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TITLE: Sharing the Riches of the Sea: The Redistributive and Fiscal Dimension of Deep Seabed Exploitation

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ABSTRACT:

Abstract This article seeks to clarify how the principle of common heritage is being implemented and concretized by the fiscal regime of deep seabed mining. It first explicates the exploitation rationale underlying the common heritage principle. It argues that common heritage is a jurisdictional principle that lays the basis for the international allocation and administration of exploitation rights and, thus, for the effective economic exploitation of seabed minerals. This exploitation bias is strengthened by the perceived remoteness of deep seabed mining and the real institutional disembeddedness of the International Seabed Authority (ISA). To better understand the distribution conflicts that the law of deep seabed mining addresses, the article introduces two (competing) sets of public interest objectives: participation in exploitation and revenue generation pursued by newly independent (and, today, developing) states and access to raw materials pursued by industrialized states. The article then focuses on the different ways in which the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement on the Implementation of Part XI promote, reconcile and detract from the identified public interest objectives. It reveals how the participation objective has given way to a focus on market supply and revenue generation, and how the changes of the 1994 Implementation Agreement may be read as an attempt to dissolve the conflict between these competing public interest objectives, and to depoliticize the seabed regime. Third, the article turns to the ongoing work on a mining code for the deep seabed that, inter alia, must implement the ISA's mandates to generate revenue from deep seabed mining and to redistribute this revenue. It shows how the ISA's adoption of an individualist stakeholder orientation and its deference to commercial expectations of profitability, in the context of growing political attention to the oceans as a source of economic growth, are further transforming the notion of common heritage and benefit sharing and concomitantly undermine the regime's redistributive ambitions. It also clarifies how the sponsorship of deep seabed mining by small Pacific island states holds only little promise of significant public revenue generation for these states, but may work to undermine solidarity among developing states. The article ends with a call on international lawyers to recognize the designing of a mining code for the deep seabed as the making of political economy.

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