

Legal Working Group on Liability for Environmental Harm from Activities in the Area

September 28-29, 2017

Marlborough House
London, UK

Introduction

The rules and procedures governing liability for damages arising from mining activities will be a crucial aspect of the development of the Mining Code. While the basic legal architecture of a liability system has been addressed in the provisions (art. 139 (2), and Annex III, art.22) of the United Nations Convention on the Law of the Sea, and elaborated upon by the International Tribunal for the Law of the Sea in its advisory opinion on Activities in the Area, there remain both substantive and procedural gaps that will need to be addressed prior to the commencement of the mineral exploitation phase.

The development of a liability regime is complicated by several factors that are unique to deep seabed mining. First, there are numerous actors with differing legal responsibilities and status within the deep seabed mining regime, including private and state enterprises, Sponsoring States, the International Seabed Authority, as well as sub-contractors and Flag States that may be engaged in aspects of the mining operations. The presence of multiple actors underscores the need to clarify respective responsibilities and to address how these overlapping responsibilities interact in the context of liability. Second, the status of the Area as the common heritage of humankind may present additional complications in determining standing to seek redress and the nature of damages that may be compensable under international rules. Finally, deep seabed mining will take place in an increasingly complicated and overlapping legal environment, which includes evolving rules in international law, under various IMO conventions and a potential new convention addressing biodiversity beyond national jurisdictions.

Recognizing the centrality of liability rules for a responsible and effective exploitation regime, the Legal and Technical Commission of the ISA has identified "Responsibility and Liability" as a priority deliverable in the development of the Mining Code for the exploitation stage of deep seabed mining (ISBA/22/C/17, Annex II). One of the next steps identified by the LTC in order to move this item forward was the establishment of a legal working group to support and inform the development of rules by the ISA. The scope of work undertaken by the Working Group will be preliminary in nature and directed to providing the ISA Secretariat and the LTC with a foundational understanding of the potential legal avenues for establishing a sector specific liability regime for deep seabed mining.

Workshop Objective

The objective of the first workshop will be for the working group to develop a work plan that will include the preparation of a number of background papers on key aspects of liability in the context of deep seabed mining. Given the potentially large scope of the issues involved, the workshop will focus on identifying and prioritizing legal issues and structuring those issues into a set of deliverables that can constructively contribute to the development of a legal framework. The central output of the workshop will be a work plan that includes implementation responsibilities, timing and identification of further activities in support of the work.

We anticipate that draft papers would be prepared in the Fall for distribution to the working group in early 2018. Followed by a further workshop in early 2018 to finalize the papers. We anticipate that the papers will be published by the Centre for International Governance Innovation in 2018 with broad circulation to stakeholder groups, as well as the international legal community.

Organizer Contact Information

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Environmental Harm from Activities in the Area

AGENDA

September 28

TIME	CONTENT	SPEAKERS
8:30 – 9:00 am	Registration & Coffee	
9:00 – 9:15 am	Welcome & Introductions	Neil Craik, CIGI Hannah Lily, Commonwealth Alfonso Ascencio-Herrera, ISA
9:15 – 9:40 am	Informational Presentations and Discussions: Session I <ul style="list-style-type: none"> Basic legal architecture for liability/responsibility in international law Mining code update Existing domestic frameworks for liability 	Neil Craik, CIGI
9:40 – 10:00 am		Chris Brown, ISA
10:00 – 10:20 am		Hannah Lily, Commonwealth Secretariat
10:20 – 10:50 am	Health Break	
10:50 – 11:20 am	Informational Presentations and Discussions: Session II <ul style="list-style-type: none"> Effective Control and Channeling Liability Operational risks/sources of potential liability Contractors' perspectives on liability 	Andres Rojas, Government of Argentina (member of the LTC)
11:20 – 12:00 am		John Machin, Deep Green Resources
12:00 – 12:30 pm		John Stevens, UK Seabed Resources Ltd.

12:30 – 1:30 pm	Lunch		
1:30 – 1:50 pm	Informational Presentations and Discussions: Session III <ul style="list-style-type: none"> • Common Heritage and Liability 	Ruth MacKenzie, University of Westminister David Bolomini, Int'l Group of P & I Clubs	
1:50 – 2:30 pm			<ul style="list-style-type: none"> • The potential role of insurance
2:30 – 3:00 pm			<ul style="list-style-type: none"> • Roundtable Discussion
3:00 – 3:30 am	Health Break		
3:30 – 5:30 pm	Scenario <ul style="list-style-type: none"> • Liability Scenario Exercise 	Steven Roady, Duke University Hannah Lily, Commonwealth	
6:00 – 8:00 pm	Private Dinner for Roundtable participants		

September 29

TIME	CONTENT	SPEAKERS
8:30 – 9:00 am	Registration & Coffee	
9:00 – 10:00am	Issue Identification and Structuring	Neil Craik (CIGI) Hannah Lily (Commonwealth) Alfonso Ascencio-Herrera (ISA)
10:00 – 11:00 am	Workplan Development Session <ul style="list-style-type: none"> • Workplan Development 	
11:00 – 11:20 am	Health Break	
11:20 – 12:30 pm	Concluding Roundtable <ul style="list-style-type: none"> • Final Comments and Next Steps 	
12:30 – 1:30 pm	Lunch	
2:00 pm	End of Meeting	

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PARTICIPANTS

Co-conveners

- Alfonso Ascencio-Herrera, ISA
- Chris Brown, ISA
- Neil Craik, Centre for International Governance Innovation
- Hannah Lily, Commonwealth Secretariat

Working Group Members

- Eden Charles, former Chair of BBNJ Preparatory Committee
- Aldo Chircop, Dalhousie University
- Tara Davenport, Centre for Int'l Law, National University of Singapore
- Elie Jarmache, French Government, (member of ISA LTC)
- Ruth MacKenzie, University of Westminster
- Steven Roady, Duke University
- Andres Rojas, Government of Argentina (member of ISA LTC)
- Zoe Scanlon, Centre for Int'l Law, National University of Singapore
- Dire Tladi, University of Pretoria
- Julia Xue, Shanghai Jiao Tong University

Other Attendees

- Silvia Maciunas, Deputy Director (Environment), International Law Research Program, CIGI
- Freedom-Kai Philips, Research Associate, ILRP, CIGI (rapporteur)
- David Bolomini, Int'l Group of P&I Clubs
- John Stevens, UK Seabed Resources Ltd.
- John Machin, Deep Green Resources

