

THE DEEP CURRENTS COLLECTIVE: AN ABYSSAL CONVERSATION

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I INTRODUCTION*

Extractivism is the dominating force driving current deep seabed governance. Under the United Nations Convention on Law of the Sea (UNCLOS), the International Seabed Authority (ISA) is required to manage the deep seabed beyond national jurisdiction, as the common heritage of humankind (CHM). This mandate includes not just overseeing deep sea mining but also ensuring the protection of the marine environment.¹ Considered interspatially and intertemporally, CHM encompasses all of the Area, its flora and fauna, and the interests of humankind yet to come.² Extending the implications of such spatial and temporal readings, CHM potentially encompasses wider ecological, social and cultural dimensions, and subjects intimately connected with the deep seabed and ocean. Yet it is not at all clear which, if any of these dimensions, would be integrated or foreclosed under the ISA's present extractive directions.

CHM considerations invite speculation about future oceans. Casting forward, how might we imagine future beings in the complexity of their oceanic connections? Beyond biophysical considerations, CHM potentially includes diverse human relationships with the ocean across time and connections of culture, knowledge,

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- 1 For related discussion, see Jaeckel, A, Gjerde, KM & Ardron, JA (2017) "Conserving the Common Heritage of Humankind – Options for the Deep Seabed Mining Regime" *Marine Policy* 78: 150–157.
- 2 Dupuy RJ and Vignes D. *A Handbook on the New Law of the Sea* (Martinus Nijhoff, Dordtrech, Boston, Lancaster, 1991) 580, cited in Bourrel, Marie, Torsten Thiele, and Duncan Currie (2018) "The Common Heritage of Mankind as a Means to Assess and Advance Equity in Deep Sea Mining" *IDEAS Working Paper Series from RePEc*, 313.

kinship and imagination. In that sense, the ISA's speculations on extraction might be brought into closer dialogue with speculative ocean futures for *allkind*.

The ISA's extractive culture and operations bustle with convenient anonymities that conceal the regime's primary beneficiaries and architects and exclude the majority of humanity. Culturally and epistemically, its governance approach is impeded by a narrow, extractive worldview and by knowledge foundations limited to international law, economics, and marine scientific data sourced largely from the very corporations seeking to mine the seabed.³ Diverse ways of knowing the ocean are excluded or marginalised.

This paper aims to create conceptual openings in which other governance approaches and imaginaries might emerge. We write as a collective, working from what feminist science studies scholar Donna Haraway termed "situated knowledges", disciplinary diversity, and shared commitments to these aims.⁴ Our approach embraces collectivity both as a political stance and a critical method: an act of commoning that values plurality and contradiction.⁵ Following the work of Caribbean poet-historian Kamau Brathwaite, we imagine this work in his tradition of 'tidalectics,' which employs ocean metaphors to envision a complex, dynamic, ecological, historical, and submarine methodology that incorporates but does not synthesise difference and is continually open to the possibilities of future emergences from the deep.⁶ Governance, as we have seen, is messy and exclusive, and often confined to institutional, technical forums. Yet this complexity calls on civil society—researchers, artists, activists, and communities—to engage reflectively and imaginatively. This is a polyphonic entanglement, precisely because we believe there are not enough conversations of this kind.

3 Reid, Susan "Solwara 1 and the Sessile Ones" in *Blue Legalities*, (eds Irus Braverman and Elizabeth R Johnson, Duke University Press, Durham, 2020) 25–44; "Imagining Justice with the Abyssal Ocean" *Laws of the Sea: Interdisciplinary Currents* (Routledge, London, 2025); "Current Legal Frameworks Can't Protect the Oceans from Deep sea Mining and the Negative Impacts on Humankind" *The Conversation* (blog, May 2025).

4 On situated knowledge as feminist praxis, see Donna Jeanne Haraway, *Modest-Witness@Second-Millennium.FemaleMan—Meets—OncoMouse: Feminism and Technoscience* (Psychology Press, Brighton and Hove, 1997).

5 On the idea of commons, see George Caffentzis and Silvia Federici (2014) "Commons against and beyond Capitalism," *Community Development Journal* 49, no suppl_1: i92–i105.

6 On tidalectics, see Kamau Brathwaite, *ConVERSations with Nathaniel Mackey*, (We Press, 1997); Elizabeth DeLoughrey *Routes and Roots: Navigating Caribbean and Pacific Island Literature* (University of Hawai'i Press, 2007); Stefanie Hessler, *Tidalectics: Imagining an Oceanic Worldview through Art and Science* (MIT Press, 2018).

This paper is an invitation to imagine, think, and act differently, together. Following the model of tidalectics, it does not aim for synthesis or closure, but rather participates in an ongoing, participatory process with unknown and yet-to-emerge Others. What follows are currents from a larger conversation, responding to questions such as: How can we envision the deep sea as a common heritage of allkind, beyond the ISA's limited interpretations? How do legal architectures shape our understanding of ocean space? What can we learn from the histories of their crafting? How might we deconstruct Western imaginaries of a universal ocean by pluralising histories and cosmologies? What cultural imaginaries have emerged and will emerge from thinking with the deep sea?

Writing as an interdisciplinary group, the Deep Currents Collective adopts the ecological metaphor of the tidalectic, of currents and counter-currents, turbulence and depth as a stylistic device.⁷ Readers will experience theoretical differences and conceptual rifts that are not smoothed over—these are part of the method. In keeping with our collective ethic, this paper is authored collectively and across disciplines, reflecting the structures of deep sea governance that raise—and obscure—the question: "for whom?" We believe in the generative power of shared ocean voices and the urgent need for a deeply complex and truly global conversation. The ecologies of the planet depend on it.

II THREE PROVOCATIONS ON THE INTERNATIONAL SEABED (AUTHORITY)

A If we disagree wholeheartedly with former ISA Secretary General Michael Lodge's one-time assertion that CHM is a principle without philosophical orientation, then how can we assert a philosophy of deep sea heritage that pays regard to how UNCLOS's framers interpreted CHM but also reaches beyond CHM toward more inclusive notions of community and heritage?⁸

Part of asserting a wider vision of commonly held oceanic heritage entails diagnosing how varieties of heritage circulate in contemporary narratives about

7 <https://www.deepcurrentscollective.org/the-collective>.

8 During his long association with the ISA, Michael Lodge* promoted CHM as a limited legal concept exclusive to UNCLOS (Lodge 2013, 60). He argued that CHM "denotes only a specific and limited legal status and does not imply any moral or philosophical concept" (Lodge and Verlaan 2018, 333). Lodge's influence sedimented this understanding within the ISA's governance approach, as if it were "incontrovertible" and "apolitical" (Ranganathan 2024, 92). See Michael W Lodge (2013) "The Common Heritage of Mankind" in *The 1982 Law of the Sea Convention At 30*

seabed mineral extraction. A meeting convened in 2024 on behalf of the mining company Nauru Ocean Resources Inc (NORI) offers an example of a narrative intended to limit and direct public orientations to heritage. Civil society representatives were called to sit down with cultural heritage consultants paid by NORI, a wholly owned subsidiary of the aspirational deep sea mining firm, The Metals Company (TMC), to discuss the relationship between polymetallic nodule extraction and cultural heritage preservation. A cluster of iron-black nodules sits at the centre of the consultation's conference table (Figure 1).



Figure 1. NORI Consultation with SEARCH Inc, Nauru. From NORI's public Facebook page. 2024.

At the top of the banner introducing NORI is an explanation of what nodules are, and the value of nodules for these states, for world development, and for the planet's health. Beneath this, in white, a map of the Pacific Ocean appears as abstracted to render only the claim areas for nodule exploration in the Clarion-Clipperton Zone, and the Exclusive Economic Zone of Nauru. This abstractions intended to highlight the physical distance from Nauru of the NORI contract areas, close enough to bear meaning for claims of intangible heritage, but far enough away to prevent any

(b=Brill USA) 59–68; Michael W Lodge, and Philomène A Verlaan (2018) "Deep Sea Mining: International Regulatory Challenges and Responses" *Elements* (Quebec) 14 (5): 331–36. For critical insight, Ranganathan, Surabhi (2024) "The Participatory Scope of the Common Heritage Principle" 118:88–92.

* Michael Ledge was legal counsel (1996–2003), Deputy to the Secretary General (2011–2016), and was Secretary General for two terms (2017–2024).

potential damage to tangible cultural heritage or the proximal ocean environment. And finally, beneath that, an outline of the major benefits offered by NORI to the Nauruan public: community initiative funding focused on food security, youth, health, education, women's empowerment, and the ocean environment, including scholarships for study at the University of the South Pacific (in selected courses), and "training opportunities for participation in NORI's operations". This banner and these consultations have narrative power because of a tension between distance and closeness. Distance because miners promise that any disturbances a thousand miles away on the abyssal seabed will not reverberate up and out toward Nauru. Closeness because economic resilience, after decades of high-profile strife, appears within reach; its coming borne out by successful projects of uplift and empowerment embodied in the scholarships, breadfruit saplings, and other material benefits that flow from TMC via NORI, to Nauru.⁹

The product TMC advertises conjures beautiful images of what Gerard Barron called "a shared destination".¹⁰ Yet it is a product, and one onto which a particular idea of heritage is grafted. It is also one to which particular futures come attached, which may or may not align with the future that Nauruan President David Adeang had in mind when he argued recently that "it's time for the islands to show that we can stand up and contribute to a better future for ourselves and the planet".¹¹ Recall that in 2020, Barron wondered aloud, "what if people working in the Pacific Ocean could bring their families along and live off the ocean on floating islands? What if these floating platforms could be prototypes of human-made habitats for communities displaced by rising sea levels?"¹² Yet even nODULES' most steadfast Nauruan advocates insist that departure is not an option. In these warming and inundating times, when firms like TMC opt to abandon international negotiation at

9 Resilience, like heritage, becomes an ambivalent weapon in the register of resource politics on the international seabed. As Lisa Yin Han recently put it, "Resilience rhetoric has already been weaponized with deep sea mining as a means of camouflaging risk." Lisa Yin Han, *Deepwater Alchemy: Extractive Mediation and the Taming of the Seafloor* (U of Minnesota Press, 2024), 115.

10 The Metals Company, "Open Letter to Ocean Conservation Community: Engage with Us on Real-World Data and Trade-Offs," *The Metals Company* (blog), November 1, 2023, metals.co/open-letter-to-ocean-conservation-community/.

11 The Metals Company, "NORI Q&A with His Excellency David Adeang, President of Nauru," *The Metals Company*, October 21, 2024, <https://metals.co/nori-qa-with-his-excellency-david-adeang-president-of-nauru/>.

12 Eco-Business, "We Need to Mine Deep Sea Metals to Power the Energy Transition: DeepGreen CEO Gerard Barron," Eco-Business, October 22, 2020, eco-business.com/news/we-need-to-mine-deep-sea-metals-to-power-the-energy-transition-deepgreen-ceo-gerard-barron/.

the ISA in favour of mining under US national legislation, how can we productively expand the boundaries of heritage beyond these narrow and circumscribing limits?¹³

Contrary to the former Secretary General's assertion, the concept of CHM is culturally bound by specific material and symbolic orientations. CHM was first brought to the seabed by Maltese diplomat Arvid Pardo in 1967, when he argued before the UN General Assembly that nations must agree to identify deep ocean's resources as CHM, appropriate by no one person or state and usable for only peaceful purposes.¹⁴ As the foundational ethos of UNCLOS, CHM initially granted humanity collective inheritance over the seabed beyond national jurisdiction. However, the 1994 Implementation Agreement reframed CHM in less abstract terms, and tethered and constrained its scope to the economic futures of three deep sea mineral formations.¹⁵ As a result, in the ongoing negotiation of the Rules, Regulations, and Procedures (the 'Mining Code') at the ISA, the interpretation of the CHM doctrine has been subsumed into a domain of legal, scientific, and economic knowledges and actionable legal frameworks (including UNCLOS, and the UNESCO framework)—a process that has drawn deep sea cultural heritage into a conceptual division between that which is tangible, or intangible.¹⁶ Rather than indicating fixed categories, these terms slide up and down along axes of danger, proximity, or belonging, along with interpretations of the CHM doctrine embedded in UNCLOS. This is the kind of scenario that NORI's subcontractor — the

13 On TMC's jurisdiction-jumping, see for example "The Metals Company to Apply for Permits under Existing U.S. Mining Code for Deep sea Minerals in the High Seas in Second Quarter of 2025," The Metals Company, March 27, 2025, investors.metals.co/news-releases/news-release-details/metals-company-apply-permits-under-existing-us-mining-code-deep/.

14 See Arvid Pardo, "Official Records, Agenda Item 92, United Nations General Assembly Twenty-Second Session" (UNGA, November 1, 1967).

15 "Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI," and "wishing to facilitate universal participation in the Convention," the 1994 implementing agreement that cleared the way for accession by gutting the seabed mining regime (Part XI): removing mandatory technology transfers, truncating the capacity of a seabed authority to mine on its own and on behalf of developing states, and slashing the financial terms of contracts.

16 One of the tasks that *Deep Currents Collective* has taken on is to challenge the exclusive and predominantly Western nature of expert knowledge relied on by the ISA. The ISA's competency to oversee the CHM and cultural heritage is questionable given its reliance on scientific disciplines and knowledge skills that lack diversity. Rather than claiming deep sea culture as a place of expert knowledge, which would once again leave 'the collective' out of the space for negotiating our common heritage, *Deep Currents Collective* supports the opening up of culture as a place from which to consider deep sea heritage and civil society engagement, complementing other issues such as intergenerational justice and historical reparation.

professional underwater archaeology firm, SEARCH Inc — along with broader displays in the ISA's negotiation rooms, are called to enact and operationalise.

The ISA has an allocated space for the discussion on cultural deep sea heritage, the *Intersessional Working Group on Underwater Cultural Heritage*.¹⁷ However, the struggle over deep sea heritage and its cultural significance, as well as its governance along the tangible/intangible spectrum, unfolds in and out of the ISA's formal sessions. It materialises through pamphlets, toys, and digital simulations placed strategically both inside and outside the negotiation space where the Mining Code is being debated (Figure 2). Reading these material ontologies underpinning law-making across spaces and narratives not only affords a more nuanced and embodied understanding of law but also plumbs the ways the tangible/intangible divide allocates differential rights to claim the seabed as Common Heritage of Humanity. Let's unpack this.



Figure 2. Hand-made Dumbo Octopuses distributed by an NGO to lobby for a moratorium for deep sea mining, pinpointing some of the life-forms using nodules as their dwelling place.
© Photo by the authors.

UNCLOS did not build law on a pre-existing material entity but rather enacts worlds (disregarding others) in a process of making the deep sea into a legal entity.¹⁸

17 The Intersessional Working Group is led by the Permanent Mission of the Federated States of Micronesia ("FSM"), which includes representatives from civil society granted observer status (NGOS, and Pacific Indigenous leaders), together with several state delegations, and NORI.

18 Commentators have argued that the sole fact that articles 149 and 303 exist demonstrates that UCH protection was one of the original purposes of UNCLOS according to the doctrine CHM and hence, the Convention as a whole should be read in this light. See Varvello, F (2019) "Looking for

As ocean politician Elisabeth Mann Borgese once put it, "it was...the very abstrusity [sic] of the notion of the seabed that made it possible to smuggle the marine revolution into the United Nations. In reality, the seabed has no independent existence. In a way it was a myth, albeit one of the most creative myths in history."¹⁹ Legal historian Surabhi Ranganathan has argued how 1960s' anxieties about overpopulation, resource exhaustion, and environmental degradation on land, all linked to the politics of decolonisation, met with a growing technoscientific intimacy with the sea "as a territory that could be mapped, colonised and connected to land and its economies". These commercial interests and this techno-scientific moment contributed to a view of the sea as containing places, in fact, for fixed capital investment.²⁰ This form of territorialisation emerged in the mid-1940s as the Truman Proclamation asserted US jurisdiction over its adjacent continental shelf by adjusting the geological basis for political claims, extending US national sovereignty to "the growing worldwide need of jurisdiction—necessary for 'conservation and prudent utilisation' of petroleum and minerals off the US Atlantic coast". In 1970, when the UN General Assembly declared the 'international' seabed as CHM, it could not indicate its precise boundaries, only that it lay "beyond the limits of national jurisdiction, the precise limits of which are yet to be determined" (Figure 3).²¹

'Submerged Commons': Towards a New Era for Underwater Cultural Heritage" Maritime Safety and Security Law Journal (5) 112.

19 Arvid Pardo *The Common Heritage: Selected Papers on Oceans and World Order 1967-1974* (Malta University Press, Valletta, 1975) xiii; Julia Poertner "Narratives of Nature and Culture: The Cultural Ecology of Elisabeth Mann Borgese" (Halifax, Nova Scotia, Dalhousie University, 2020).

20 Surabhi Ranganathan "Ocean Floor Grab: International Law and the Making of an Extractive Imaginary," European Journal of International Law 30 (2): 574–80.

21 Ranganathan, 585. The absence of detailed underwater topography, or bathymetric data — only 6% had been mapped to an adequate resolution — bootstrapped the recent initiative from the Nippon Foundation and General Bathymetry Chart of the Ocean (GEBCO) Seabed 2030. As a consequence of the same lack of data, for instance, large topographic features such as seamount's estimates could vary between 8 and 80 million (Global Seamount Census (2010) Wessell et al). These examples highlight the precarious nature of the seabed as a topographical construct.



Figure 3. Minerogenic map of the world ocean. The map displayed at the Nii Allotey Odunton Museum in the ISA Headquarters in Kingston (Jamaica) shows mineral formations and compositions with no exact geographic locations on the ocean floor (both in English and Russian). The magnifying glass invites the visitor to the ISA Museum to zoom in and out of a mineral ocean while standing in front of it. © Photo by the authors.

Embedded in these larger and more complex arrangements, the tangible/intangible divide defines what falls inside and outside of CHM. These are effects that the Area, as a world-making fiction engendered within and by law, has in making the seabed abstract yet material enough to tie CHM to the operational needs of extractive industries. What is less obvious though, and that is the point raised here, is the way in which this entity, which includes the subject positions it builds upon, as the redistributive idea of heritage embedded in the map above, frames the scope of what can be claimed as Cultural Heritage of Humanity — literally — "objects of an archaeological and historical nature".²² The concept of heritage itself is a Western category that circumscribes and limits how the seabed is conceived legally, both generally and in these discussions. More broadly, UNESCO and UNCLOS (the bedrock of ocean and seabed management today) can be seen as underpinned by colonial context and motives. It is important to remember, as Antony

²² UNCLOS, Part XI, section 2 article 149 refers to "All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin".

Anghie noted, that "colonialism was central to the constitution of international law".²³ There would be many examples to bring here, from the Intersessional Working Groups sessions or the Mining Code, by which "intangible" indicates lack of place. For instance, UNCLOS leaves no margin to claim deep sea minerals, as Pacific leaders have been indicating, as part of their ancestry, part of their kin.

A core practice of resistance in the face of this reality is the focus on intangible heritage, a term that is problematic, but which creates a space: that which is intangible resists articulation and classification, and marks that which is not known, words, histories and entities too sensitive to mention or mark on maps. The intangible is a poor translation of a deeper, unfathomable question: one that expands our understanding of heritage in philosophical and inclusive terms. What if heritage from the ocean is not merely what can be known, but what frames the limits of knowledge itself? Can CHM still be invoked if it systematically excludes non-Western ocean ontologies that teach us to live with and care for the deep sea as something that precedes geography, geology, and law? The Area, then, is not only a world-making fiction, but also one that acts as a tool of dispossession, one that dispossesses Heritage from Humanity.

B Building on Surabhi Ranganathan's provocation that "the law of the sea is a product of its time, changeable in ours", how can more expansive visions of jurisprudence, drawing upon history but with an orientation to future ocean governance, offer a new form to the character of deep sea law?²⁴

The Deep Currents Collective endeavours to build models for deep sea heritage that, while imbued with CHM's older, more expansive framings, also move beyond CHM. Similarly, we work to understand deep sea law, as embodied by UNCLOS and its implementing agreements, as only one possibility for governance nested within a wider historical and epistemological landscape of potential deep sea jurisprudence. Germane to these efforts, then, is applying a historical lens to understanding how ocean governance as it is known today was distilled from larger oceanic visions for non-terracentric models of jurisprudence, some aspects of which we might usefully employ today in the service of new priorities for participatory, redistributive, and other justice.

23 Antony Anghie *Imperialism, Sovereignty and the Making of International Law* (CUP, Cambridge, 2004).

24 Surabhi Ranganathan (2019) "Ocean Floor Grab" European Journal of International Law, 30 (2).

Take, for example, some of the efforts of politician-activist Elisabeth Mann Borgese after the late 1960s to frame the oceanic commons as an opportunity to rethink world ordering. By 1970, Mann Borgese, with Pardo, worked to gather a group of politicians, scientists, industrialists, and others at the first *Pacem in Maribus* conference (PIM). PIM was seen by Mann Borgese as a laboratory for expansive experimentation through which familiar forms of political dialogue could be broken down and built back up again in the form of a workable entity to govern the world's oceans (Figure 4). As she introduced the event²⁵

The *Pacem in Maribus* program was based on the concept of the Marine Revolution, which cannot be stopped and which will be destructive unless we harness and rationally direct its forces to minimize its harmful effects. But a revolution it is. Our choice is not between a 'moderate' *status quo* orienting regime and a radical, utopian one. The *status quo* is the most unreal of unrealities. Those who aim timidly at a 'moderate' regime simply will not be able to sway the forces of inertia. There will either be no regime at all or there will be a comprehensive one; comprehensive in every sense of the word, and based on the necessary political and intellectual courage and precision.



Group 1 discussing "The Limits of National Jurisdiction." Panel is composed of (left to right) Sergio Martins Thompson-Flores (Brazil), Wolfgang Friedmann (Great Britain), Shigeru Oda (Japan), Lord Ritchie-Calder (Great Britain), Paul Bemela Engo (Cameroon), Ambassador Hamilton S. Ames (United States), Ambassador Arvid Pardo (Malta), rapporteur of the panel, Juraj Andrassy (Yugoslavia), Louis Henkin (United States) and Sugroho (Ceylon).

Figure 4. Group 1 at PIM discussing the limits of national jurisdiction at the Corinthia Palace Hotel, Malta.

Delegates articulated the outlines of many basic proposals meant to address the gap that would be addressed the coming UNCLOS negotiations, from joint ventures for mineral exploitation to the mandates of an international seabed organisation. And what would be the mandate of an organisation whose remit might cover more than seventy percent of the planet's surface? The exciting thing was that nobody really knew. Most of the assembled agreed that there was some relationship implied

25 Elisabeth Mann Borgese "Reflections on *Pacem in Maribus*" in *Proceedings: Pacem in Maribus Convocation, Malta, June 28-July 3, 1970* (International Ocean Institute, 1971).

between the common resources and common problems – what the engineer Edward Wenk called "universal threats", which included marine pollution and arms storage, but also notably hunger and poverty.²⁶ He asked, "what do we want an ocean regime for? To restrict and restrain? Or to expand the possibilities for science, politics, and development in the future?"²⁷ How might a comprehensive ocean organisation practically embody the management of ocean commons, for example, by shaping how scientific knowledge could be made and shared, and indeed how it could be conceived as commonly held, rather than proprietary? PIM's vision intended to stretch the purview of common heritage to entail much more than simply the logistical management of mining royalties or rent payments, toward reorienting the flows of knowledge and technology such that the ocean could serve as a key foundation for truly equitable, self-determined, development. Maybe that vision feels impossible now. But in 1970, it would have felt to many like PIM modeled a structure that could change the world and conceive a better future whose reforms were as expansive as the seabed.

Altogether, the history of UNCLOS can be interpreted as a triumph of the ability of treaty-making to shape customary international law, but it can also be seen as a gradual weathering of imagination. Ocean politicians came to lament the fact that negotiations focused so much of their energy on seabed minerals, governed by an authority with limited rights and restricted responsibilities, at the expense of a comprehensive ocean organisation. Incipient ideas about benefits-sharing that had been wide in scope and diverse in intent became written only in terms of financial benefits to be derived directly from mining, and, eventually, policy chipped away at even these. Fairness, which had been conceived in terms of participatory equity and the kinds of redistributive actions necessary to achieve that, became rewritten in terms of states' abilities to fairly compete for knowledge and capital on a free and open market. Links between commonly held ocean resources and development were splintered in the hopes of pacifying extractive enterprise in developed countries, which famously foundered on the shores of the Reagan Administration's United States. Rejecting any obligations to share knowledge or capital and abjuring a commitment to seabed minerals as common heritage in any meaningful sense, the US refused to ratify UNCLOS.

26 Edwin Wenk "Toward Enhanced Management of Maritime Technology," in *Ocean Enterprises: A Special Report on a Preliminary Conference Held in Preparation for the Pacem in Maribus Convocation, Valletta, Malta, June 28-July 3, 1970*, ed Elisabeth Mann Borgese (Santa Barbara, California: Center for the Study of Democratic Institutions, 1970), 154–63.

27 Above n 27.

Mann Borgese and Pardo espoused an alternative understanding of ocean governance—one that foregrounds law's active engagement with imagination. The imagination of collective prosperity, so far held captive by the legal fiction of a mineral seabed (the Area), meets today a growing lack of trust in the distributive structures of international governance, which holds that "the common" seabed cannot be detached from the collective process of negotiating what is at stake in "commons". We can thus interpret an institutional investment in the labour of imagination as a shift from a paradigm of distributing a commons to one of commoning,²⁸ and from Law — particularly the restrictive, though operational, totality of law — to Jurisprudence.²⁹

Jurisprudence, a philosophy of law, operates as what Deleuze calls an institutionalised line-of-flight, a sanctioned yet deterritorialising power that "constantly threatens to bring what's been established back into question".³⁰ Jurisprudence involves the construction of a casuistry for a possible common life. "It advances by working out from singularities in contradistinction to the limitations of the rights of man and other empty eternal values" — among which CHM might be

28 Commoning entails understanding the commons, not as resources or static things, but as fluid, evolving social activities that take place in shared spaces. [...] Seen from this angle, commoning is akin to a process of 'world making' — a collective creation of a social system through experience [...] which implies being open and capable of change. See: <https://politiquesdescommuns.cc/glossaire#commoning> and Linebaugh, P *The Magna Carta Manifesto: Liberties and Commons for All* (1st ed, University of California Press, 2008).

29 These movements help illuminate the multifaceted nature of the current crisis in seabed governance. It is not only the limited scope in ocean governance granted to the ISA under the ratified version of UNCLOS, or the conservative interpretation of its responsibilities in relation to the common good. More recent manoeuvres—such as The Metals Company's (TMC) attempt to bypass the ISA's negotiation of the mining code, relegating its partnership with Nauru in order to align with the US administration under US domestic law — US Deep Seabed Hard Mineral Resources Act (DSHMRA)—underscore the fragility of existing structures in upholding even the most neoliberal conceptions of the common good. For a similar line of argument, see: Amon, D, Earle, S, Gjerde, K, Levin, L, Lily, H, Morgera, E, Pouponneau, A, Rodriguez-Moodie, T, Singh, P, Sumaila, UR, Thiele, T, Tsenikli, S and Vierros, M (2025) "Delivering Benefits to Humankind: Opportunities for the International Seabed Authority Under a Deep sea Mining Moratorium" *The Deep Sea Conservation Coalition*.

30 The 'G' entry of Deleuze's *L'Abécédaire* is noteworthy for its sustained and concrete consideration of law, justice, and institutional jurisprudence. Gilles Deleuze, *L'Abécédaire de Gilles Deleuze, avec Claire Parnet* (Paris:DVD Editions Montparnasse, Paris, 2004). See also Lefebvre, Alexandre (2005) A New Image of Law: Deleuze and Jurisprudence. *Telos: Critical Theory of the Contemporary* 2005 (130):103-126.

included.³¹ As such, Jurisprudence is capable of unblocking the movement of *commoning* – understood as the collective negotiation of what is at stake as Common Heritage.³² The PIM conference programme, we could argue, was a process of jurisprudential curation, driven by the idea of a Marine Revolution, but we could imagine others following—eg heritage, commons, fairness — to be inoculated with PIM's constituent spirit, ie posing questions such as: What would be the mandates of an organisation whose remit covers the largest ecosystem on Earth? What do we want an ocean regime for? By raising these questions as part of an active and committed practice of jurisprudence, as a form of political imagination, we argue that it would be possible to imagine other infrastructures and ways of implementing social rights commensurate with those of other beings on Earth, both present and future.

An interesting aspect that emerges from juxtaposing jurisprudence and law is that the former does not deny the fundamental role the work of imagination and fiction plays in shaping and producing a body of rules. Jurisprudence embraces a vaster space than law, culturing fictions on which law relies and nourishes but that the current structures reject. If we agree that one of the devastating effects of 'the Area' is on the spatial imagination from which ISA draws its mandate, purging "the space from which law draws its constitutive effects,"³³ then reclaiming jurisprudence in the context of ISA law-making involves a minoritarian becoming of law that not only seeks the enforcement of rights, but also the restitution of other worlds and the images of justice nourished in them.³⁴

31 Gilles Deleuze, *Negotiations, 1972-1990* (tr by Martin Joughin, Columbia University Press, New York, 1995) 153. Cited in Lefebvre, Alexandre (2005) "A New Image of Law: Deleuze and Jurisprudence". *Telos: Critical Theory of the Contemporary* (130):103-126.

32 "Law is always a process of "commoning", a long-term collective action in which communities, sharing a common purpose [...] institutionalize their collective will to maintain order and stability in the pursuit of social reproduction. Thus, the commons — an open network of relationships — rather than the individual, is the building block of the ecology of law and what we call an ecological order" (Capra & Mattei, 2015:15)

33 Ranganathan, above n 24, 573.

34 We borrow the term "minoritarian becoming" from Deleuze and Guattari, for whom it designates a continuous process of transformation and the creation of new possibilities beyond what is prescribed by the 'majority' embedded within language and culture. As they write, "Becoming-minoritarian is not becoming a member of a minority but becoming-minoritarian as a process of political and collective creation." See: Deleuze, Gilles, and Félix Guattari *A Thousand Plateaus: Capitalism and Schizophrenia* (tr by Brian Massumi, University of Minnesota Press, Minneapolis, 1987) 291.

C Since the deep ocean is not a void but a living being, a sacred keeper of memory, grief, resistance, and ancestral wisdom, how can art, history, and culture help us unlearn the logic of extraction, reimagine our relationships with the deep sea, and restore ways of being that honour its spirit, agency, and right to flourish beyond utility?

"You want to hear my history? Ask the sea."³⁵

The deep ocean is framed within governance structures as a technical and economic frontier, an "*aqua nullius*" rendered empty of meaning except insofar as it yields extractable resources.³⁶ Nowhere is this erasure more evident than within the frameworks of the ISA, headquartered in Kingston, Jamaica, a site layered with colonial histories yet institutionally distanced from them. In its ongoing negotiations over deep sea mining, the ISA upholds a Western concept of heritage encompassing material artefacts such as shipwrecks and submerged relics. This narrow view severs the broader cultural, spiritual, and historical relationships that communities across the world, particularly in the Global South, have long held with the ocean. The conversations remain dominated by environmental impact assessments and economic benefit-sharing models, leaving the historical, spiritual, cultural, and ontological dimensions of oceanic connection unspoken or at best relegated to the margins. This epistemic narrowing reflects what scholars of postcolonial theory and critical heritage studies have identified as a continuation of colonial modes of thought: the sea imagined not as a living cultural landscape, but as a void to be mapped, categorised, and exploited. The colonising imagination of deep ocean governance reproduces a status quo that treats ocean peoples' memories, identities, and ontologies as footnotes to the so-called serious business of economic rationality and scientific management.

"The Sea is History," writes Caribbean Nobel Laureate Derek Walcott – a sentiment shared by those shaped by colonial displacement and oceanic crossings. To "peoples of the sea," in the words of Tongan anthropologist and visionary of Oceania, Epeli Hau'ofa, the ocean is not a void but an archive. It is a living vessel of ancestral memory and future imaginings. For African diasporic and Caribbean peoples, the Atlantic is not merely a vast expanse of international waters; it is a mass grave, an ancestral burial ground, and a haunted site of history. During the

35 Derek Walcott "The Sea is History" *Selected Poems* (Farrar, Straus & Giroux Inc, 2014).

36 '*Aqua nullius*' is theorised in Elizabeth DeLoughrey *Routes and Roots: Navigating Caribbean and Pacific Island Literatures* (University of Hawai'i Press, 2007).

transatlantic slave trade, millions of African lives were stolen and consigned to the depths of the ocean. The Atlantic thus holds not only biological life but also has a spiritual and historical presence. Walcott captured this profound entanglement in his epic poems, calling attention to the ocean floor in which "bone (is) soldered by coral to bone/mosaics/mantled by the benediction of the shark's shadow".³⁷ Histories are "subtle and submarine", representing unfathomable loss and resistance and critical to re-member through ceremony, art, literature, and other cultural practices. These submerged memories continue to animate cultural practices, from rituals of remembrance to oral histories, from songs of mourning to renewed movements of reclamation. Similarly, across the Pacific and Arctic regions, Indigenous communities conceive of the ocean as kin, as homeland, as sacred space and as the afterlife. Polynesian wayfinding traditions, Inuit sea-ice cosmologies, Zenadh Kes navigators and ocean storytellers, and Sámi coastal narratives all testify to a profound relational epistemology that understands the sea as a living, thinking entity, an extension of community, spirituality, and governance.

Such oceanic worldviews understand the sea as a dynamic being that far exceeds its representations as a space of pure resource potential or inert matter. Deep sea creatures, moving through their shadowy and pressurised worlds, as well as hydrothermal vents and the nodules on the ocean floor, are little-known to Western science but are often integral to the storytelling and knowledge of oceanic peoples. These creatures do not concern themselves with our legal systems, yet they live within worlds full of structures and relations which have meaning to them. Western thought and governance segregate the human from nature. But what if we think from the position of the more-than-human? In doing so, we might see the possibility of mutual recognition through ontological difference. That is, we can recognise that these beings, and the environments they inhabit, do not live within our systems of law, but within systems of their own. It is as much about ecological knowledge as it is about Indigenous practices of being.

From this perspective, the deep sea itself could be seen not simply as a subject of regulation, but as a disruptor of legal meaning.³⁸ It suggests that what we need is the acknowledgement that alternative legal realities already exist—entangled with us yet grounded in entirely different ways of knowing and being. This is what legal

37 Above n 35.

38 Relatedly, Susan Reid encourages "not just the liquefaction of the development-tilted legal order but also of disassociated, exploitative, relational approaches to the ocean as well". Reid, Susan "Taking Code to Sea" in *Thinking Ecologically, Thinking Responsibly: The Legacies of Lorraine Code* (SUNY Press, New York, 2021) 279-80.

pluralism might truly mean: not merely the coexistence of different human legal systems, but the recognition that law is not only a human invention. Rather, law can emerge from relationships between people, waters, animals, and lands, embodied perhaps in the laws of the currents and coral, by migration paths and moon cycles. This notion challenges the very foundation of modern legal thought, asking us to reimagine the ontology of law itself as relational and evolving. As Zoe Todd has powerfully argued, Indigenous peoples, through their mediations of legal traditions in which they reflect on other-than-human as kin, practice non-extractive and reciprocal relations.³⁹ Western governance and extractive structures must listen and learn from this. However, this proposal stands in stark contrast to the practices of the ISA, where many Pacific island leaders have voiced their concerns. Time and again, they have emphasised that their local traditions and ancestral knowledge constitute systems of law in their own right, yet these have little or no recognition within the framework of international legal instruments. What we are proposing, situated between imagination and fiction, is thus not entirely fictive.

The ocean is also living memory, humanity's embodied palimpsest of migration, suffering, knowledge, life, and hope. To ignore these relational understandings within deep sea governance frameworks is not simply an oversight; it constitutes a profound form of epistemic violence. When institutions such as the ISA perpetuate frameworks that value only tangible, commodifiable aspects of the deep ocean while silencing its intangible cultural dimensions, they extend the logics of dispossession that began with colonialism and were institutionalised by the transatlantic trade. If the ocean is a grave, a home, and an archive, then deep sea mining without cultural reckoning is a continuation of historical erasures and violence. To govern the ocean justly demands more than environmental assessments or financial redistribution. It demands centring the living memories, cosmologies, and relational sovereignties that communities have long cultivated with the sea.

Despite the profound ancestral and cultural ties that many frontline communities have with the ocean, interventions that centre art and cultural expression remain largely marginalised within formal decision-making spaces such as the ISA. When Pacific leaders like Solomon Pili Kaho‘ohalahala introduce chants, songs, and traditional forms of storytelling and communication into negotiations, their interventions are often met with unease, perceived as disruptions to the sterile, technocratic proceedings. The negotiation rooms are built for measured technical

39 Zoe Todd (2018) "Refracting the State Through Human-Fish Relations: Fishing, Indigenous Legal Orders and Colonialism in North/Western Canada" *DIES: Decolonisation, Indigeneity, Education, and Society* 7 (1) 60–75.

dialogue, not for the heartbeat of ancestral memory. Even fundamental provisions such as sound amplification or space for artistic expression are absent, revealing a deeper truth: the structures of ocean governance have not been designed to accommodate non-Western ways of knowing, feeling, and being. In these halls, art is not seen as knowledge, and culture is not seen as evidence. The conference hall becomes a place where corporate humanity feels at home, lifeless, dominated by words stripped of spirit, reinforcing a narrative where oceans are understood only in terms of their economic utility.

Outside the confines of these formal spaces, however, cultural practitioners are carving out sites of resistance. The "Ocean Depths Unveiled: Preserving the Abyss" exhibition, hosted in Kingston, Jamaica alongside ISA negotiations in July 2023, challenged the prevailing norms by embodying the ocean's spirit through dance, songs, textiles, films, and photography (Figure 5). In stark contrast to the procedural sterility inside the negotiation halls, the exhibition invited viewers to engage the deep sea through emotion, ancestry, and imagination.



Figure 5. Works such as *Ocean Mysteries* by Jamaican artist Danaree Greaves stitched the textures of Caribbean marine life into vivid textile forms, inviting a tactile, emotional connection to the mysteries of the seafloor. These creative expressions made the invisible visible, translating the deep ocean from an abstract resource into a living, breathing cultural space. Where formal policy discussions often fell silent on the soul of the ocean, art spoke volumes, making tangible the loss, wonder, and sacredness at stake.

This movement of cultural resistance stands firmly on the legacy of Caribbean artists who have long grappled with the ocean-land nexus as a site of memory, rupture, and survival. Artists such as Deborah Jack illuminate the ocean's layered meanings through works that explore its roles as graveyard, archive, and refuge. In multimedia pieces like *the water between us remembers* and *shore*, Jack depicts the ocean as an active witness to history, bearing the weight of the transatlantic slave trade and ongoing colonial erasure. Her art captures the silence of submerged grief while also offering the ocean as a site for reimagining futures rooted in memory and resilience. Across the Caribbean and other regions with islands and coastal regions, contemporary artists, writers, and storytellers are weaving cultural continuums that resist the violent simplification of the sea into neat zones of extraction. They are insisting that the ocean is not a blank slate for resource exploitation, but an archive of lives lived, lost, and yet-to-be-born.

Cultural expression in this context is not ornamental. It is a necessary intervention. It is a form of memory-keeping, resistance, and reclamation. Through exhibitions, storytelling, music, and film, communities are reminding the world that the ocean's value cannot be reduced to mineral content or ecosystem services. The ocean is history, it is spirit, it is home. Every dance performed, every textile woven, every story spoken in defiance of technocratic amnesia reclaims the deep sea as a living cultural space. It challenges ocean governance to confront its blind spots and to build a new ethic, one rooted not in extraction, but in reverence, remembrance, and responsibility.⁴⁰

III CONCLUSION: A DEEP SEA TO OWN, OR TO IMAGINE WITH?

For now, most minerals remain in the deep. So long as they do, for some, there remains an ocean to win, a frontier to exploit. Considered beyond such extractive limitations, through more relational imaginaries and histories, the ocean and its bed are felt and understood as allies and kin. The ISA's seabed governance approach has not yet realised its potential for ethically focused, human-ocean stewardship that reflects diverse oceanic voices, histories and knowledges, and as yet unknowable

40 From a similar standpoint of values-based ocean management, the concept of "integral heritage" offers a means of engaging with this so-called "intangible heritage" without reducing it to extractable value. Rather than treating heritage as a set of isolated categories—natural, cultural, underwater, or intangible—it reframes it as a holistic entity embedded in lived and ecological relations encompassing the interconnectedness of memory, society, culture, nature, and the environment. See Pérez-Álvaro, E and Boswell, R (2025) "Integral oceans heritage of Indigenous communities: Its value for good health and well-being" Social Sciences & Humanities Open, 11.

future ones. The Deep Currents Collective views culture and imagination as critical pathways for future seabed governance.

The Deep Currents Collective aims to generate critical new knowledge tools for navigating present and future challenges associated with extractive seabed regimes and diverse human relationships with the deep seabed. We foreground Indigenous, vernacular, and traditional knowledges sidelined by Western law and technoscience. We are working to bridge epistemic and legalistic gaps, structuring discourse within and beyond the ISA that have bisected the high seas from the territorial seabed, and the water column from the ocean floor. Indeed, given the contemporary ambivalence or even antagonism toward multilateral negotiation and international lawmaking emerging in the Global North and particularly the US, we hold the conviction that building a deeply rooted base of shared cultural values and norms must underpin further efforts to make broadly acceptable ocean law and policy.

In forming these convictions, we recall again *Pacem in Maribus*, where an anonymous commentator suggested that divisive interests in an ocean regime could only be overcome if "advanced" countries could "demonstrate relatively new attitudes" to "Third World states" that promised to be "full (and perhaps even obstructive) bargaining partners". Some participants at PIM 1 conceived of how these new attitudes could be demonstrated. Part of the redistributive justice that an ocean organisation might embody in practice concerned how scientific knowledge could be shared, and indeed how it could be conceived as commonly held, rather than proprietary. How could the study of socially governed ocean science be organised? Mann Borgese believed that scientific research and training could become a key, rather than ancillary, function of the organisation. She felt that the viability of the institution depended not only upon how states and multinationals would sort out claims to political-economic sovereignty, but also upon building a social contract between the public and the world scientific community.

These ideas were distilled by Mann Borgese into the machinery of an organisation in a text called *The Ocean Regime*, which followed and summarised PIM 1. In it, she imagined the organisation, which she called the Maritime Commission, as octopus-like. Its "centre," a seat of decision-making divided among industries, worker unions, scientists, politicians, and others, would host rotating fellowships and researchers by affiliating with a tentacular global network of universities. She clearly had PIM's postcolonial and non-aligned participants in mind, including Shirley Amerasinghe (Ceylon), Tommy Koh (Singapore), Egerton Richardson (Jamaica), and Arvid Pardo (Malta), by suggesting that, "in selected universities — eg Washington, MIT, Jamaica, Bristol, Goteborg, Leningrad, Naples, Malta, Colombo, Singapore, Kyushu

— one can readily imagine regional institutes whose research and training programs would be closely coordinated with the 'centre'.⁴¹ Reworking scientific infrastructure might change how ocean knowledge was made, by whom, and why. Where, for Mann Borgese, the Marine Revolution was primarily a matter of transfer and diffusion through universities, the Deep Currents Collective builds on this spirit to work cooperatively with not only diverse universities, but also cultural organisations, science and conservation groups, creative youth and community groups, and activist and civil society networks.

In hoping to distribute training and research programmes across the world, Mann Borgese had in mind the primary intention of bolstering participation in seabed mining among countries that traditionally lacked access to the capital, knowledge, and technical training needed to prospect on the high seas.⁴² Obviously, times have changed, and the needs and priorities held by communities of relevant concern have shifted. There are widespread, diverse, and growing calls for precautionary pauses or even moratoria on deep seabed mining. Yet, the spirit of Mann Borgese's Maritime Commission in service of a wider Marine Revolution theorised in *The Ocean Regime*, remains important as we search for ways to build models for ocean governance that are inclusive of all perspectives, and do not parochialise Indigenous, vernacular, or traditional modes of relating to the ocean as alternative to UNCLOS. An institutional network, as adapted from Mann Borgese above, might contribute, for example, to building and maintaining the infrastructure for a transdisciplinary and translocal database of resistance practices and other situated approaches to oceanic valuation. This kind of data stewardship would work to assert the place of diverse epistemological approaches to jurisprudence – what ecological accountants in the Pacific have referred to as an "ocean of data", within a wider legal ecology both at the ISA and beyond.⁴³

Hope for better and fairer ocean governance lies with the communities that have formed to demand not only better science, more transparent lawmaking, and fairer distribution of benefits, but also a re-evaluation of how we collectively relate to the ocean and designate its spaces and resources, toward a reconception of

41 Elisabeth Mann Borgese *The Ocean Regime: A Suggested Statute for the Peaceful Uses of the High Seas and the Sea-Bed beyond the Limits of National Jurisdiction*, Center Occasional Paper (Center for the Study of Democratic Institutions, 1970).

42 In 1972, Professor Elisabeth Mann Borgese founded the International Ocean Institute (IOI), an independent organisation, which conducts training and capacity building in Ocean Governance.

43 Arnie Saiki, *Ecological-Economic Accounts: Towards Intemperate Values* (Pacific Theological College, Suva, Fiji, 2020) 7. We thank the reviewer of this article for insight toward this point.

"management" in the registers of stewardship and kinship. This ensures that all ocean knowledges, which have long preceded the epistemes of international law and western science that contour the ISA, are recognised as such and taken seriously in their own terms rather than folded into the concepts that have colonised them. This requires an imaginative shift fostered by culture and the arts, but that need not be limited to them. For example, a biocultural approach to jurisprudence would take forms of social, legal, and historical expression embodied by art, oral tradition, and diverse modes of record-keeping, as a distributed archive of legalistic claims.⁴⁴ Patterns of place-making, extractive refusal, social organisation, and ecological valuation might then emerge as counterpoints to the relentless imposition of reductive developmentalism.

Diverse publics, only a few of whom have been included as observers at the ISA, must be central to projects of rethinking ocean management. Seabed governance's long, slow, fall from its redistributive conception underscores that we cannot rely on help to arrive from above. It is up to us to look beyond the guardrails for places where they might be widened or reshaped. If Nauru and some other Pacific states are among Barron's "few that are willing" to engage because they see mining as "a real opportunity to contribute to the world's transition to clean energy," then they, and we, should fight with tooth and nail to insist that the identification of a resource with common heritage does not free extraction from responsibilities to people and ecology.⁴⁵ Rather, it deepens and multiplies these responsibilities.

44 On the possible dimensions of a biocultural approach that could be applied to seabed governance, see Luisa Maffi, "Biocultural Diversity," in *The International Encyclopedia of Anthropology* (John Wiley & Sons, Ltd, 2018), 1–14, <https://doi.org/10.1002/9781118924396.wbiea1797>; Heather L McMillen et al (2014) "Small Islands, Valuable Insights: Systems of Customary Resource Use and Resilience to Climate Change in the Pacific" *Ecology and Society* 19, no 4; Michael C. Gavin et al (2015) "Defining Biocultural Approaches to Conservation" *Trends in Ecology & Evolution* 30, no 3, 140–45; Virginie Tilot et al (2021) "Traditional Dimensions of Seabed Resource Management in the Context of Deep Sea Mining in the Pacific: Learning From the Socio-Ecological Interconnectivity Between Island Communities and the Ocean Realm" *Frontiers in Marine Science* 8, 257.

45 Quoted material is from Company "Open Letter to Ocean Conservation Community." See also the claim made recently by analysts at Development Alternatives with Women for a New Era (DAWN) and the Pacific Network on Globalization (PANG) that TMC's about-face away from the ISA to the end of mining the international seabed under the US Deep Seabed Hard Minerals Resource Act has every bit to do with a project of securing national defense materials as it does with onshoring key links in the commercial supply chain for critical minerals. See Claire Slatter and Maureen Penjueli "Peace Under-Sea Siege: How 'Defense' Critical Minerals Could Pull the Trigger to Mine the Ocean Floor?" (Development Alternatives with Women for a New Era (DAWN) and Pacific Network on Globalization (PANG) nd).