

International cooperation, regulations, and role of the International Seabed Authority

This presentation focuses more on the role of the International Seabed Authority, regulations and a little bit on international cooperation.



international relations
& cooperation

Department:
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Introduction

The International Seabed Authority is an autonomous international organization established under the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the Implementation of Part XI of the Convention. I am unwavering in my belief in the universal character of the Convention and that large parts of it constitute customary international law binding on all states, whether State Party or not. We should be continually guided by the Convention and the 1994 Agreement which constitute the framework within which all activities in the Area take place.



The Role of the International Seabed Authority

Under the Convention, the Authority is the organisation established to organize, control and regulate activities in the Area for the benefit of humankind as a whole. This is a solemn responsibility that has to be carried out faithfully and has to be guarded jealously. The primary concern for the Authority as a regulator is how to balance the societal benefits of deep seabed mining, including access to essential minerals, the non-displacement of communities) extensive deep sea research and technological development, against the need to protect the marine environment. Of course, the fact that no part of the Area may be exploited without permission from the Authority ensures that the environmental impacts of deep seabed mining will be monitored and controlled.



The Role of the International Seabed Authority

Activities in the Area shall be carried out for the benefit of humankind as a whole (Art 140(1) and some of these activities are the following: Promote the carrying out of activities in the Area 'in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing states (Art150). Promote the effective participation of developing countries in activities in the Area including taking due regards of the special interests of the landlocked and geographically disadvantaged to overcome obstacles arising from their disadvantaged location, including remoteness from the area and difficulties of access to and from it (Art 148).

The Role of the International Seabed Authority

Provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through appropriate mechanism, on a non-discriminatory basis (Art 140). Adopt rules, regulations and procedures that ensure effective protection of the marine environment from harmful effects which may arise from such activities (Art 145). Establish and enforce international rules to prevent and control pollution of the Marine environment from activities in the Area (Arts 209 & 215). Exercise control over activities in the Area as necessary for the purpose of securing compliance with the relevant provisions of the Convention and the rules, regulations and procedures of the Authority and the approved Plans of Work (Art 153(4)).



The Role of the International Seabed Authority

Exercise the right to take any measures to ensure compliance with the provisions of the Convention and any contracts and the right to inspect any installation in the Area used in connection with activities in the Area (Art 153(5)). Promote and encourage the conduct of marine scientific research and may enter into contracts for that purpose concerning the Area and its resources as well as the coordination of such research and the dissemination of its results (Arts 143(2) & 256). Take measures to acquire technology and scientific knowledge relating to seabed mining and to promote, encourage and facilitate its transfer to developing countries (Arts 144, 273 & 274 & also AGXI/A/S5).



Regulations and challenges

As we are on the brink of the next phase which is deep seabed mining, we acknowledge that there is more to do. We are encouraged that the process of developing the draft regulations for exploitation has started. Perhaps the most important element of this process is to establish an appropriate fiscal framework for mining that is fair to the industry, investors, to the member States of the Authority, and all humankind who are intended to be the ultimate beneficiaries of the deep seabed mining, taking into consideration that the exploitation of the mineral resources should not lead to environmental damage. The biggest challenge for ISA is balancing the conflicting obligations which are (i) the exploitation activities of mineral resources for the benefit of mankind as a whole and (ii) effective protection of marine environment from harmful effects which may arise from such activities. These obligations emanate from the 1982 United Nations Convention on the

Regulations and challenges

For instance, Article 140 states that “activities in the Area shall be carried out for the benefit of mankind as a whole” whilst Article 145 states that “Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities”. By the way, the draft exploitation regulations must make it clear that the exploitation activities in the Area are carried out in terms of the principle of the Common Heritage of Mankind (CHM) because the Area and its resources are the CHM (Art 136). Another challenge is specifying in the draft exploitation regulations how the ISA is going to give effect to the principle of the CHM in terms of the Convention and the 1994 Agreement, more particularly, how fair and equitable benefit sharing will be realized.

Regulations and challenges

There is also a need for Economic Model and a payment mechanism that balance commercial interests with a fair and equitable return to the CHM. This is an obligation in the Convention and it reads, “The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis”, in accordance with Articles 140(2) and 160, paragraph 2(f)(i). The last biggest challenge is specifying in the draft exploitation regulations how the ISA is going to protect the developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in articles 150 (h) and 151.

Enterprise

There is progress on the front of the Enterprise. The boldest measure envisaged by the UNCLOS to institutionalise benefit-sharing is the creation of the Enterprise, the commercial arm of the ISA. It was to be a communitarian feature of Part XI that would enable joint seabed mining operations with some of the profits being distributed amongst States parties, particularly developing States. The UNCLOS envisages the Enterprise as an organ of the ISA albeit enjoying “autonomy in the conduct of its operations. In order to minimise costs for States parties, the Enterprise's initial deep seabed mining operations must be conducted by means of joint-ventures.



Enterprise

In facilitating the participation of developing countries in deep seabed mining, especially those that are less technologically endowed, the Enterprise was designed to provide an important mechanism to give effect to the common heritage of mankind principle. Indeed, without the Enterprise, the Area's mineral resources could be effectively reserved for those private corporations and government entities with sufficient capital and operational and/or technological knowledge to extract them, to the effective exclusion of the developing countries.



International Cooperation

Designing a regime for the exploitation of marine minerals in the International Seabed Area clearly has the potential to be most destructive. It is therefore vitally important to the Authority that careful thought is given towards this in the initial elaboration of the mining regime. Dialogue, exchanges of views and information on best practices and cooperation with member States, intergovernmental and inter-agency partners and all stakeholders at all level will therefore be necessary. Clearly other activities, aside from mining, can affect deep seabed ecosystems and it is therefore necessary to adopt an approach that can consider the cumulative impacts on the marine environment. As the Authority is only competent to regulate activities in the Area, such an approach will necessitate cooperation with other relevant international organizations.





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