

From apathy to action

Africa's role in deep seabed mining

Edwin Egede



When the United Nations Convention on the Law of the Sea was adopted, Africa played an active role in developing the deep seabed mining regime. The continent should now play an equally active role in steering future debates on the subject. African countries must implement a clear action plan to transform the ideas presented in African blue economy instruments into action.

Key findings

- ▶ Africa made a vital contribution to the establishment of the deep seabed mining (DSM) regime under the Convention on the Law of the Sea (LOSC).
- ▶ Ten African states sponsored the resolution that led to the United Nations General Assembly establishing an ad hoc committee and a standing committee to study the peaceful uses of the seabed and ocean floor beyond national jurisdiction.
- ▶ For a long time after the adoption of the 1994 Implementation Agreement, the continent was apathetic about DSM. More recently, interest in the subject has been growing.
- ▶ Africa is the only regional group that has not sponsored an entity to explore the international seabed area (the Area).
- ▶ The International Seabed Authority (ISA) has developed a range of initiatives to encourage Africa to engage more with DSM. Its African group is playing an active role in developing DSM regulations for the Area.
- ▶ Exploitation of critical minerals in the Area may contribute to the global transition to a low-carbon economy. The fact that such a transition will affect terrestrial mining makes it appropriate for Africa to invest in DSM. The COVID-19 pandemic has hampered negotiations to finalise the exploitation regulations.

Recommendations

For African states:

- ▶ Consider the implications of both engaging and failing to engage directly in DSM exploration activities.
- ▶ Sponsoring an entity or a consortium of states to apply for an exploration contract with the ISA is an option for direct engagement.

For the AU:

- ▶ Adopt the Lomé Annexes.
- ▶ Improve its Africa Integrated Maritime (AIM) Strategy. It should provide a clear statement on African states' position on DSM and the need for an African DSM policy and legal framework based on the best environmental standards and practices.

- ▶ Assess the benefits and environmental risks of DSM through regional maritime strategies that are informed by research and dialogue.
- ▶ Support the African Minerals Development Centre in coordinating the work of the institutions that adopt DSM-relevant instruments. This will help achieve Africa's goal to engage more actively and coherently with DSM.
- ▶ Develop a clear action plan for Africa, which could be based on the United Nations Economic Commission for Africa strategic roadmap. The plan will help transform ideas in the different African blue economy instruments that support DSM engagement, into action.
- ▶ Strengthen cooperation with ISA in order to develop and implement specific activities/programmes that support Africa's blue economy.

Introduction

The International Seabed Authority (ISA) is based in Kingston, Jamaica. It manages all mineral-related activities in the international seabed area beyond the limits of national jurisdiction, and has developed regulations to control exploration for mineral resources in what is known as the Area.¹

The exploitation regulation, however, has yet to be finalised. The Pacific state of Nauru, a member of the ISA, which has sponsored Nauru Ocean Resources Inc to contract with the ISA to explore the Area, triggered the ‘two-year rule’ in terms of the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (the 1994 Agreement). This requires the ISA to finalise the exploitation regulation within two years from 30 June 2021.²

Africa is the only region that hasn’t sponsored an entity to explore the international seabed area, though interest in the subject is growing

The African regional group of the ISA has expressed concerns about the two-year deadline, citing the fact that the COVID-19 pandemic has hampered the negotiation process.³ Several significant issues, such as developing a mechanism for sharing equitably the benefits derived from seabed mining and the impact of seabed mining activities on terrestrial mining economies, conservation activities and coastal states, as well as putting into operation the Enterprise (the ISA’s mining arm),⁴ still need to be resolved.⁵

Background

In 1967 Arvid Pardo, the Maltese Ambassador to the United Nations (UN), delivered a famous speech before the UN General Assembly, arguing that the deep seabed area beyond the continental shelf of coastal states and the resources therein (the Area) should be declared the Common Heritage of Mankind (CHM).⁶

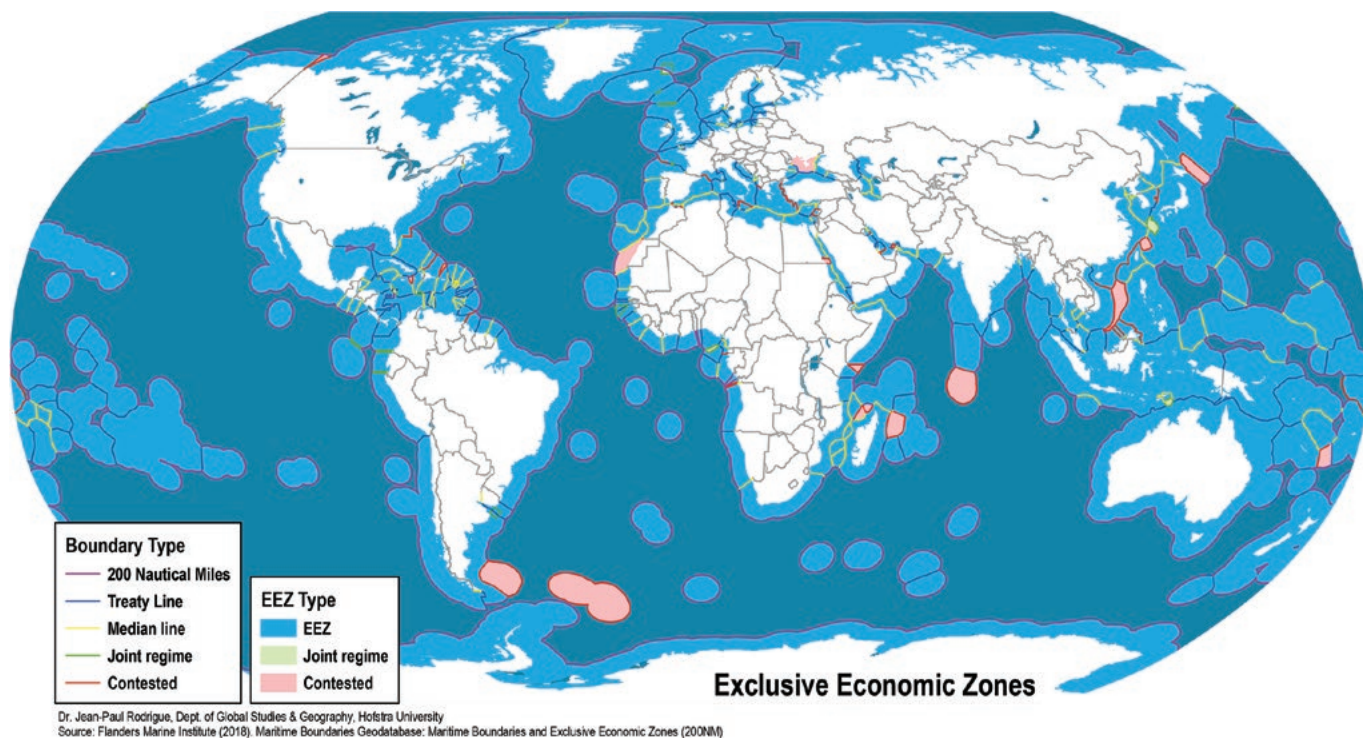
The Area should be used only for peaceful purposes, he declared.⁷ The speech was a ‘clarion call for developing states, including African states’, to support the initiative to establish a distinct regime for the Area based on the core principle of CHM.⁸ One possible reason for doing so might be that, as Pardo put it, the race for marine resources can be compared to the colonial rush for territories in Africa and Asia.⁹

The speech led to a raft of UN General Assembly resolutions, which many newly independent African states supported actively.¹⁰ The General Assembly’s establishment of an ad hoc committee and then a standing committee to study the peaceful uses of the seabed and ocean floor beyond national jurisdiction was based on a resolution sponsored by ten African states – Egypt, Ghana, Kenya, Libya, Madagascar, Nigeria, Senegal, Somalia, Sudan and Tunisia.¹¹



THE RACE FOR MARINE
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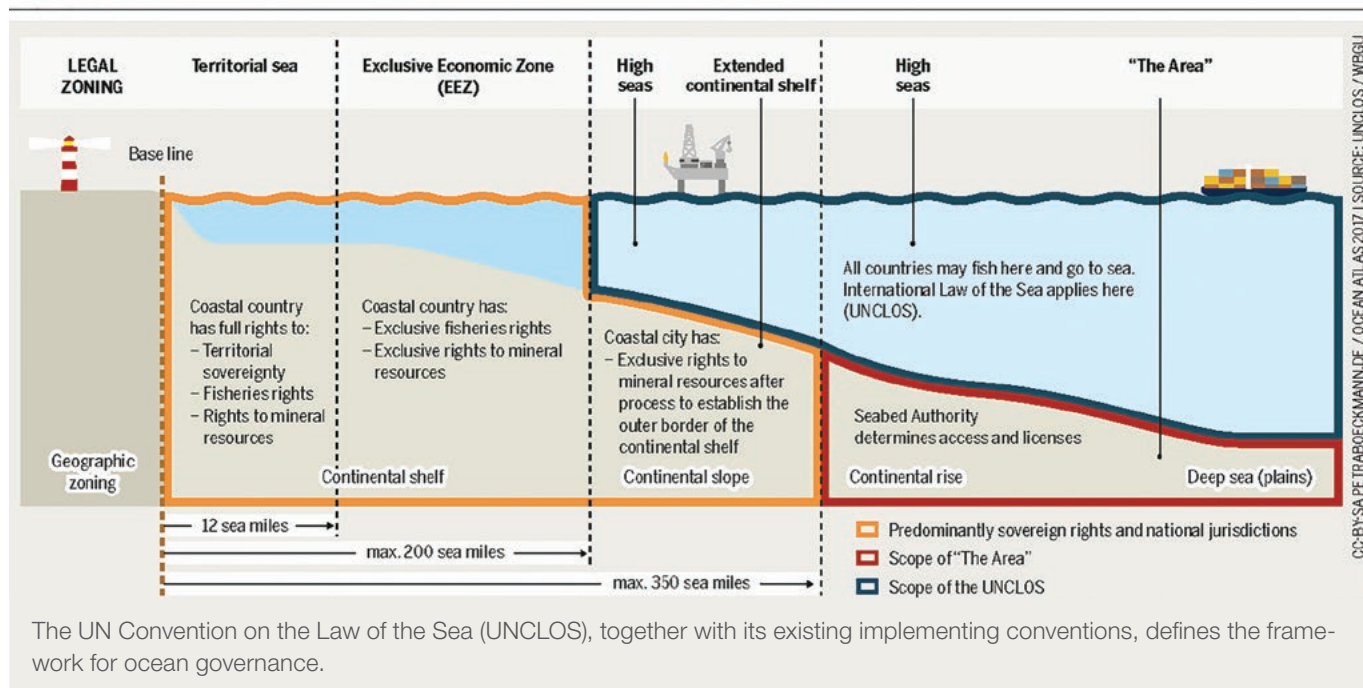
Chart 1: Maritime boundaries geodatabase – maritime boundaries and exclusive economic zones



Source: Flanders Marine Institute (2018)

Chart 2: Legal and geographic zoning

How the Lawyers Think—Maritime Zones and the International Law of the Sea



The UN Convention on the Law of the Sea (UNCLOS), together with its existing implementing conventions, defines the framework for ocean governance.

Source: Ocean Atlas 2017, Petra Böckmann/Heinrich Böll Foundation

During the third United Nations Conference on the Law of the Sea (UNCLOS III), which lasted from 1973 to 1982, the Organization of African Unity (OAU) passed significant resolutions harmonising the positions of African countries on a variety of issues raised at the Conference, particularly with regard to the Area.¹² The OAU's Council of Ministers adopted the Declaration of the Organization of African Unity on the Issues of the Law of the Sea in 1974, following the start of UNCLOS III.¹³

UNCLOS III led to the 1982 United Nations Convention on the Law of the Sea (LOSC), although this only came into force in 1994 after the 1994 Agreement was reached. The agreement, which significantly modified the original Part XI of the LOSC provisions, was negotiated and adopted to encourage certain central developed states, including Canada, France, Germany, Japan, United Kingdom and the US, to ratify the LOSC. Currently 47 African states are parties to the LOSC and 36 are parties to the 1994 Agreement.¹⁴

International Seabed Authority and Africa

Deep Seabed Mining Regulatory Framework

The LOSC recognises the Area and its resources as CHM.¹⁵ The International Seabed Authority (ISA), which is regulated by Part XI and Annexure III of the LOSC, as modified by the 1994 Agreement, is responsible for organising and controlling all mineral-resources- related activities in the Area on behalf of humankind.¹⁶ It is also responsible for protecting the marine environment in the Area and promoting and encouraging the conduct of scientific research there and coordinating and disseminating the results.¹⁷

Notwithstanding concerns about the potential environmental impact of DSM, the ISA has made substantial progress in drafting regulations based on the LOSC, as modified by the 1994 Agreement, to ensure that deep seabed mining is developed in an environmentally sustainable manner.¹⁸ It has developed regulations for prospecting and exploration in the Area for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. The precautionary approach is incorporated in these regulations and in the functioning of ISA and its decision-making processes.¹⁹

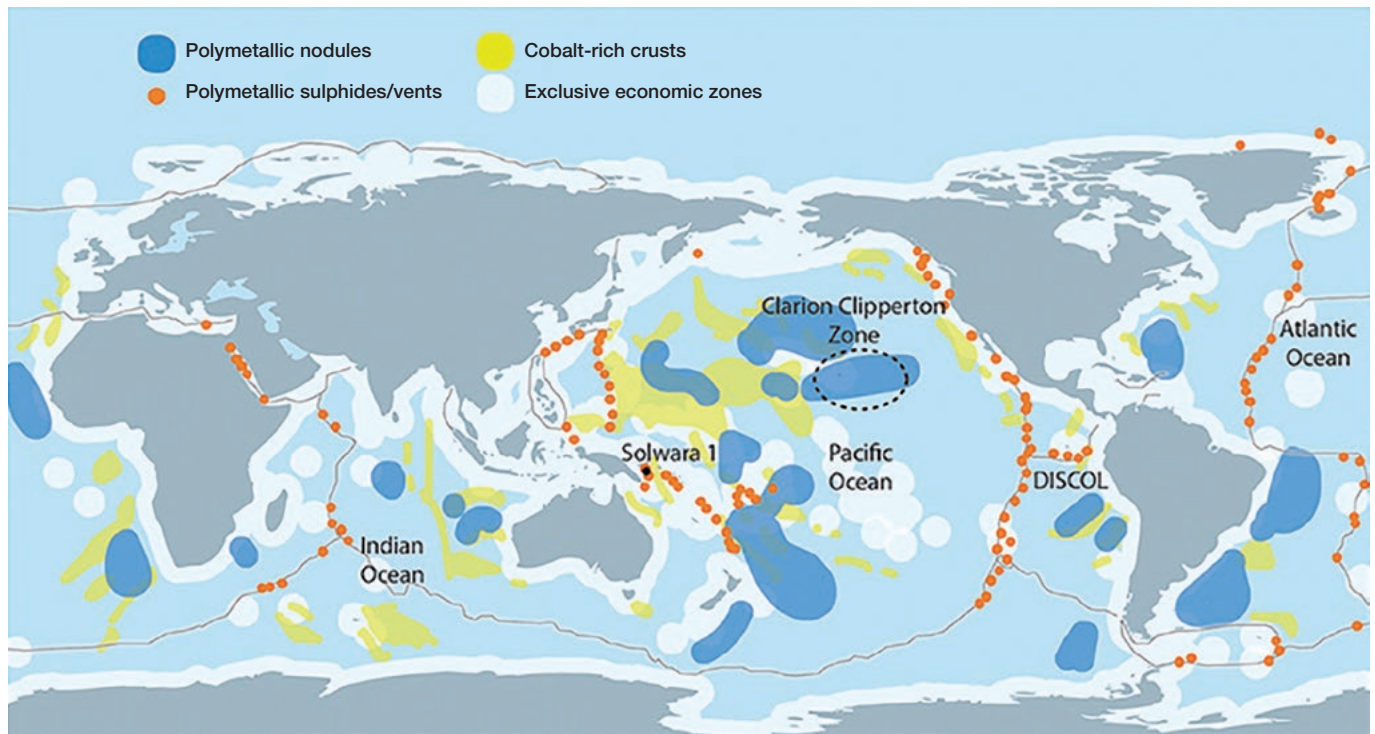
Thus far ISA has entered into 31 contracts with state entities and private corporations sponsored by states parties from different regions of the world for the exploration of the Area.²⁰ Africa comprises 55 states, 39 of them coastal, the other 16 landlocked (although some border on or contain large lakes and rivers).²¹ Yet the continent is the only regional grouping in the ISA that does not have a state party sponsoring a corporation to secure an ISA contract to undertake exploration activities in the Area.

In contrast, several Caribbean and Pacific Small Island developing states, among them the Cook Islands, Kiribati, Nauru, Tonga and Jamaica, have sponsored entities to secure exploration contracts from the ISA.²²

The draft regulations for the exploitation of mineral resources in the Area are now being developed with the participation of a diverse group of stakeholders, including states, civil society and corporations.²³

ISA HAS
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Chart 3: World map showing the location of the three main marine mineral deposits



Source: Redrawn from a number of sources/frontiers in Marine Science

If the ISA fails to finalise the exploitation regulation within the requisite two years in response to Nauru's application,²⁴ an application for a plan of work for exploitation by a contractor would have to be considered and provisionally approved based on 'the principle of contractor non-discrimination' under the LOSC and regulations provisionally adopted by the ISA Council.²⁵

Since this is the first time the 'two-year rule' has been invoked, there is no definitive interpretation of what this would mean, although some scholars have sought to offer one.²⁶ For example, it is unclear how such a pending plan would be provisionally approved because it would still need to be reviewed and assessed by the ISA Council, which might have valid reasons for not approving it. Further clarity on this and other elements of the relevant clause of the 1994 Agreement, such as provisionally approved ISA Council regulations and the principle of contractor non-discrimination, would be required.²⁷

African Regional Group

The concerns of the African group about the two-year deadline are based on a number of issues, among them the fact that the COVID-19 pandemic has hindered the

negotiating process. Others are the need to devise a mechanism for sharing equitably the benefits of seabed mining, the impact of seabed-mining activities on terrestrial mining economies and methods of putting the Enterprise into operation.²⁸

The African regional group has been quite active in the ISA, offering a substantial number of proposals about the development of the international regulatory framework for the Area.²⁹ It has made a significant contribution to the ongoing development of the draft Regulations for Exploitation of Mineral Resources in the Area, including the economic model/payment regime and other financial matters.³⁰

In doing so, the group was guided by the provisions of LOSC and the 1994 Agreement, especially the core principle of the CHM, and the Africa Mining Vision (AMV), a strategic plan adopted by the African Union (AU) Assembly for the '[t]ransparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.' The AMV promotes a developmental approach to mining with the aim of ensuring that the environment is protected and the proposed beneficiaries enjoy real benefits.

The group is further inspired by the AU's Agenda 2063, a long-term strategic framework for the socio-economic transformation of the African continent, which emphasises a sustainable, people-centred and equitable approach to development.³¹ The group has also been instrumental in activating renewed interest in the ISA in putting the Enterprise into operation.³² It has also made significant proposals about training and capacity building that would facilitate the participation of developing states, including those from Africa, in the design of the training and ensure it meets their needs.³³

African Deep Seabed Resources Project

The ISA established the African Deep Seabed Resources (ADSR) Project to fulfil a voluntary commitment it made during the 2017 UN Ocean Conference to foster international and regional cooperation in support of the sustainable development of Africa's blue economy.³⁴

The relevance of the blue economy is underscored by the African Union and deep seabed mining is cited as 'one of the critical blue growth areas'

The project, which is housed in the ISA, is implemented jointly with the AU and the Norwegian Agency for Development Cooperation.³⁵ The ADSR is committed to organising five workshops, one in each African sub-region, to raise awareness about the significance of the African continental shelf and the adjacent Area. The workshops also discuss strategies that would help African states, including those that are landlocked, and their nationals to build the expertise to engage in DSM activities in the Area and promote sustainable use of the maritime areas around the continent.

Three workshops have been held thus far – in Abidjan, Côte d'Ivoire (October 2018); Pretoria, South Africa (2019) and with the Mauritian government (June 2021 – virtual workshop).³⁶ Another significant component of the ADSR's task is the two-month deployment of experts in ocean policy/blue economy and geology from African states to the ISA Secretariat to strengthen their expertise in deep seabed related matters while also contributing to the work of the Secretariat.³⁷

Other initiatives

The ISA undertook additional initiatives in 2021 to respond to the specific capacity-development needs of African states. Among these were specialised webinars on marine scientific research ('MSR Information Series for Africa').³⁸ Three key documents have been published, explaining the essential requirements contained in the LOSC for least developed countries, landlocked developing countries, and small island developing states, including African states.³⁹

January 2014

THE AU ADOPTED THE 2050
AFRICA INTEGRATED
MARITIME STRATEGY (AIM)

Africa and deep seabed mining

After a period of apathy about DSM after the 1994 Agreement was signed, there appears to be renewed interest, sparked by the imminent exploitation in the Area made possible by technological progress.⁴⁰ The initial focus was limited to blue economies related to internal waters, territorial seas, exclusive economic zones and continental shelves. But African states are recognising that there is a need to expand involvement to the Area, a maritime zone which, along with the mineral resources it contains, has been designated as CHM.⁴¹

African Union

In 2014 the AU adopted an integrated long-term approach to engaging with the rivers and lakes within the continent and the oceans adjacent to it, calling it the 2050 African's Integrated Maritime (AIM) Strategy.⁴² However, it failed to engage in DSM activities in the Area despite the fact that the LOSC specifies that effective participation of developing states there should be encouraged.⁴³

It has since expressed a willingness to address this gap in its strategy. In 2015 it adopted Agenda 2063, a strategic framework for the continent's socio-economic transformation in the next 50 years.⁴⁴ This long-term vision, comprising seven aspirations, builds on and attempts to expedite the implementation of continental growth and development programmes and cites DSM under Aspiration 1, titled '[a] prosperous Africa based on inclusive growth and sustainable development'.⁴⁵

There appears to be renewed interest, sparked by the imminent exploitation of the international seabed area made possible by technological progress

The relevance of the blue/ocean economy is underscored and DSM is mentioned as 'one of the critical blue growth areas', supporting, among other things, 'exploitation and beneficiation of deep-sea mineral and other resources.'⁴⁶ Aspiration 7 emphasises the necessity for Africa to have its 'rightful share of the global commons (land, oceans and space)', which, of course, includes the Area.⁴⁷

The AU adopted the African Charter on Maritime Security, Safety and Development in Africa (the Lomé Charter) at an Extraordinary Summit held in Lomé, Togo, in 2016.⁴⁸ The summit aimed to change the issue of engaging with the blue economy from soft law to a more binding approach.⁴⁹ However, when the charter was adopted the assembled heads of state and government felt that some of the AU's specialised technical committees (STCs) had not had the opportunity to be involved in its creation, especially the aspects relating to development.⁵⁰

Agenda 2063

CITES DEEP SEABED MINING
UNDER ASPIRATION 1

The AU Assembly, therefore, instructed the African Union Commission (AUC) to:

take all necessary measures in order to convene an Extraordinary session of the relevant Specialized Technical Committees which were not involved in the elaboration process of the Charter, namely: the STCs on Trade, Industry and Minerals, STC on Transport, Infrastructure, Energy and Tourism, STC on Monetary Affairs, Economic Planning and Integration and any other relevant STCs to enable them to consider issues falling within their respective mandates and submit their contributions to the African Charter, in the form of annexes, to the Assembly for consideration in July 2017.⁵¹

In line with this decision, the African Union Commission (AUC) convened an Ad Hoc Expert Group consisting of a range of experts from different disciplines. The group was mandated to develop the draft annexes. These included aspects of DSM such as encouraging cooperation among African states and cooperating with developing countries with the capacity and skills to engage in DSM in an environmentally sustainable manner. The draft annexes designated the African Minerals Development Centre (AMDC) as the appropriate technical institutional body to provide strategic vision and policy direction on DSM and coordinate DSM activities on the continent.⁵²

When the annexes are adopted, they will be an integral part of the charter.⁵³ They were developed in 2017 and validated in a workshop bringing together several stakeholders involved in marine affairs in Africa.⁵⁴ At the time of writing they are still being considered by the relevant AU political organs for adoption.⁵⁵

At the 2018 Sustainable Blue Economy Conference, jointly organised by Kenya, Canada and Japan and held in Nairobi, the AU requested, among other things, '[h]elp [for] African countries in capacity building in exploitation of deep seas.'⁵⁶ Subsequent to the conference the Agriculture, Rural Development, Blue Economy, and Sustainable Environment department of the AUC directed its technical office, the AU Inter-African Bureau for Animal Resources (AU-IBAR), to develop an African Blue Economy Strategy.

The AU STC on Agriculture, Rural Development, Water and Environment developed and subsequently endorsed this strategy,⁵⁷ which identifies DSM in the Area as one of the new frontiers of the Blue Economy with colossal potential and pinpoints a gap in African expertise in this field.⁵⁸

According to the Strategy DSM resources could be used to create a prosperous continent if it sets 'clear objectives with concrete milestones.'⁵⁹ It identified particular strategic objectives for Africa's engagement with DSM, such as the need to meet the growing demand for minerals and harness the potential of the DSM as an innovative industry through research and development. It advocated the creation of an appropriate regulatory framework, the necessity to deal with DSM in a sustainable and environmentally responsible manner as well as the need for capacity building and knowledge transfer.⁶⁰

Deep seabed mining resources could create a prosperous continent if it sets clear objectives with concrete milestones

Although DSM is included in the 2019 Blue Economy Strategy, because the strategy was developed by an AU subsidiary unit it does not have the same degree of authority as Africa's Integrated Maritime Strategy (AIMS) and the Lomé Charter,⁶¹ which were adopted by resolutions of the AU Assembly. To elevate DSM to prominence the AIMS must be revised, and the annexes of the Lomé Charter should be adopted and incorporated.

United Nations Economic Commission for Africa

The United Nations Economic Commission for Africa (UNECA), whose mandate is to promote the economic and social development of African states and intra-regional integration and international cooperation for Africa's development, made one of the first significant policy pushes for Africa's engagement with DSM in 2016.⁶² The *UNECA African Blue Economy Policy Handbook* advocated the inclusion of DSM as an integral part of the African blue economy.⁶³

UNECA collaborates closely with the AMDC, which, at its inception was housed within the commission.⁶⁴ Both have undertaken significant initiatives to support Africa's participation in DSM operations.⁶⁵ In 2016 UNECA facilitated the AMDC's observer status with the ISA. The AMDC stated that it intended to use this status to 'contribute to establishing a deep-sea mining governance framework for Africa, and ... the development of policies and regulatory frameworks for the deep-sea mining sector.'⁶⁶

African states that sponsor deep seabed mining may benefit from royalties, taxes, employment and capacity building

In 2017 UNECA and AMDC, in collaboration with ISA, the AU and Uganda, a landlocked state, hosted a high-profile workshop in Kampala on 'Marine Mineral Resources of Africa's Continental Shelf and Adjacent International Seabed Area – Prospects for Sustainable Development of Africa's Maritime Domain in Support of Africa's Blue Economy'.⁶⁷ The workshop was attended by more than 60 participants from government mining ministries, international organisations, partner institutions and the private sector. The workshop advocated a collaborative body among African states (such as the AMDC) to raise awareness of DSM.

This would require encouraging states to sponsor contractors to engage in deep seabed exploration activities in reserved areas. Among the essential steps to improve the AIM Strategy is establishing a clear common position on DSM. An African DSM policy and legal framework anchored by the best environmental standards and practices is also needed. It is also vital that African states are helped to employ and build the capacity to use DSM technology.⁶⁸

In January 2020 UNECA convened a workshop to develop a strategic roadmap for the development of DSM regulations for Africa's Blue Economy.⁶⁹ The roadmap consisted of seven strategic goals:

- Establish a multilevel coordinating body to coordinate Africa's engagement with DSM
- Include DSM in continent-wide African Blue Economy normative instruments

- Arrange stakeholder consultations on Africa's involvement in DSM
- Develop a legal regulatory framework for DSM⁷⁰
- Work out the cost implications of a DSM exploration contract
- Establish appropriate national institutions for DSM
- Apply to the ISA for an exploration contract

To the best of this author's knowledge, there has been no progress in implementing these goals.

Economic Community of West African States

Under the heading 'Regulate mining and other exploitation of natural resources,' the Economic Community of West African State (ECOWAS) Integrated Maritime Strategy 2014 (EIMS) touches briefly on DSM without elaborating on how it would include it. It states:

The ocean and riverbeds are rich in oil and precious minerals that offer many economic development opportunities but need to be managed responsibly by competent authorities nationally and regionally. National governments must, under the guidance of the regional bodies, guide responsible extraction to the benefit of all their people. However, extraction, exploration, or deep-sea mining raise concerns about potential environmental impacts. The protection of the marine environment is of utmost importance.⁷¹

While it is vital to highlight the potential environmental effects of DSM in the EIMS it would have been helpful for this sub-regional strategy to elaborate on the potential benefits to provide a more balanced view of DSM.

Conclusion

Africa played an active and essential role in developing the deep seabed regime contained in part XI of UNCLOS 82. However, when Part XI was modified by the 1994 Agreement, the continent appeared to become indifferent to the regime. The raft of instruments engaging with the African blue economy that have been adopted appear to have changed this attitude and the continent must play an active role in steering future debates and discussions.

A coordination mechanism is needed to synchronise the efforts of institutions that have adopted the instruments. This will help achieve the goal of a more active and coherent engagement by Africa with DSM. While other regions of the world are surging ahead, Africa is – despite many efforts to stimulate its engagement – the only region that has yet to sponsor an entity to engage in DSM in the Area.

The African Minerals Development Centre is committed to establishing governance frameworks that regulate the African deep-sea mining sector

Technological progress means that exploitation of critical minerals in the Area is imminent, with some claiming that it may aid in the global transition to a low-carbon economy. The fact that such a transition will affect terrestrial mining makes it strategically appropriate for Africa to invest in DSM as a possible competing industry.⁷²

In addition, African states that sponsor entities engaged in DSM may benefit from royalties, taxes, employment and capacity building.⁷³ Africa needs a clear action plan, which could be based on the UNECA strategic roadmap. This would help transform the ideas of the different African Blue Economy instruments supporting DSM engagement from paper to reality.



THE UN POLICY HANDBOOK
CALLS FOR DEEP SEABED MINING
TO BE AN INTERGRAL PART OF
THE AFRICAN BLUE ECONOMY

NOTES

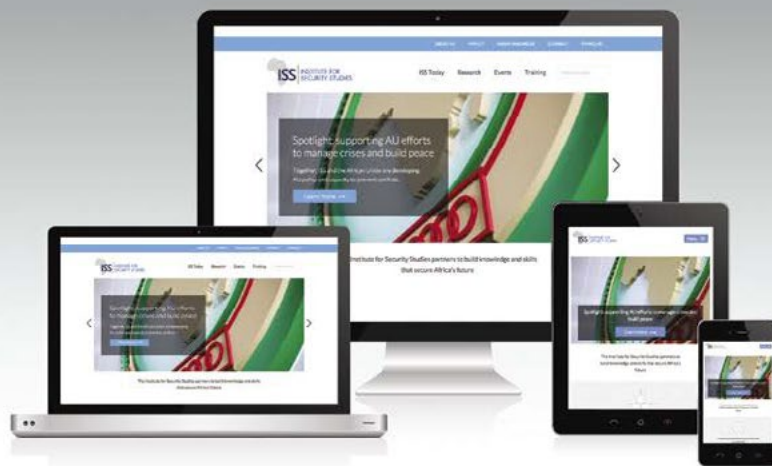
- 1 Article 1(1) of the LOSC states that the “Area” means “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.” Article 133 further explains that for the purposes of the part of the convention regulating the Area (Part XI) (a) ‘resources’ means all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules and (b) resources, when recovered from the Area, are referred to as ‘minerals’.
- 2 Section 1 para 15(a)–(c) of the Annexure to the 1994 Agreement.
- 3 There are five regional grouping in the ISA – the African Group, the Asia-Pacific Group, the Eastern European Group, Latin American and Caribbean states and Western European and other states, see www.isa.org.jm/regional-groups.
- 4 See Articles 158(2) and 170(1) of LOSC. Also see A V Lowe, *The International seabed: A legacy of mistrust, Marine Policy*, 1981, 205; Aline Jaeckel, Jeff A Ardron and Kristina M Gjerde, *Sharing benefits of the common heritage of mankind – Is the deep seabed mining regime ready?, Marine Policy*, 2016, 198, 202; A Study Related to Issues on the Operationalization of the Enterprise: Legal, Technical and Financial Implications for the ISA and for states Parties to the UNCLOS, Technical Report 1/2019, www.isa.org.jm/files/files/documents/enterprise_study.pdf, 8–17.
- 5 See paras 3–4, 6–11 of Submission of Members of the Council of the International Seabed Authority from the African Group in relation to the request made by Nauru pursuant to section 1, para 15 of the Agreement, relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, ISBA/26/C/40, 13 July 2021.
- 6 Also called the common heritage of humankind or humanity. See Edwin Egede, *Common Heritage of Mankind*, in Tony Carty (ed), *Oxford Bibliographies in International Law*, www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0109.xml.
- 7 See Maltese Note Verbale, 17 August 1967, to the UN Secretary-General, A/6695, 18 August 1967, Vol II, Doc 12.1 and Pardo’s speech to the General Assembly’s First Committee on 1 November 1967, 15th Meeting, A/C.1/PV.1515, 1 November 1967.
- 8 E Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, Springer, 2011, 11.
- 9 A/C.1/PV.1515, para 91.
- 10 They included the Resolution on the examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of the present national jurisdiction and the use of their resources in the interests of mankind; the Moratorium Resolution (Resolutions 2340(XXII)), 18 December 1967; Resolution on the Declaration of Principles governing the seabed and ocean floor, and the subsoil thereof beyond the limits of national jurisdiction (Resolution 2574(XXIV)), 15 December 1969; and the Resolution for reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interest of mankind and convening of a Conference on the Law of the Sea (2749(XXV)), 17 December 1970 and 3029(XXVII), 18 December 1972.
- 11 GA Resolution 2340(XXII), 18 December 1967. See Egede 2011, 11–13.
- 12 See Vincent Nmehielle and Tafadzwa Pasipanodya, African Union, in Patrick Vrancken and Martin Tsamenyi (eds), *The Law of the Sea: The African Union and its Member states*, Juta, 2017, 41 and 44 (fn 50). They point to the following OAU instruments which illustrated the role of the OAU during the UNCLOS III negotiations: OAU Council of Ministers Resolution of the twenty-ninth ordinary session on the law of the sea (OAU Doc. CM/Res. 570 (XXIX) of 23.06.1977) para 5 (calling on the African Group of the Law of the Sea Conference to act in concert with the G77 and the Non-Aligned Group based on “the uniformity of aims and interests of the Third World”); OAU Council of Ministers Resolution of the thirty-first ordinary session on the law of the sea (OAU Doc CM/Res 649 (XXXI), 18 July 1978), para 5 (requesting African delegations to present a unified front on the basis of the OAU Declaration on the Law of the Sea at UNCLOS III); OAU Council of Ministers Resolution of the thirty-third ordinary session on the law of the sea (OAU Doc. CM/Res 745 (XXXIII) Rev 1, 6 July 1979), paras 4–5 (calling on African states participating in UNCLOS III to act in unity to advance the interests of the continent and to also act in coordination with the G77); OAU Council of Ministers Declaration of the thirty-fifth ordinary session on the law of the sea (OAU Doc CM/St 17 (XXXV)), 18 June 1980, paras 2–4 (stating the position of the OAU on procedural matters such as voting, entry into force of the LOSC and the right of certain groups to become parties to the LOSC); OAU Council of Ministers Resolution, 18 June 1980, paras 1–2 (stating that the OAU Secretariat has the role of coordinating the activities of the African Group at UNCLOS III and urging greater participation of the Secretariat in UNCLOS III).
- 13 See Edwin Egede, *Institutional Gaps in the 2050 Africa’s Integrated Maritime Strategy*, *Journal of Ocean Law and Governance in Africa*, 2016, 3.
- 14 See, www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea.
- 15 LOSC, Article 136.
- 16 LOSC, Articles 156(1) and 157(1).
- 17 LOSC, Articles 145 and 143.
- 18 Some conservation groups such as the International Union for Conservation of Nature have called for a moratorium on DSM because of their concerns about the environmental risks. See, *Protection of deep-ocean ecosystems and biodiversity through a moratorium on seabed mining*, 22 September 2021, www.iucncongress2020.org/motion/069.
- 19 ISBA/19/C/17 of 22 July 2013; ISBA/16/A/12/Rev 1, 15 November 2010 and ISBA/18/A/11, 22 October 2012.
- 20 See ISA website, www.isa.org.jm/exploration-contracts.
- 21 The Republic of South Sudan became the newest African state when it became independent on 9 July 2011 and has since become a member of both the AU and the UN. The Saharawi Arab Democratic Republic, which became independent on 27 February 1976, though a member of the AU, is not currently a member of the UN and there are still some issues surrounding its recognition as a state. See, www.au.int/en/member_states/countryprofiles2.

- The 16 landlocked states are Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Eswatini (formerly Swaziland), Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, South Sudan, Uganda, Zambia and Zimbabwe, www.unctad.org/topic/landlocked-developing-countries/list-of-LLDCs.
- 22 Currently 31 contractors have exploration contracts with the ISA, www.isa.org.jm/deep-seabed-minerals-contractors.
 - 23 The current version of the draft Exploitation Regulations is ISBA/25/C/WP.1, 22 March 2019, www.isa.org.jm/files/files/documents/isba_25_c_wp1-e_0.pdf.
 - 24 See, Letter from Nauru President – International Seabed Authority, www.isa.org.jm/files/files/documents/NauruLetter-Notification.pdf and Nauru requests the President of ISA Council to complete the adoption of rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area, www.isa.org.jm/index.php/news/nauru-requests-president-isa-council-complete-adoption-rules-regulations-and-procedures.
 - 25 Annexure to the 1994 Agreement, Section 1 para 15(a)–(c).
 - 26 For analysis of the legal implications of the two-year rule see Klass Willaert, Under Pressure: The Impact of Invoking the Two Year Rule within the Context of Deep Sea Mining in the Area, *International Journal of Marine and Coastal Law* 36(3), 2021, 505–513; Pradeep A Singh, The two-year deadline to complete the International Seabed Authority’s Mining Code: Key outstanding matters that still need to be resolved, *Marine Policy* 134, December 2021, Article 104804; The Commonwealth, Triggering Change: the Next Two Years of Seabed Mining Regulation Development, *Deep-Sea Minerals Briefing*, November 2021.
 - 27 Ibid.
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 - 30 Statement by Algeria on behalf of the African Group – African Group’s comments and inputs on the Draft Regulations on Exploitation of Mineral Resources in the Area of the International Seabed Authority, Ibid and Statement by Algeria – Request for consideration.
 - 31 Ibid, 1–2.
 - 32 Statement by Algeria – Request for consideration of the African Groups proposal for the operationalization of the Enterprise. This led to a major study by the ISA, A Study Related to Issues on the Operationalization of the Enterprise: Legal, Technical and Financial Implications for the ISA and for states Parties to the UNCLOS, Technical Report 1/2019, https://isa.org.jm/files/files/documents/enterprise_study.pdf.
 - 33 Training Programmes for Developing Countries, ISBA/25/A/8 of 10 June 2019.
 - 34 For 2017 UN Ocean Conference see <https://oceanconference.un.org/about>.
 - 35 Supporting Africa’s Blue Economy, www.isa.org.jm/vc/supporting-africas-blue-economy. The current ISA Secretary-General, H E Mr Michael Lodge, has played a pivotal role in encouraging Africa’s engagement with DSM since his appointment in 2017.
 - 36 Ibid.
 - 37 Ibid. So far only two such experts – from Ghana and Togo – have been deployed to the Secretariat, while eight others have been selected and will hopefully be deployed after the Covid-19 restrictions are lifted. The eight come from Cameroon, Kenya, Mauritius, Zambia, Nigeria (two), Namibia and Senegal
 - 38 www.isa.org.jm/event/msr-information-series-africa-topic-1-deep-sea-mineral-resources-and-technologies.
 - 39 www.isa.org.jm/event/report-launch-law-sea-ocean-opportunity-ldcs-ldcs-and-sids.
 - 40 UN Economic Commission for Africa, *Africa’s Blue Economy: A Policy Handbook*, 2016, www.uneca.org/publications/africas-blue-economy-policy-handbook.
 - 41 LOSC 1982, Articles 136 and 137.
 - 42 https://wedocs.unep.org/bitstream/handle/20.500.11822/11151/2050_aims_strategy.pdf.
 - 43 LOSC, Article 148; Egede, Institutional Gaps, 19–26.
 - 44 Agenda 2063, The Africa we want (Popular version), September 2015, https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf.
 - 45 Ibid, Aspiration 1.
 - 46 Ibid, para 15.
 - 47 Ibid, Aspiration 7; Thomas Brauning and Thomas König, Making Rules for Governing Global Commons: The Case of Deep-Sea Mining, *Journal of Conflict Resolution* 44(5), 2000, 604–629.
 - 48 The charter was adopted by 35 African states and has thus far been ratified by only two, Republic of Benin, and Togo. In terms of Article 50(1) the charter would come into force 30 days after the 15th ratification, www.au.int/en/treaties/african-charter-maritime-security-and-safety-and-development-africa-lome-charter.

- 49 Edwin Egede, *Africa's Lomé Charter on Maritime Security: What are the Next Steps?*, *Africa's Lomé Charter on maritime security: What are the next steps?* – // SAFE SEAS// SAFE SEAS.
- 50 The STCs are listed in Articles 5(g) and 14–16 of the Constitutive Act as one of the organs of AU. They are thematic committees answerable to the Executive Council of the AU. Their members are ministers and senior officials of member states responsible for sectors falling within their respective areas of competence and their purpose is to collaborate closely with the AUC departments to ensure the harmonisation of AU projects and programmes as well as coordination with the regional economic communities, www.au.int/en/stc.
- 51 Assembly Decision Ext/Assembly/AU/Dec.1 (VI) by the AU Extraordinary Summit, 15 October 2016.
- 52 Statute of the AMDC, adopted 30 January 2016, which establishes the AMDC, which is located in Guinea, as a specialised agency of the AU.
- 53 *Ibid.* This author was privileged to be appointed as a member of this group and was directly responsible for drafting the part of the annexes relating to DSM.
- 54 Egede, *Africa's Lomé Charter*.
- 55 Communiqué of the 858th meeting of the Peace and Security Council held on 16 July 2019, on the status of the implementation of the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter), www.peaceau.org/uploads/eng-858th-psc-communication-maritime-security-lome.pdf. This restated the necessity to expedite the finalisation of the draft annexes as an integral part of the charter, with a view to facilitating its rapid signature and ratification by member states to allow the entry into force of this important instrument, as soon as possible.
- 56 The Nairobi Statement of Intent on Advancing the Global Sustainable Blue Economy, 12. See also the Summary of the Commitments made during the Sustainable Blue Economy Conference 26–28 November 2018, Nairobi, Kenya, 14, www.blueeconomyconference.go.ke/documents/.
- 57 For AU Blue Economy Strategy see, https://www.au-ibar.org/sites/default/files/2020-10/sd_20200313_africa_blue_economy_strategy_en.pdf; also see, generally, Pierre Failler, Patrick Karani, Asmerom M Gilau, Hashali Hamukuaya and Serigne Diop, *Africa Blue Economy Strategy – Implementation Plan 2021–2025*, AU-IBAR 2020, www.researchgate.net/publication/346841034_Africa_Blue_Economy_Strategy_Implementation_Plan_2021-2025.
- 58 Failler et al, XIV, 7,12.
- 59 *Ibid.*, 21
- 60 *Ibid.*, 22, 27–28; Annex 4: Sustainable Energy, Mineral Resources and Innovative Industries in the context of Africa's Blue Economy, 1–3, 10–14, 17, 18–19, 22, 27–30, 36–37, www.au-ibar.org/strategy-documents; Egede, *Africa and the Deep Seabed Regime*, 218–227, where the present author had previously highlighted similar strategic reasons why Africa should engage with DSM.
- 61 Decision on the adoption and implementation of the 2050 Africa's Integrated Maritime Strategy (2050 AIM strategy), Doc. Assembly/AU/16(XXII) Add.1, Assembly/AU/Dec.496(XXII) and the Lomé Charter.
- 62 www.uneca.org/about.
- 63 UNECA *Handbook*, xii, 1, 55–63. This author had already pushed in two previous publications for Africa's engagement with DSM as a critical component of its maritime strategy. See E Egede, *African States and Deep Seabed Mining: Problems and Prospects*, *International Journal of Marine and Coastal Law* 24(4), 683–712; Edwin Egede, *Africa and the Deep Seabed Regime*. He was then appointed by UNECA as a consultant on integrating the DSM into the African blue economy.
- 64 The AMDC was initially endorsed in 2011 by the 2nd conference of African Ministers responsible for Minerals Resource Development as an AU flagship project with the main aim of coordinating the implementation of the 2009 AMV for the Conference of African Ministers. For the decision of the AU Assembly and AMV see www.au.int/en/documents-9. The AMDC was established in 2012 and was handed back to the AUC in February 2019. See, <https://archive.uneca.org/stories/african-minerals-development-centre-moves-eca-african-union-commission>. The AU Statute of the AMDC was adopted on 30 January 2016 and has only been ratified by three states (Guinea, Mali and Zambia). The statute will enter into force 30 days after the deposit of the 15th instrument of ratification). Despite the Statute of the AMDC not yet having entered into force the centre has been operating, first under the UNECA and now under the AU.
- 65 The AMDC under UNECA identified engagement with the African blue economy as one of its strategic objectives, specifically stating that it also works to developing international cooperation for activities in the international seabed areas. See *African Minerals Development Centre: Geological and Mineral Information Systems Harnessing mineral resources for Africa's transformation*, 11 and 13, <https://repository.uneca.org/handle/10855/23881>.
- 66 *Ibid.*, 11. See also www.isa.org/jm/observers.
- 67 Marine Mineral Resources of Africa's Continental Shelf and Adjacent International Seabed Area, ISA Technical Study No 20, 15 October 2019, www.isa.org/jm/files/files/documents/ts20.pdf.
- 68 *Ibid.*, 40–43.
- 69 This took place in Addis Ababa, Ethiopia, from 28–29 January 2020.
- 70 As a consultant for UNECA, this author has developed a model deep seabed mining law for Africa that would allow African states interested in sponsoring an entity to conduct deep seabed mining to develop a legislative framework in line with the International Tribunal for the Law of the Sea (ITLOS), Seabed Dispute Chambers in states Responsibilities and Obligations with respect to Activities in the Area, Advisory Opinion No 17, February 2011, ITLOS Reports, 10.
- 71 EMIS, www.ecowas.int/wp-content/uploads/2019/05/EIMS-English-final.pdf, para. 74,
- 72 Axel Hallgren and Anders Hansson, *Conflicting Narratives of Deep-Sea Mining*, *Sustainability* 13(9), 2021, 5261; www.doi.org/10.3390/su13095261.
- 73 Lisa A Levin, Diva J Amon and Hannah Lily, *Challenges to the sustainability of deep-seabed mining*, *Nature Sustainability* 3, 2020, 789–791.

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This report is funded by the government of Norway. The ISS is also grateful for support from the members of the ISS Partnership Forum: the Hanns Seidel Foundation, the European Union, the Open Society Foundations and the governments of Denmark, Ireland, the Netherlands, Norway and Sweden.

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