# T-Mining Isn’t Appropriation

#### A] Interpretation: appropriation means a claim of sovereignty- affs may only defend claims of sovereignty by private entities as unjust

#### Violation: they only defend asteroid mining, which is simply extraction

#### Appropriation refers to sovereign claims of land, not using or extracting resources- proven by OST’s guidelines, nation’s interpretations, and prior property regimes.

Wrench, 19 [Wrench, John. 2019. “Case Western Reserve Journal of International Law Non-Appropriation, No Problem: The Outer Space Treaty Is Ready for Asteroid Mining Non-Appropriation, No Problem: The Outer Space Treaty Is Ready for Asteroid Mining,” n.d. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2546&context=jil>.] WL

It is unlikely, however, that the non-appropriation principle is an absolute ban on the ownership of resources extracted in outer space. An interpretation of Article II supporting a blanket ban on resource ownership is unwarranted by the text of the OST and illfounded on account of the international community’s common practices. Scholars have noted that the international community has never questioned whether scientific samples harvested from celestial bodies belong to the extracting nation.60 Furthermore, space-faring members of the international community rejected the Moon Treaty precisely because it prohibited all forms of ownership in resources extracted from celestial bodies.61 The space-faring nations’ support for the OST, coupled with their rejection of an alternative set of rules governing extracted resources, is at the very least an indication of what those nations believe the non-appropriation principle to stand for. It is equally improbable that the international community drafted the non-appropriation principle to be merely idealistic rhetoric. The OST leaves no room for interpretations to squirm out from under its ban on sovereign claims of land.62 The following section illustrates, however, that the distinction between sovereign ownership of land, and the vestment of property rights in resources extracted from that land, is nothing new. Although the OST does not provide a comprehensive guideline for resource extraction in outer space, its foundational logic provides a workable distinction between ownership and use. This part explores three property regimes developed under the same fundamental constraints as the non-appropriation principle: the United Nations Convention on the Law of the Sea (“UNCLOS”), the Antarctica Treaty System, and the prior appropriation doctrine as applied in United States water law.63 Under each regime, parties may establish some form of ownership in extracted resources despite being restricted from claiming sovereignty over the underlying land. Each section includes a brief discussion of the property regime’s history, its major traits and their relationship to the overarching characteristics of the non-appropriation principle. This part further describes how each property regime fits within the non-appropriation principle’s prohibition on claims to land, while prohibiting waste, separating land ownership from rights to extracted resources, enforcing liability for destruction or damage, and establishing a simple regulatory system to manage claims.

**Presume neg – all parties to the outer space treaty prohibit “appropriation” of resources by private entities.**

Durkee, 19

Melissa J. Durkee, J. Alton Hosch Associate Professor of Law, University of Georgia, ’19, "Interstitial Space Law," Washington University Law Review 97, no. 2 423-482

Those answering this question in the affirmative have access to a strong textual argument. Article II of the Outer Space Treaty specifically references "national" **appropriation**.17 9 The context surrounding that appears to confirm that the prohibition of "national" appropriation is directed at nations, as only a nation could have a legitimate "claim of sovereignty." 180 Moreover, "occupation" refers to old international legal doctrines that once allowed nations to claim territory based on occupation. The historical context within which the treaty was drafted supports this position, as the concern of the time was colonization, not commercial use of space resources. As for private parties, they are specifically anticipated by the treaty: **Article VI states that States Parties bear international responsibility for activities by "non-governmental entities" as well as governmental agencies**.' 8 1 The fact that they are anticipated by the treaty but not included in the Article II prohibition on appropriation suggests that the treaty intended to prohibit only national appropriation of outer space resources.18 2 Those claiming that the treaty prohibits both national appropriation and appropriation by private parties can marshal their own textual argument. Article VI defines "national activities in outer space" to include both "activities . .. carried on by governmental agencies" and those carried on by "non-governmental entities." 8 3 This definition of "national" must inform Article II's prohibition on "national" appropriation and thus extend to a nation's citizens **and commercial entities** as well as governmental activities. Moreover, a contrary interpretation defies logic: **if nations themselves may not claim property rights to outer space objects, they have no power to confer those rights on their nationals.**184

#### This applies to the res – 1] Upward entailment test – “appropriation by private entities is unjust” doesn’t imply that “anything done by private entities is unjust” because extraction might not apply 2] Adverb test – "general appropriation by private entities" doesn’t substantially change the meaning of the res

#### B] Vote neg—

#### 1] Semantics outweigh—

#### A] Topicality is a constitutive rule of the activity and a basic aff burden, they agreed to debate the topic when they came to the tournament

#### B] It’s the only stasis point we know before the round so it controls the internal link to engagement, and there’s no way to use ground if debaters aren’t prepared to defend it.

#### 2] Limits:

**A] Quantitative – the topic is literally too big to count – every specific thing that could be defined as “appropriation” from private entities helping out NASA to them mining some asteroids– unlimited ways appropriation could be defined incentivize obscure affs that negs won’t have prep on – limits are key to reciprocal prep burden**

**B] Qualitative – unresolutional spec kills unified generics like the innovation DA because you could just say you’re still allowing entities to make claims of sovereignty and go out into space**

#### D] Paradigm Issues –

#### 1] T is DTD – their abusive advocacy skewed the debate from the start

#### 2] Comes before 1AR theory -- A] If we had to be abusive it’s because it was impossible to engage their aff B] T outweighs on scope because their abuse affected every speech that came after the 1AC C] Topic norms outweigh on urgency – we only have a few months to set them

#### 3] Use competing interps on T – A] topicality is a yes/no question, you can’t be reasonably topical B] reasonability invites arbitrary judge intervention and a race to the bottom of questionable argumentation

#### 4] No RVIs – A] Forcing the 1NC to go all in on the shell kills substance education and neg strat B] discourages checking real abuse C] Encourages baiting – outweighs because if the shell is frivolous, they can beat it quickly

#### the aff took away the asteroid mining part of the plan—other than that being a theory argument (they didn’t send the case when i asked but they *did* say it was mining; that was my only guarentee), their plan STILL applies to mining—and having a general “appropriation bad” cancels out like half their plan since a bunch of their cards are satellites good and they contradict anyways so double bind either 1) it’s mining and t applies or 2) theory and DTD anyways

# k thing

#### The 1AC erroneously bifurcates the state and capital in the question of space appropriation, which is the strategy of fascists and Musk fanatics alike – their advantages circulate orientalist tropes of a techno-utopia, ceding the political of space to neoreactionaries and cementing colonial hierarchies through the economic segregation of spaceflight speculation.

Pinto, Lecturer @ Dutch Art Institute, 19

[Ana Teixeira: “Capitalism with a Transhuman Face.” Third Text, Published October 11, 2019. DOI: 10.1080/09528822.2019.1625638]//AD

In the 1960s, two distinct anti-establishment movements emerged in America: the New Left and the New Communalists. Whilst the New Left sought to effect political change – mostly by organising against the Vietnam War – the New Communalists felt that any engagement with politics, the state or government as such, was itself the problem. Between 1965 and 1972, a great many young, mostly white, Americans headed out of the cities and into the rural parts of northern California and built communes. The Whole Earth Catalogue and the WELL emerged from this communalist spirit, though, as Fred Turner argues, few have rigorously explored its roots in the American counterculture of the 1960s. Another offshoot of the New Communalists, Biosphere 2, attracted a flurry of interest recently, due to the project’s fortuitous connection to Steve Bannon, the former White House strategist whose short-lived tenure in the Trump administration was the subject of a great deal of scrutiny. But Bannon’s involvement was not the only dubious question ever to afflict the ill-fated experiment. Biosphere 2 was the brainchild of John Allen, a New Age Visionary who led a commune south of Santa Fe called ‘Synergy Ranch’. Synergy Ranch had an apocalyptic ethos: worried about impending environmental collapse, Allen wanted to escape the Earth by building new colonies in space. Whereas the Whole Earth Catalogue or the WELL defined a virtual community (that is, a ‘new form of technologically enabled social life’),51 Biosphere 2 was a real miniature world, meant to sustain a crew of eight human inhabitants (four men and four women) for a period of two years inside its hermetic dome. But – and here I am returning to Jackson’s argument – Allen’s appeals to venture beyond the Earth, to build the ultimate version of The Good Life in outer space, leave unexamined the racial and ideological dimensions which connote this beyond, as well as the peculiar combination of settler colonialism and white flight that characterises the Biosphere project. The Biosphere 2 case remains relevant to my argument because the ideological pillars of both the neoreactionary movement and, to a great extent, of the alt-light arc back to the opposition between the New Left and the New Communalists. Nick Land, for instance, describes their relative positions as a choice between ‘voice’ and ‘exit’. Whereas the democratic right to having a ‘voice’ leads to chaos and cacophony, you are always free to leave: for Land, the right to exit is ‘the only meaningful right’. 52 Neoreaction, the brainchild of Land and Urbit owner Curtis Yarvin (also known has Mencius Moldbug) typically champions opt-in societies or ‘gov-corps’, ideally run by a CEO-king. Though they do not identify as neoreactionaries, Balaji Srinivasan, Peter Thiel and Patri Friedman also advocate opt-ins that restrict citizenship rights to investors (stockholders), barring stakeholders from representation. Under the govcorp model, the state will no longer regulate capital but will become capital’s unfettered expression.53 Neoreactionaries are, in a way, classic libertarians: they do not want to limit the power of the state, they want to privatise it.54 In a similar fashion, almost all the prominent figures in the alt-right define themselves as libertarians politically and white supremacists ideologically.55 The question is not so much, in my view, whether neofascists are crypto-libertarians or, obversely, whether libertarians are crypto-fascists. Rather, it is important to note that democratic self-governance is not a necessary part of a liberal social order. On the contrary, classical liberalism does not support the idea of inalienable rights – Hayek famously said he favoured a ‘liberal dictatorship’ when professing his support for Pinochet’s coup in Chile – but this ideological affinity between fascism and libertarianism, however substantial, was obscured by geopolitical alignments and revisionist history.56 In the aftermath of WWII, the analogy between the ‘two Totalitarianisms’ played a huge role in distorting the relation between libertarian and fascist doctrine, by positing a political (and moral) equivalence between Stalinism and National Socialism/Fascism, in contradistinction to the anti-state politics of libertarian-inspired individualism. Furthering this confusion, the Cold War trope of ‘the free world’ vs ‘totalitarian states’ assimilated the question of democratic governance to an epic battle between the forces of freedom – lionised by the likes of Ayn Rand, Friedrich Hayek or Ludvig von Mises – and unfreedom, ultimately conflating democracy with liberalism. But unlike representative democracy, classical liberalism, as David Ellerman argues, ‘leaves open the possibility of a voluntary constitutional form of non-democratic government in which the people have voluntarily agreed to alienate and transfer the rights of self-government to some sovereign’. 57 From Hobbes to Rawls – and here I am paraphrasing Ellerman – one finds multiple arguments for consent-based alienation of basic self-governing rights. In the context of the US, this debate is often tied to the issue of ‘voluntary slavery contracts’, for, as Robert Nozick contends, ‘the comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would’. 58 Or, in the words of Paul Samuelson: ‘Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself.’ 59 As Ellerman maintains, the key question here is the one concerning alienation versus delegation of rights, not the one of consent versus coercion. Most contemporary libertarians defend the alienation of power to a sovereign rather than the citizens’ delegation of power to representatives, and neo-Austrian economists typically champion non-democratic sovereign city-states (like start-up cities or charter cities). Libertarian models of consent-based, non-democratic municipal or state governments include the notion of ‘free cities’ or ‘start-up cities’, proprietary cities, Patri Friedman’s floating seastead cities, Paul Romer’s charter cities, or ‘shareholder states’, all of which see ‘the resident-subjects as having agreed to a pactum subjectionis as evidenced by their voluntary decision to move to and remain in the city or state. All of these cases preclude any possibility of democratic participation in government. When, or if, consent is withdrawn, the only available option is to exit.’ 60 Instead of democratic rights, people have the right to leave. Exiting, however, implies segregation: the whole concept hinges on leaving others behind. Comparable to ‘capital strike’ (the withholding of new investment in an economy, a concept popularised by Ayn Rand’s novel Atlas Shrugged, the plot of which involves a socialist United States in which the most creative industrialists, scientists, and artists respond to the demands of the welfare state by going on strike, retreating to a mountainous hideaway where they build an independent free economy), ‘Exit’ is a formal version of what is informally known as ‘white flight’: the migration of middle-class white populations to more racially homogenous areas. NRx does not disavow this racial dimension but reworks it in its incentive-based techno-monarchy: ‘if a person doesn’t produce quantifiable value, they are, objectively, not valuable. Everything else is sentimentality’. 61 If social apartheid is the hallmark of fascism, the stack is the new fasces. The Valley is heavily invested in Bitcoin as well, a technology the social and political functions of which, as David Golumbia argues, far outstrip its technical ones. Economically speaking, Bitcoin is the answer to the wrong question: the problems with value fluctuations are not formal but political, they cannot be solved by software engineering: ‘Without direct regulatory structures’ any financial instrument can be ‘used as an Fashwave meme with Black Sun or Sonnenrad, used by Heinrich Himmler and popular with esoteric white supremacist circles. Fashwave makes explicit the white supremacist content Vaporwave vaguely gestures towards op cit investment’. 62 Ideologically, however, Bitcoin reflects deep-seated anxieties about ‘foreign’ control of the Federal Reserve and, more broadly, an anti-Semitic creep marked by the putative illegitimacy or unnaturalness of financial capital. The new far right also forces us to rethink the articulation of fascism and collectivism. Fascism does not necessitate mass movements; it is a corporatism doctrine, not a collectivist one. Although the historical iterations of fascism which came to power in the early twentieth century enjoyed a considerable amount of popular support, the alt-right – ongoing attempts to mobilise the traditional far-right notwithstanding – remains intensely supra-structural. Corporatism is an organicist doctrine. Society is represented as an organism, the social body, comprising industrial organs (corporations), which exercise control over persons and activities within their jurisdiction. Unlike Marxism, corporatism does not narrate the structure of social antagonisms along class lines. Instead, it insists on the harmonious relation between brain and limbs, that is, between employers and employees, and pits both, together, against an external or parasitical element, which feeds on the social body. For classical fascism this parasitical element is typically depicted as the financial sector (and codified as the Jew). Under neoliberalism however, the position of the parasite has often been imputed to the state – a place-holder for the unworthy, racialised welfare beneficiaries – whose taxes unduly sap corporate productivity. In Europe and the US, the question of taxation is increasingly tied to the racist refusal to pay taxes, which are largely seen as supporting racialised minorities. The trajectory from LessWrong to MoreRight is, I would argue, not simply a trajectory from ‘overcoming bias in decision making’ to paranoid urgency; it is a trajectory from cyber-libertarianism to overt bigotry. That said, there is clearly some tension between the political positions represented by neoreactionists (who see whiteness as a proxy for capital) and those of the alt-right (who see capital as a proxy for whiteness). Asking himself whether whiteness necessitates white people, Land answers in the negative: no, whiteness can be better performed by nerdy Asians, or by AI. Whereas most of the alt-right argues for planetary apartheid – ethno-nationalism in the alt-right’s jargon – NRx would gladly shed the red states, a drag on the economy; declare California an independent state; or welcome ‘competing gov-corps on the same land mass’. 63 Rather than embracing the traditional far-right racial doctrine, neoreaction believes that a ‘genetically self-filtering elite’ is already in the process of divorcing itself from those of average and below-average intelligence,64 in a process that will ultimately lead to a transhuman super-race and to ‘a powerful leader making use of intelligence enhancement technology to put himself in an unassailable position’. 65 Though a transhuman hyper-race might seem thus far unlikely, existing technology is already immersing us in the radical disruption proffered by the cyber-libertarian doctrine.66 Think how the gig economy skirts the social contract. Though apparently non-racist, or even anti-racist, neoreaction’s virulent rejection of egalitarianism bleeds easily into discrimination: after 500 years of colonial plunder, any form of economic segregation will result in racial apartheid. Either way, to argue for the removal of democratic rights and protections is to sanction a persecuting or discriminating society of one form or another.

#### The process and agents of political change matter. Indigenous internationalism must be asserted through Native sovereignty and organizing. The plan and the perm still collude with settlerism, which trades-off with meaningful resistance.

Simpson 16

(Leanne Betasamosake Simpson, renowned Michi Saagiig Nishnaabeg scholar. She holds a PhD from the University of Manitoba, and teaches at the Dechinta Centre for Research & Learning in Denendeh. An Interview with Eve Tuck (Unangax̂), Indigenous Resurgence and Co-resistance, Critical Ethnic Studies, Vol. 2, No. 2 (Fall 2016), pp. 19-34, JKS)

PLACE-BASED INTERNATIONALISM

Eve: One idea that Wayne and I floated in our call for papers is that how a person or community understands the roots or source of injustice will have implications for how they go about undoing that injustice. Does this make sense to you? Might it be too simplistic or problematic?

Leanne: I think we need to be a bit careful here, particularly in the academy. I think Indigenous peoples understand pretty well injustice in their own lives whether or not they can articulate it using the language of colonialism or decolonization. I think movements that link social realities with political systems and focus on creating real-world-on-the-ground alternatives are powerful. I worry that too much of our energy goes into trying to influence the system rather than creating the alternatives. It matters to me how change is achieved. Change achieved through struggle, organizing, and creating the alternatives produces profoundly different outcomes than change achieved through recognition-focused protest, and pressuring the state to make the changes for us. That is a recipe for co-option. I think it is important to understand root causes of injustice, but it is also important to understand think strategically and intelligently about approaches to undoing that injustice. I think that diagnosis and strategic action must be done within grounded normativity. Indigenous thought has a tradition of place-based internationalism that I think is this beautifully fertile spot because it links place-based thinking and struggle with the same decolonial pockets of thinking throughout the world. Nishnaa- beg have been linking ourselves to the rest of the world since the beginning of time, and throughout our resistance to colonialism we have our people traveling throughout the world to link with other communities of resistors. Grassy Narrows First Nation comes to mind in their nearly four- decade fight against mercury poisoning in their river system and the relationship they have made with the Japanese community in Mnimata.6 We need to use our experiences in the past to think critically about how we respond to injustice today. Right now, Indigenous peoples in Canada need to be thinking critically about the implications of seeking recogni- tion within the colonial state because we have a government that is very good at neoliberalism and seducing our hope for their purposes. Again, Glen Sean Coulthard, in Red Skin, White Masks, using the Dene nation’s experience in the 1970s, provides a blistering critique of the pitfalls of seeking political recognition within state structures. He makes the point that continually seeking recognition with the settler-colonial state is a process of co-option and neutralization, and is a way of bringing Indigenous peoples into the systems that guts our resistance movements, for instance, and we get very little in return.7 In fact, in terms of dispossession—that is, the removal, murdering, displacement, and destruction of the relation- ship between Indigenous bodies and Indigenous land—this serves only to facilitate land loss, not improve things. Engagement with the system changes Indigenous peoples more than it changes the system. This can be destructive in terms of resurgence because resurgent movements are trying to do the opposite—we are trying to center Indigenous practices and thoughts in our lives as everyday acts of resistance, and grow those actions and processes into a mass mobilization. I think it is useful to apply this same critique of recognition to orga- nizing and mobilizing with the purpose of making a switch from mobi- lizing around victim-based narratives—that is, publically demonstrating the pain of loss as a mechanism to appeal to the moral and ethical fabric of Canadian society (which has over and over again proven to be morally bankrupt when it comes to Indigenous peoples)—to using that same pain and anger to fuel resurgent actions. This organizing from within grounded normativity has always fueled Indigenous resistance and continues to happen all the time in Indigenous communities—it is just often misread by others. The community of Hollow Water First Nation created the Community Holistic Circle of Healing as a Nishnaabeg restoration of relationships, or a restorative justice model to address sexual violence in their community.8 Christi Belcourt’s Walking with Our Sisters exhibit has created a traveling display of 1,800 moccasin vamps as a way of honoring and commemorating missing and murdered Indigenous women and children in Canada and the United States. The exhibit does not rely on state funding.9 Thousands of volunteers made the vamps. The exhibit works with local communities and their cultural and spiritual practices to install the exhibit and do the necessary ceremony and community processes. Walking with Our Sisters works with local organizers a year in advance of installation, using Indigenous processes to embed the art in community on the terms of the local community. There is also the work of countless urban Indigenous organizations supporting the families of MMIWG2S people. The Native Youth Sexual Health Network provides on-the-ground, community-embedded, peer-to-peer support around sex- ual health and addiction for youth.10 The Akwesasne Freedom School provides Mohawk education for Mohawk children.11 The Iroquois national and Haudenosaunee women’s lacrosse teams travel using Haudenosau- nee passports instead of American or Canadian ones.12 The Unist’ot’en Camp pursues land protection resurgent action and the reclamation of the original name of Mount Douglas, PKOLS, in the city of Victoria, British Columbia.13

# case

#### International mining regimes are inefficient, corrupt, and enable exploitation/private development as much as they claim to prevent it

Roach 11-8-21

Anna Bianca Roach (she/they, degree in conflict studies from munk school of global affairs), 11-8-2021, "The Obscure Organization Powering a Race to Mine the Bottom of the Seas," PassBlue, https://www.passblue.com/2021/11/08/the-obscure-organization-powering-a-race-to-mine-the-bottom-of-the-seas/, // HW AW

On the seafloor, anemones with eight-foot-long tentacles live alongside [blind crabs](https://www.mbari.org/discovery-of-yeti-crab/) that cultivate food in their arm hair, sharks with glow-in-the-dark bellies and [glass sponges](https://www.mpg.de/5595233/climate_archive_deep-sea_sponge#:~:text=Researchers%20at%20the%20Max%20Planck,living%20animal%20species%20existing%20today.) that have been thriving since before the invention of the wheel. “Because of the lack of light and the fact that creatures do need to see each other to eat each other, you get these amazing photoluminescent animals down there,” said Helen Rosenbaum, the coordinator of the [Deep Sea Mining Campaign,](http://www.deepseaminingoutofourdepth.org/) an association of nongovernmental organizations located in Australia, Canada, the United States and the Pacific Islands. “We’re just starting to discover them!” The emerging industry of deep-sea mining is eyeing these otherworldly creatures’ home with keen financial interest: the potato-shaped rocks that provide a foothold for many of these animals in the otherwise silty, slippery environment of the ocean floor contain myriad metals that miners say are needed for a global eco-transition. At the heart of primary decision-making on deep-sea mining ventures is the [International Seabed Authority](https://www.isa.org.jm/), an autonomous organization based in Jamaica that critics say has little public oversight. “Our journey is to drive humankind through a wonderful adventure, which is to go very deep in the ocean to extract some minerals that are necessary for human activity on earth,” says Marie Bourrel-McKinnon, a special assistant to the secretary-general of the Authority, in one of its promotional [videos](https://www.youtube.com/watch?v=tzP-WqTJR_w&t=55s). The ISA, which was established through the 1982 [United Nations Convention on the Law of the Sea](https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm#:~:text=by%20%22*%22.-,The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea,the%20oceans%20and%20their%20resources.&text=The%20Convention%20also%20provided%20the,the%20law%20of%20the%20sea.), is led by the idea of a “common heritage of mankind,” a phrase that is used to explain that the wealth of the ocean floor should belong to all of humanity. Michael Lodge, the Authority’s secretary-general, says in the same video that the ISA’s focus on equity and common resources is what makes the organization special. “This is something that has never been done before,” he says. “It’s actually a unique experiment in human civilization.” **Critics balk at the organization’s lack of transparency and worry that the humanitarian intentions behind the Law of the Sea treaty aren’t enough to ensure that the monetary benefits of the minerals on the seafloor will reach everyone**. Some critics see an inherent contradiction in the Authority’s dual mandate to promote the development of deep-sea minerals while also protecting the environment. King among the coveted metals is cobalt, a mineral used for batteries in phones, electric cars and other electronics. Other minerals include nickel, manganese and copper. On land, these minerals — particularly cobalt — are shrouded in [controversy](https://www.youtube.com/watch?v=tzP-WqTJR_w&t=55s) related to child slavery and the environmental impacts of terrestrial mining, but they’re also in high demand. Large companies like the Canadian-based Metals Company and the American-based Lockheed Martin see these metals as the key to transitioning away from fossil fuels and contend that procuring these metals from the deep sea is a cleaner, more ethical alternative to digging them on land. “We’re on a quest for a more sustainable future, and we need metals to get there,” says [Gerard Barron](https://www.linkedin.com/in/gerardbarron), chief executive of the Metals Company, in an [advertisement](https://vimeo.com/286936275) for what was then called DeepGreen. “I don’t want to see more deforestation. I don’t want to see child labor. And I want to see us access the most sustainable supply of these important metals.” But scientists warn that disturbing these slow-moving ecosystems could hurt the biological pump — a process through which the ocean sequesters a substantial amount of carbon — in ways that can’t be remedied within generations. With the COP26 climate conference underway in Glasgow, Scotland, until Nov. 12, and the UN classifying the 2020s as the “Decade of Oceans,” leaders have been turning their eyes to the health of the seas and to the human activities that damage them. Peter Thomson, a Fijian diplomat and former president of the UN General Assembly who was president of the International Seabed Authority’s decision-making body twice, wrote an [open letter](https://ocean.economist.com/governance/articles/cop26-and-the-ocean-climate-nexus) calling for COP26 to devote attention to sustainability in the blue economy. “What the ocean gives, it can take away,” Thomson writes. “While our understanding of the ocean’s properties is still limited, we know it is the planet’s largest carbon sink, so that closely protecting the special places within it has become urgent work at hand.” Thomson is also the [UN’s envoy for the ocean.](https://sdgs.un.org/topics/oceans-and-seas/SpecialEnvoy) Other diplomats and advocates have spoken to similar concerns, including Monaco’s Prince Albert II. “We still need to avoid overexploitation of the ocean’s natural resources and the ocean floor,” he says in an [interview](https://people.com/royals/prince-albert-urges-bold-action-cop26-united-nations-climate-change-conference/) right before launching the most recent [Because the Ocean initiative](https://www.fpa2.org/en/initiatives/because-the-ocean-005) at COP26. “We cannot allow countries or large corporations to jump on every opportunity they see to exploit oil, gas or precious metal nodules protruding from the seabed without strict regulation.” Some experts and scientists who have worked with the ISA warn that harvesting metals from the mostly untouched ecosystems in the seafloor holds as much potential for global ecological devastation as it does for profit. The Authority has so far sold 31 licenses for companies and governments to explore the bottom of the high seas and is being [pressured](https://news.mongabay.com/2021/07/canadian-miner-looms-large-as-nauru-expedites-key-deep-sea-mining-rules/#:~:text=Nauru%2C%20which%20sponsors%20a%20company,whether%20regulations%20have%20been%20written.) by the small Pacific island nation of Nauru to authorize the beginning of mining operations within two years. Observers, civil society members and former employees of the ISA are raising alarms about **potential conflicts of interest in the organization and a lack of transparency surrounding funding for and profits from mining**. PassBlue’s investigation into the ISA’s operations has involved interviewing eight scientists, researchers and lawyers familiar with deep-sea mining as well as four former ISA employees and scouring documents from the Authority, embassy cables, civil society reports, academic papers and from the UN Appeals Tribunal, which is hearing [disputes](https://www.un.org/en/internaljustice/files/unat/orders/order-unat-2018-328.pdf) from employees who have left the organization. **The portrait that emerges is of an organization with a vested interest in promoting the work of the underwater mining industry, a consistent habit of alienating international marine scientists whose findings favor a more cautious approach to exploiting the ocean floor and a lack of good-faith engagement with civil society.** “If you guys are the first to mine, the first to extract nodules from international waters, it’s opening oceans earthwide,” Adrian Hellman, an Australian environmental scientist, says in an [ad](https://vimeo.com/user79094991) for the Metals Company. “What happens initially is going to affect everything down the track.” Although the push to speed up the start of undersea mining has been triggered by a two-year clause initiated by Nauru, it doesn’t mean that the Authority has to finalize the necessary legislation within two years, Duncan Currie of the [Deep Sea Conservation Coalition](http://www.savethehighseas.org/) says. The group consists of more than 80 international organizations that promote the conservation of biodiversity in the high seas. “**Once regulations are adopted, the voting requirements make it extremely difficult to disapprove a mining application, so it’s likely numerous 30 year contracts will be approved,**” Currie added in an email, noting that the contracts cannot be amended or canceled without the consent of the mining contractor. “Under the two-year rule, contracts can even be approved without regulations being in place. And it is likely they cannot be cancelled or amended without the contractor’s agreement.” PassBlue [published the first of its two-part investigation](https://www.passblue.com/2021/09/29/pressure-builds-to-mine-international-waters-amid-questions-about-ecosystems-and-profit-sharing/) on the ISA on Sept. 29, focusing on the efforts by Nauru to trigger deep-sea mining licenses. A spokesperson for the ISA declined an interview on the topic after repeated requests from PassBlue. A delegate of Nauru, Margo Deiye, attending the 26th session of the ISA, Feb. 18, 2020. The small Pacific island nation has triggered a clause at the ISA giving its member states the ability to demand that the process of granting mining permits to begin soon, possibly jeopardizing the delicate ecosystems of the oceans. ISA Navigating with good intentions? “A lot of idealists go into the International Seabed Authority thinking, ‘Oh wow, this is a place where there’s actually a statement about ensuring effective protection of the marine environment from harmful effects of seabed mining, and making sure that all states can participate in these activities,'” says Kristina Gjerde, who represents the [International Union for Conservation of Nature](https://www.iucn.org/) at ISA meetings. But she says that **the Authority is led more by corporate interests** than for “the benefit of all mankind,” the Authority’s stated goal. “It’s difficult for states to put on their hats as representing the global community interests, as opposed to one particular economic sector or another,” Gjerde told PassBlue. “Now that interest in seabed minerals is rising, this gives rise to very serious concerns about potential conflicts of interest.” The members of the ISA consist of 167 countries and the European Union. Formally, the organization is made up of five bodies: the Secretariat; the Assembly, where member countries are represented; the Council, elected by the Assembly; the Finance Committee; and the Legal and Technical Committee. The latter is tasked with making recommendations to the Council about approving legislation; together with the Secretariat, this committee is the most influential of the Authority’s organs. Longtime observers say that the Legal and Technical Committee has also never turned down an application for an exploration license. Critics of the ISA, including former employees who spoke to PassBlue confidentially, point to its leadership and revenue structure as the source of many of its problems. When deep-sea mining may actually begin, the ISA plans to receive a cut of the profits from the mining operations to cover its operating expenses. Until then, the organization receives money in two ways: through sales of exploration licenses and member states’ voluntary donations or assessed contributions. The ISA collects a $500,000 application fee for each exploration license that it grants as well as a yearly administrative fee of $47,000 per contractor doing the exploring, according to a 2019 [presentation](https://isa.org.jm/files/files/documents/dec-analysis_0.pdf) on the ISA’s payment regime. A [2020 report](https://isa.org.jm/files/files/documents/ISBA_26_FC_4-2006697E.pdf) by the Finance Committee to the Authority’s Secretary-General Lodge expressed concern that many member states haven’t been paying their assessed contributions. Outstanding contributions currently total just over $1.1 million, representing more than a month of the organization’s yearly budget. According to a former finance officer, who spoke to PassBlue but asked to remain anonymous because of the sensitivity of the information, the ISA depends heavily on the exploration license fees for its roughly $10 million annual operating budget. PassBlue has been unable to verify how much of the budget comes from contractor fees, as the Authority did not share audited financial statements after repeated requests to do so. The ISA also has a track record of dismissing scientists or employees who raise concerns about the speed at which decisions surrounding deep-sea mining are being taken, several former employees and longtime observers to the organization said. “I decided to speak out about the fact that, you know, we didn’t have enough science to be making informed decisions about how to manage this activity, unless the decision was not to proceed,” says Diva Amon, a marine biologist who [received](https://www.isa.org.jm/news/isa-secretary-general-presents-inaugural-edition-award-excellence-deep-sea-research-dr-diva) the ISA’s Award for Excellence in Deep Sea Research in 2018, referring to the writing of the Authority’s regulations around deep-sea mining. “That was when the relationship [with the Authority] switched.” Amon says she no longer gets invitations to the workshops that the ISA hosts on environmental management. The workshops are one way that the ISA consults scientists to inform members of the Legal and Technical Committee on policy decision-making. But some scientists who attend the workshops question whether their advice is being heeded. [Pradeep Singh](https://de.linkedin.com/in/pradeeparjansingh), a researcher at the University of Bremen, in Germany, who specializes in the Law of the Sea treaty, said that the reports on the workshops have gotten less substantive and sometimes fail to include the recommendations made by scientists at the gatherings. “If all this scientific input is not included in the workshop report,” he told PassBlue, “it won’t come to the attention of the Legal and Technical Committee.” Singh also said the organization’s selection of scientists attending the meetings isn’t transparent. Sabine Christiansen, a senior researcher at the German-based Potsdam Institute for Advanced Sustainability Studies, agreed. She has been studying the ISA since 2001 and attending the organization’s meetings since 2009, and says that it has a tendency to invite mostly “like-minded” scientists, a sentiment that other observers have also echoed. Who’s steering the ship? The relationship between Lodge, the secretary-general of the Authority, and the Metals Company, the Canadian company that holds three of the 31 current exploration licenses, especially concerns critics of the ISA. Lodge sparked controversy when he [tweeted](https://twitter.com/mwlodge/status/984626856384221185) a photo of himself in 2018, wearing a hard-hat branded DeepGreen, the previous name of the Metals Company, on one of its exploration cruises. Lodge also represented the ISA in an [ad](https://vimeo.com/286936275) for DeepGreen, where he said that mineral resources on Earth are dwindling and becoming more expensive and environmentally damaging to mine. [Baron Divavesi Waqa,](https://en.wikipedia.org/wiki/Baron_Waqa) the president of Nauru from 2013 until 2019, is also featured in the ad as well as in Lodge’s tweeted photos of the deep-sea cruise. [Lodge](https://www.isa.org.jm/secretary-general) is a British lawyer with a background in ocean law and fisheries management and has worked extensively in the South Pacific, where he was a lead negotiator for the 1995 [Fish Stocks Agreement](https://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm), part of the Law of the Sea treaty. He has been with the ISA as a legal counsel since 1996 and was elected secretary-general in 2016. He did not respond to repeated requests for an interview from PassBlue. Christiansen of the Potsdam Institute says the climate at the ISA has become “less open” since Lodge’s election, citing less-thorough public reports. The Metals Company has been the most active corporation pushing for deep-sea mining to begin. It holds an exploration contract sponsored by Nauru through a local subsidiary. Gerard Barron, chief executive of DeepGreen (and now heading its renamed Metals Company), [represented](https://enb.iisd.org/events/1st-part-25th-annual-session-international-seabed-authority-isa/highlights-and-images-main-1) Nauru at the ISA’s Assembly meeting in 2019. In March 2021, the Metals Company [released](https://metals.co/deepgreen-combines-to-form-the-metals-company/) a $2.9 billion initial public offering stating that it would begin producing metals — and mining the ocean — as soon as 2024. Today, the company appears to be struggling, however, with one major investor [suddenly pulling out](https://www.ft.com/content/6675ac1e-a9a0-48d8-b4e9-aee2ef27c7be) his capital and a [class-action lawsuit](https://www.businesswire.com/news/home/20211028005874/en/EQUITY-ALERT-Rosen-Law-Firm-Files-Securities-Class-Action-Lawsuit-Against-TMC-the-metals-company-Inc.-fka-Sustainable-Opportunities-Acquisition-Corp.-%E2%80%93-TMC-TMCWW-SOAC-SOAC.U-SOACWS) accusing the company of misleading information in documents for investors. Lodge’s public statements on mining also raise questions about his commitment to protecting the environment when that work contradicts the interests of mining companies. Scientists, including the ISA awardee Diva Amon, have for years been calling for a moratorium on deep-sea mining to give scientists and miners more time to understand its potential consequences and devise mitigation strategies. During a [June 2020 hearing](http://www.dekamer.be/media/index.html?sid=55U0739) in Belgium’s parliament, Lodge said he had not heard a “powerful” call for a moratorium and called such an initiative “anti-science, anti-knowledge, anti-development and anti-international law.” In September 2021, 81 governments, more than 500 civil society organizations and several multinational companies, including Google, [jointly called](https://www.iucncongress2020.org/motion/069) for the moratorium. They also called on the ISA to improve its transparency and accountability. A deep-sea jellyfish collected by a remotely operated vehicle from a depth of at least 4,920 feet in the Celebes Sea of the western Pacific Ocean. The red color is common among deep-sea medusas, as it is invisible in the perpetual darkness and at the same time masks any bioluminescence of prey in the jelly’s gut. NOAA-OFFICE OF OCEAN EXPLORATION AND RESEARCH Sharing the profits The ISA was established “with this amazing principle as its fundamental legal basis to act on behalf of humankind,” Gjerde of the International Union for the Conservation of Nature says. The ISA contends that it is committed to prioritizing the interests of developing nations through the financial and economic frameworks that it writes for the exploitation of the riches that lie at the ocean floor. Though the US is not a party to the Law of the Sea treaty, American organizations still have influence over the ISA. Through subsidiaries, the weapons manufacturer Lockheed Martin holds two exploration contracts. The ISA also relies heavily on research by the Massachusetts Institute of Technology for its economic predictions. A [leaked US embassy cable](https://wikileaks.org/plusd/cables/05KINGSTON2220_a.html) from 2005 describes the involvement of the US in the Authority’s meetings, noting that the choice of an “acceptable” candidate to succeed then-secretary-general Satya Nandan would be an issue that the US would “want to address in the near future.” The 31 exploration licenses that the Authority has sold so far are held by a total of 23 governments, nationally owned entities and private companies. Seven of the contracts are set aside as “reserved areas,” which are donated by wealthy countries and meant to benefit developing countries. A closer look at the complex web of the parties involved with the exploration licenses, however, raises questions as to whether the mechanism is working as intended. “Sponsoring states need to think carefully, because if they fail to exercise due diligence and the company causes environmental damage because of that, they can be held liable,” Gjerde says, paraphrasing an [advisory opinion](https://www.asil.org/insights/volume/15/issue/7/advisory-opinion-seabed-disputes-chamber-international-tribunal-law-sea-) of the International Tribunal for the Law of the Sea. Of the contracts reserved for developing countries, three are owned by the Metals Company; one is a Chinese state company; one is a joint venture among Lockheed Martin, the Singaporean conglomerate Keppel and an investment company whose ownership is unknown; one is a joint venture between the Cooks Islands government and the Belgian dredging company DEME; and one is Blue Minerals Jamaica, of which little is known except its association with Peter Henrik Jantzen, a Dane. Indeed, as pressure increases for the Authority to speed up the process of allowing the mining of the deep sea, it remains an obscure body with little public oversight. The next meetings for the ISA Council and the Assembly, postponed last year due to the Covid crisis, are planned for December. “We have all these other activities in the high seas,” Christiansen of the Potsdam institute says. “The ISA is adding new pressures on the ocean, and nobody’s looking.”

#### Even though the OST doesn’t bind private entities, governments still already restrict and regulate them to ensure just compliance in the squo

Eijk 20 [Cristian van Eijk is finishing an accelerated BA in Law at the University of Cambridge. He holds a BA cum laude in International Justice and an LLM in Public International Law from Leiden University, and has previously worked at the T.M.C. Asser Institute and the International Commission on Missing Persons. “Sorry, Elon: Mars is not a legal vacuum – and it’s not yours, either.” Voelkerrechtsblog. May 11, 2020. <https://voelkerrechtsblog.org/sorry-elon-mars-is-not-a-legal-vacuum-and-its-not-yours-either/>] HW AL

Two provisions of the Outer Space Treaty (OST), both also customary, are particularly relevant here. OST article II: “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.” OST article III: “States… shall carry on activities in the exploration and use of outer space, including (…) celestial bodies, in accordance with international law”. SpaceX is a private entity, and is not bound by the Outer Space Treaty – but that does not mean it can opt out. Its actions in space could have consequences for the United States in three ways. First, the US, as SpaceX’s launch state, bears fault-based liability for injury or damage SpaceX’s space objects cause to other states’ persons or property (OST article VII, Liability Convention articles I, III). Second, the US, as SpaceX’s state of registry, is the sole state that retains jurisdiction and control over SpaceX objects (OST article VIII, Registration Convention article II). Both refer to objects in space and are irrelevant. According to article VI OST, States “bear international responsibility for national activities in outer space”, including Mars, including those by “non-governmental entities”. The US, as SpaceX’s state of incorporation, must authorise and continuously supervise SpaceX’s actions in space to ensure compliance with the OST (OST article VI) and international law (OST article III). In practice, this task is done by the US Federal Communications Commission, which licenses and regulates SpaceX. Article VI OST sets a specific rule of attribution, supplementing the customary rules of state responsibility (Stubbe 2017, pp. 85-104). SpaceX acts with US authorisation, and its conduct in space within and beyond that authorisation is attributable to the US (ARSIWA articles 5, 7). In the absence of circumstances precluding wrongfulness, the result is straightforward. If SpaceX breaches a US obligation under international law, the US bears responsibility for an internationally wrongful act.