice in regulating seabed mining at the regional and national levels (seven and fourteen chapters respectively). The regional practice section includes chapters on Antarctica and, separately, on the more advanced and tense Pacific Islands regime. The national practice chapters include a real, geographical diversity of States (e.g., Belgium rubs shoulders with Côte D'Ivoire, the Republic of Korea, Brazil). Makgill and Elizabeth Macpherson provide a needed emphasis to the importance of indigenous people in reviewing New Zealand practice. The consistent theme in these chapters is a lack of developed regulatory systems for seabed mining.

In summary, this book provides an excellent concise history of the development of the law of the sea in its application to seabed mining. Throughout, it highlights that this is a field of great uncertainty where biophysical information is particularly absent and precaution is necessary, but exploration and exploitation will occur. Despite the attempts of several authors to identify and address future legal challenges, many are untested, and the book will suffer from the rapidity with which law (especially domestic law) and technology changes. Indeed, the May 2024 ITLOS Advisory Opinion on Climate Change and International Law, with its clarity around the State obligations and responsibilities for land- as well as marine-sourced discharges on marine pollution and climate change, has already added additional context to the material covered in this book.

The several calls in the book for more powerful means of compliance and implementation may also be challenged by attacks launched by the USA's Trump administration on the international rules-based regime (even though the USA is not a Party to UNCLOS). Indeed, on 25 March 2025, the Secretary General of the ISA released a Statement in response to the announcement that The Metals Company had initiated processes to obtain permission from the USA to mine in the Area. The ISA Statement reaffirmed its exclusive authority over the Area and warned that "Any unilateral action would constitute a violation of international law and directly undermine the fundamental principles of multilateralism, the peaceful use of the oceans and the collective governance framework established under UNCLOS."

Fortunately, these constraints can easily be addressed through subsequent updated editions. More importantly, this is an excellent book that captures the knowledge, views and critiques of an exceptionally well-qualified set of authors. The four New Zealand authors (Robert Makgill, Malcolm Clark, Joanna Mossop and Elizabeth Macpherson) ensure that the content is directly relevant to New Zealanders. Practically, the hardcover version I own is a 'real' book, well-bound, that will withstand the heavy use I will make of it!

Planners were late to engage in marine planning and had to play a considerable amount of catch-up with the complexities of the environment and regulatory frameworks. As they move into the field of oceanic planning, this book will be essential reading and provides an excellent starting point for their voyage into these partially charted depths.

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