

# BIOPROSPECTING AND DEEP-SEA GENETIC RESOURCES IN A FRAGMENTING INTERNATIONAL LAW



GÖTEBORGS UNIVERSITET  
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## **Akademisk avhandling**

som för avläggande av juris doktorexamen vid Göteborgs universitet  
offentligt framläggs och försvaras fredagen den 11 juni 2021, kl. 10.00 i  
Europa-salen, Konferenscentrum Wallenberg,  
Medicinaregatan 20A, Göteborg.

av

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Doctoral thesis to be publicly defended for the degree of Doctor of Laws, on 11 June 2021, at 10.00 AM, in lecture hall Europa, Conference Centre Wallenberg, Medicinaregatan 20A, Göteborg. The thesis defence will be conducted in English.

#### **Abstract**

Krabbe, Niels (2021). *Bioprospecting and Deep-Sea Genetic Resources in a Fragmenting International Law*

Printed by: Stema specialtryck AB, Borås 2021.

ISBN 978-91-8009-376-7 (Print)

ISBN 978-91-8009-377-4 (PDF)

<http://hdl.handle.net/2077/67465>

This thesis investigates if public international law manages to function as a coherent system in the case of deep-sea bioprospecting, where rules in three regimes provide seemingly inconsistent obligations for states.

Based on an investigation of the development of bioprospecting and patenting of deep-sea genetic resources, the study explores how rules in the United Nations Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD) and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS) apply to such activities. It is illustrated how rules of these treaties provide different and seemingly inconsistent obligations for states in the context of deep-sea bioprospecting. This is explained by their origin in different *regimes* of public international law with distinctively dissimilar perspectives on the appropriation of genetic resources.

It is discussed how the *prima facie* norm conflict in some cases can be resolved on the basis of the principles on treaty application and interpretation under the Vienna Convention on the Law of Treaties. In other cases, such as the obligations for bioprospecting of deep-seabed micro-organisms, states are faced with an irreconcilable dilemma; the different treaty obligations cannot be simultaneously applied. In order to prevent such conflicts and ensure the credibility of international law as a functioning system, new approaches are suggested, in particular the development of holistic conflict clauses and *lex specialis*. The case of deep-sea bioprospecting calls for a more state-oriented perspective in the debate on the fragmentation of international law.

**Keywords:** public international law, law of the sea, international environmental law, WTO law, bioprospecting, biotechnology, genetic resources, deep-sea, biological diversity, areas beyond national jurisdiction, fragmentation, treaty interpretation, norm conflict, regimes, commons, conflict clauses

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