Proposal for a workshop session

Norwegian institution: Scandinavian Institute of Maritime Law, Petroleum and Energy Law Department, Faculty of Law, University of Oslo

South-African institution: Chair of the Mineral Law in Africa, University of Cape Town

Topic of the proposed session: « Seabed Mining and Marine Areas Management: Appraising Regulatory Approaches»

Background:

Deep-sea mining of mineral deposits promises a blue economy immense growth in terms of global trade and commerce, and as a significant source of strategic raw materials for the states. However, as with all other extractive activity, it raises concerns in terms of ecological degradation and competition for the use of marine resources and space. Deep-sea mining activities hence must be well regulated and the environment well conserved, for the seas will remain a source of other renewable and environmental friendly business, such as food and tourism.

At the international level, the International Seabed Authority (ISA) established under the framework of the U.N. Convention of the Law of the Sea (UNCLOS), has developed a dedicated regime for deep seabed mining in the Area, which is considered common heritage of mankind. Such efforts resulted in the drafting of a Mining Code containing a set of rules, regulations and procedures issued by the ISA to regulate the prospecting, exploration and exploitation of marine minerals (mainly three). The ISA regime is currently under periodic review while the first exploration contracts granted 15 years ago are coming to an end and contractors are in the process of submitting applications for extensions. As of June 2016, 24 exploration contracts have been entered into in total.

At the national level, both Norway and South Africa have made discoveries within their exclusive economic zone (EEZ) or on their continental shelf and are currently conducting new exploration campaigns in the perspective of mapping further the potential for seabed mineral resources. In both countries, the legislative framework for the exploitation of such resources is lacking but reflection has started as to the regulatory approach to follow. Both countries have jurisdiction over a large EEZ. Given these massive areas, effective ocean governance is challenging, but imperative. In particular, finding a balance between socio-economic needs and ensuring environmental integrity is crucial.

Norway possesses a strong offshore petroleum sector and a sophisticated regulatory regime applying to it. The country has also high ambitions as to the further development of its activities at seas, including in the Arctic but also along the Norwegian coasts. New management tools for marine areas have been adopted to secure a more integrated ecosystem approach. In that context, recent data showing the potential for finding metallic seabed minerals within the Norwegian EEZ is raising the question of regulatory approach and coexistence of activities. As of today, national legislation for seabed minerals is not yet in place and discussions are still at an early stage, under the auspice of an inter-ministerial working group.

In South Africa, environmental challenges relating to onshore mining and extractive activities are already tense. Offshore mining activities build on this experience, but also present new challenges, not least related to South Africa’s unique topography and ecology in that it abuts an interlock of two of the world’s oceans; the Atlantic and the Indian Ocean. These oceans feed the country, the continent
and the world with sea-foods. They attract revenues that are important to alleviation of poverty. The harmful effects of water pollution due to seabed and coastal mining activities are obvious concerns, while the economic interests for the whole nation in developing new resources is weighting too. The most concentrated mining activities at the coastal region are on alluvial diamond- and heavy mineral-bearing sands from the coastal sediments of Western South Africa. The regulatory framework for marine environment management in South Africa in respect of extractive activity is sorely wanting. The 2014 Operation Phakisa study exposed the lack of central body that integrates or coordinates the country’s sectoral approach to maritime activities. A discussion around the legislative treatment that would remedy current gaps in governance is necessary.

**Objectives of the session:**

The objective of the session is twofold.

First, the session aims to review recent legal developments under public international law as concerns the exploration and exploitation of mineral resources on the deep seabed. The objective is here to share knowledge and perspectives on the development of a regime which is common to all UNCLOS parties (Norway and South Africa included) and which is coordinated by the International Seabed Authority (ISA). Both Norway and South Africa are actively participating to ISA’s work.

Second, the session aims to discuss regulatory approach to the exploitation of mineral resources on their continental shelf. Both Norway and South Africa made mineral discoveries and are considering elaborating a dedicated national regime. The second part of the session will therefore focus on exchange of views on the fundamentals for the elaboration of related national legislation.

The discussion is expected to provide input to public authorities, stakeholders and to serve as a basis for further joint research projects.

**Session structure (90 min):**

Chair: Prof. Hanri Mostert, Professor of Law and the Chairperson, Chair of the Mineral Law in Africa, University of Cape Town (UCT)

10 min - Introduction and presentation of research questions by representatives from the University of Cape Town (Prof. Hanri Mostert) and the University of Oslo (Ass. Prof. Catherine Banet).

20 min - Ass. Prof. Catherine Banet (Scandinavian Institute of Maritime Law, UiO) – The International Seabed Authority (ISA) licensing regime for deep seabed mining

20 min - Ms Micha Lau (IMEL, UCT) – International law aspects of deep sea-bed mining: South Africa’s perspectives

20 min - Prof Jan Glazewski (IMEL, UCT) - Towards regulating deep sea-bed mining in South Africa

Comments on the Norwegian approach: Guiding regulatory principles for commercial ocean mining in Norway, Ass. Prof. Catherine Banet (NIFS, UiO)

20 min - Mr Saul Roux (CER) - Safeguarding our Seabed: Regulatory issues in South Africa: case studies