

Fathoming Liability in the Context of Deep Sea Mining

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Three Points for Consideration

- The “due diligence” standard and the accompanying potential for harm without remedy
- The principle of “residual liability” as a solution that is not available
- New ways of thinking about the content of “due diligence” as a possible solution (and how the developing exploitation regulations might assist)

Article 139

- (1) States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by State Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with [Part XI] ...

- (2) ... [D]amage caused by the failure of a State Party or international organization to carry out its responsibilities under [Part XI] shall entail liability ... A State Party shall not however be liable for damage caused by any failure to comply with [Part XI] by a person whom it has sponsored ... if the State Party has taken all necessary and appropriate measures to secure effective compliance ...

Annex III, Art. 4

(4) The sponsoring State or States shall ... have the responsibility to ensure, within their legal systems, that a [sponsored contractor] shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are ... reasonably appropriate for securing compliance by persons under its jurisdiction.