

New Zealand

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# Tonga's risky seabed mining ventures

Yoichiro Sato comments on the problems confronting Tonga in seeking to exploit its EEZ resources.

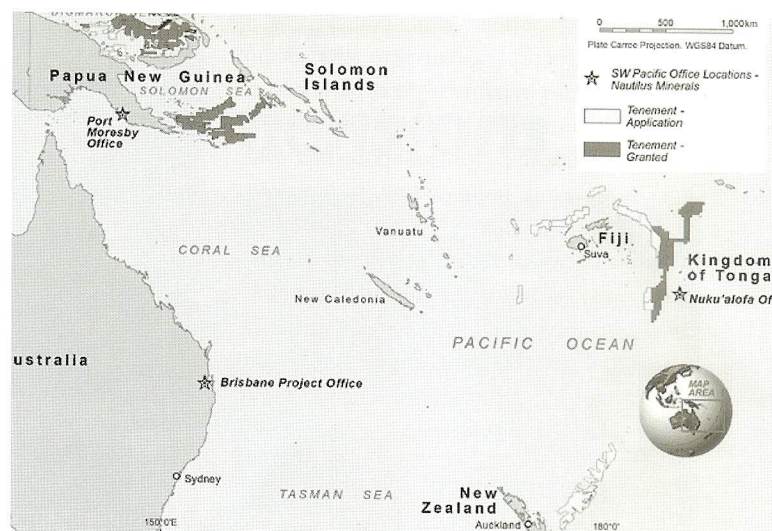
For Pacific Islands nations, seabed mineral resources offer growing potential for boosting their economic development. The vast exclusive economic zones (EEZs) they hold are host to various mineral resources that are as yet untapped. Furthermore, the seabed of international waters in the Pacific has been opened to international mining consortia under the management of the International Seabed Authority (ISA) of the UN Law of the Sea Commission. While most participants are from the developed countries with a large capital endowment and advanced technology, Pacific countries like Nauru and Tonga have partnered with an international investor to join mining in the international seabed.

In EEZ mining, the national government holds authority both in licensing prospecting the area for mining resources and overseeing their extraction. In addition to setting the price of the license fees, it has another important responsibility in ensuring that subsequent operations are environmentally sound.

Despite Tonga's 'democratic transition' after the Nuku'alofa riot of 2006, the royal family continues to dominate its politics. The absence of transparent law governing the deep-sea mining and the Tongan government's decision to sign international joint exploration and production agreements have set the stage for the partial privatisation of national resources without a fair return to the general government coffer. The Tongan government's involvement in seabed mining in international waters exposes it to the risk of losses and liabilities that will have to be shouldered by the taxpayers. For the poorly developed governance competency of Tonga, seabed mining simultaneously offers too much economic lure and demands too much supervisory responsibility.

## Hydrothermal vents

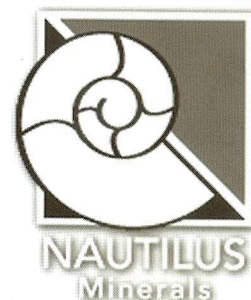
Deep water within the Tongan EEZ is host to numerous hydrothermal vents known as 'black smokers' on the seabed, which produce polymetallic sulphide deposits containing various metals, such as copper, lead, zinc and gold. By March 2008, the Tongan government had granted a 15-year exploration license to Nautilus Minerals, a Canada-based firm active in deep-sea mining throughout the Pacific, for an 80-square-kilometre area off Nuku'alofa known as the Lau Basin. Nautilus organised its first exploration voyage in September 2008. The Tongan government also awarded the Korean government a similar exploration license in March 2008, and



Licence applications and those already granted in the South Pacific

three exploration voyages were carried out in the following month. The project attracted US\$13.8 million in investment from five 'local' companies. The Korean exploration continued until the end of 2012.

The Tongan government is also involved in Nautilus' deep-sea mining outside the Tongan EEZ. In 2008 it sponsored the application by Tonga Offshore Mining — a subsidiary of Nautilus Minerals — to explore the Clarion Clipperton Zone in the Central Pacific midway between Hawaii and Mexico governed by the International Seabed Authority (ISA). In 2009, concerned by the question of responsibility and liability of the sponsoring states, the government asked for postponement of consideration of its application but was persuaded to proceed. Developed countries and their business sectors are critical of the ISA legal opinion that places too much responsibility and liability on the precautionary principle.<sup>1</sup> However, the image of a restrictive US government constraining the exploratory activities of US firms is not at all applicable to the Tongan case, where the sponsoring government totally lacks enforcement capabilities to fulfil its supervisory and regulatory responsibilities in a remote area. The exploration right was granted in July 2011, and the agreement between the ISA and Tonga Offshore Mining was signed in January 2012. The Tongan government signed an agreement with Tonga Offshore Mining for the initial fifteen years for a royalty to the Tongan government of 'US\$1.25 per dry ton for the first 3 million dry tons of nodules



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**With technological advances, deep-sea mining offers a great economic potential for the Pacific Islands countries. Tonga's entry into seabed mining in its exclusive economic zone, however, has proceeded without an appropriate governance structure to regulate the industry and attracted some shady international figures working with a royal family member. The country's participation in an international consortium in seabed mining in international waters exposes the country to risks of environmental liability and financial loss possibly beyond its means to compensate. It is hoped that the country proceeds more cautiously, while ensuring that development of its own supervisory capability keeps pace with exploitation of the resources.**

mined per year, and US\$0.75 per dry ton for all subsequent tons mined thereafter in that same year.<sup>2</sup> Nautilus has signed a similar agreement with Nauru Ocean Resources Incorporated with sponsorship of the Nauru government to explore seabed mineral resources in separate ISA governed blocs. While the Tongan-sponsored bloc has announced good resource prospects, the Nauru-sponsored blocs have not. Meanwhile, Nautilus has tied the Tongan project to Nauru's through an arrangement swapping interests in the two subsidiaries. It now controls 100 per cent of the Tongan project and Tonga is allowed to hold 50 per cent of the Nauru project.<sup>3</sup>



Pilolevu Tuita

out a national law on seabed minerals mining. Legislation was scheduled for August 2013, but had not been completed as of mid-September 2013.

### Patrol boats

Lack of physical enforcement capability is another concern. Tonga's only patrol boats that are capable of offshore water conditions are the navy's three Pacific patrol boats. Donated by Australia, these boats are primarily used for fishery and search and rescue patrols, for the Australian conditions for fuel subsidies are restricted to these operations.<sup>12</sup> The Tongan government currently has no mechanism to ensure that part of the licensing revenue from seabed mining will be set aside for the

### Poor governance

While seabed mining of the Tongan EEZ seems promising, the lure of a quick profit in the poorly governed regulatory environment invites shady figures. An investor group, comprising mysterious firms allegedly based in Denver and London and centred on a Russian individual, signed agreements with the Tongan government on hydrocarbons exploration and mining and established three Tonga-registered subsidiaries. Princess Royal Pilolevu Tuita owns 20 per cent shares in each of the three subsidiary firms,<sup>4</sup> and the three firms were given exploration rights for eleven years and production rights for 35 years in the event of discovery of minerals in the '37,000 square kilometers of marine scheduled lands'.<sup>5</sup> The area amounts to 5.5 per cent of the Tongan EEZ,<sup>6</sup> and international investment of US\$20–40 million is sought for the initial exploration, which will start in 2014.<sup>7</sup> Tonga's 'new business models and practices' to bring international capital to a risky emerging market<sup>8</sup> have effectively privatised a portion of the Tongan EEZ seabed, while no major international oil and gas firms have shown interest in the prospect of 'hydrocarbons' there.

Tonga's inexperience with international negotiations and legal training concerning deep-sea mining has been addressed by collaboration of international and regional organisations like the European Union and the Applied Geoscience and Technology Division of the Secretariat of the Pacific Community (SOPAC).<sup>9</sup> However, critics are skeptical about acculturation of the Tongan elite through these workshops.<sup>10</sup> Tonga's *Strategic Development Framework, 2011–2014*, states:

The opportunities for oil exploration and seabed mining remain in the future, however, government recognises the potential contribution these could make to the future development of the Kingdom. Government also recognises that there are many lessons to be learned from other countries where oil and mineral wealth has greatly disrupted political reform and social solidarity.

Government will review the need for new legislation to ensure that exploration and any future mining or extraction of resources will generate a significant benefit to the Kingdom. This legislation will include measures to ensure royalties and other charges are received by Government and to protect the economy and political system from any possible economic disruption and potential corruption that might eventuate from a failure to effectively manage mineral wealth.<sup>11</sup>

Tonga issued three exploration licenses in its EEZ in 2008 with-

patrolling costs.

The seabed mining potential of Tonga is high, and so is the risk of its abuse. The poor domestic governance of Tonga has so far proven to be incapable of properly managing the licensing of prospecting and mining the seabed resources within the country's EEZ. Furthermore, the government's sponsoring of a deep-sea mining operation in international waters by an international firm has exposed the country to environmental liability and expanded financial risks that it has no way of controlling through proper supervision. It is to be hoped that the country takes advantage of its seabed mining resources incrementally to keep pace with the building of its own supervisory capability and refrains from taking large risks in international waters, where its supervision cannot reach.

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