

The Pew Charitable Trusts Intervention on Inspection, Compliance and Enforcement Mechanism

Firstly allow me to align myself with the thrust of the interventions from the other civil society observers, **Pew would like to offer some brief comments on ISA's legal competence.** We heard almost every State start their interventions in the last session, about how important it is to ground discussions in UNCLOS. The same must be applied here. In that regard, the ISA has jurisdiction over activities in the Area. The ISA can set rules for how ISA contractors operate. The ISA however has no jurisdiction to set rules for how third parties operate. Legal powers that relate to activities in the Area, do not apply to other ships in the high seas for other purposes. Measures to control the actions of ships are within the jurisdiction of the flag state regime and IMO treaties.

The IMO has also issued a resolution on 'Assuring Safety During Demonstrations, Protests or Confrontations on the High Seas' (with which Greenpeace / the Netherlands complied). Member States of the ISA should not seek to undermine or confuse the IMO's rules or the flag state jurisdiction.

Regarding the proposed 500m safety zone around ISA contractors.

UNCLOS Article 147(2) requires safety zones (with no distance prescribed) to be established around installations. Article 260 of UNCLOS allows (though does not mandate) 'safety zones around scientific research installations'. NORI's vessel is not an installation, it is a ship. Exploration and 'marine scientific research' are distinct activities according to UNCLOS and should not be conflated.

Neither Article 147(2) nor 260 applies to ISA contractor exploration ships. There is no other power in UNCLOS enabling safety zones to be placed around ships. This is probably because ships move, unlike installations that can be plotted on a chart to inform other vessels where to avoid. To call a ship an installation only when it is stationary is not a clear rule that other vessels can be expected to follow.

To mandate a moving 1km diameter 'no-go' zone whose location is at the discretion of an ISA contractor over thousands of square kilometres of high seas, seems likely to infringe the right to freedom of navigation in the high seas and the duty to give reasonable regard to other marine users. It could also impede independent environmental monitoring programmes for contractor activity, which as an important source of independent marine scientific research should be promoted not prevented).

In conclusion: UNCLOS gives ISA no legal power or competence to issue a safety zone around an exploration ship, and to do so could have adverse consequences for other marine users. Again, if States wish to pursue this idea further, we agree with States who identified that this is a matter best referred to the IMO.