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TITLE: The Common Heritage of Mankind and the Proposed Treaty on Biodiversity in Areas beyond National Jurisdiction: The Choice between Pragmatism and Sustainability

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ABSTRACT:

On 3 June 2015, the United Nations General Assembly (UNGA) adopted a resolution in which it decided to 'develop an internationally legally binding instrument under the Convention on the Law of the Sea (UNCLOS) to address biodiversity in areas beyond national jurisdiction'.¹ This decision was the culmination of a process that began in 2004 when the United Nations (UN) established the Ad Hoc Open-ended Working Group to study issues relating to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (Working Group).² Through the deliberations of the Working Group, a proposal to launch negotiations on an implementing agreement³ under UNCLOS was made to the UNGA.⁴ A key element of the discussions of the Working Group has been the principle of the common heritage of mankind and its applicability, in particular, to marine genetic resources on the deep seabed. Unsurprisingly, the...

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