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ISA AND SPONSORING STATES | Michael Lodge





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PRELIMINARY OBSERVATIONS ON THE INTERFACE BETWEEN ISA AND SPONSORING STATES IN THE CONTEXT OF DEEP SEA MINERAL EXPLOITATION



ADVISORY OPINION

The purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in the Convention, a treaty under international law which binds only States Parties thereto, are complied with by entities that are subjects of domestic legal systems. (para. 75)

This result is obtained through the provisions of the Authority's Regulations that apply to such entities and through the implementation by the sponsoring States of their obligations under the Convention and related instruments. (para. 75)



COMMON HERITAGE ELEMENT

The role of the sponsoring State contributes to the realization of the common interest of all States in the proper application of the principle of the common heritage of mankind which requires faithful compliance with the obligations set out in Part XI. (para. 76)

The common interest role of the sponsoring State is further confirmed by its obligation, set out in article 153(4) of the Convention, to “assist” the Authority, which, as stated in article 137(2), acts on behalf of mankind. (para. 76)



SPONSORING STATE OBLIGATIONS

- Direct obligation to conduct EIA (para. 145-146) [Note link to Arts. 205 and 206.]
- Scope and extent of laws and regulations depends upon the legal system of the sponsoring State
- The Convention leaves it to the sponsoring States to determine what measures it will take to enable it to discharge its responsibilities ... but must take into account, objectively, the relevant options in a manner that is reasonable ... (good faith)



SPONSORING STATE OBLIGATIONS

- Measures should be reasonable appropriate
- Measures may include enforcement.
- May be more stringent provisions on marine environment protection
- Measures should be enforceable.



DRAFT REGULATIONS

- Duty to cooperate and exchange information (Reg. 3)
 - Avoid unnecessary duplication of compliance requirements
 - Measures to promote health and safety and environmental protection
 - Exchange information with ISA
 - Develop BEP and programmes to study environmental impact
- Termination of sponsorship (Reg. 21)
- Use of exploitation contract as security (Reg. 22)
- Preventing and responding to ‘incidents’ (Reg. 33)
- Notifiable events, consultation ‘as necessary’ (Reg. 34)
- Human remains and objects of archaeological or historic nature (Reg. 35)



DRAFT REGULATIONS

- Training plan (Reg. 37)
- Review of activities under a plan of work (Reg. 58)
 - Possible participation in review
 - Report on review provided to sponsoring State
- Inspections (Reg. 96 - 100)
 - Assist Secretary-General and Inspectors
 - Inspection report to be copied to sponsoring State
 - Acts of intimidation, obstruction etc. to be reported to sponsoring State
 - Electronic monitoring data to be provided to sponsoring State





Conclusions

1. Certainty and predictability are key for regulatory intervention.
2. Draft regulations a good starting point to identify key points of interface.
3. Appears to be some duplication (e.g. in reporting)
4. Lack of clarity on enforcement (who is to act and how)





Conclusions

1. What mechanisms and protocols need to be put in place?
2. How? Under what instrument?
3. Who is to act on enforcement?
4. How to avoid duplication?
5. Who has lead role on Environmental Plans (Reg. 11)?
- 6. Understanding the relationship between EIA under Regulations and Arts. 205 and 206.**





THANK YOU!
