

The competences in the Area Conflicting or Complementary?

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General context

- The legal framework : UNCLOS 1982
- New oceanic order
 - Institutionnal Innovations: ISA, ITLOS, CLCS
 - Geographical Innovation: the AREA
 - Article 1,(1) (2) seabed, subsoil bnj; Authority
- States: one status (**a State is a State**): « the procedures for assessing the qualifications of States Parties as applicants shall take into account their **character as States**, art.4,(5) A.III

Plurality of actors in the Area

- Above all, Human Heritage of Mankind
- The ISA and all its bodies
- States Parties (167)
- Contractors
- International Org. Competent in ISA's field

Sponsoring State in the Area

- Origin in the notion of Certifying State (R.II)
- Functional definition according to UNCLOS:
 - art.139 « responsibility to ensure that activities undertaken are in conformity with UNCLOS », the importance of the national legal system
 - Art.153 « sponsorship is required »
 - Annex III, art. 4 « qualifications of applicants »
 - Confirmation by ISA's rules and regulations
 - Words in need of interpretation

The Legal Opinion, Feb, 2011

- The Seabed Disputes Chamber of ITLOS,
(section 5, art.191, Part XI)
- Why such request of a legal opinion?
 - To appreciate the extent of the liability of a sponsoring State in case of failure of an entity to comply with UNCLOS and 1994 Agreement
 - Opportunity to define the scope of activities with respect to Sponsoring State ; no obligations outside the Area
 - « due diligence » as obligation of conduct

Qualification of the sponsoring State in the Legal Opinion

- « Sponsorship is a **key element** in the system for the exploration and the exploitation of the resources of the Area », §74
- Requiring sponsorship: to build a bridge between UNCLOS binding States Parties and entities part of domestic legal system, §75
- Obligation of the sponsoring State: **to assist** the Authority, §76
- Sponsoring State **complementary** to ISA
- Valuable input from the Legal Opinion

Other States

- Role, rights and obligations of the **flag State** are described in UNCLOS (art. 91,92,94)
- Is the « activity in the Area » for a flag State an issue?
- Legal Opinion: transportation to points on land from the part of the high seas superjacent to the part of the Area where the contractor operates **cannot** be **included** in the notion of activities in the Area
- But, if transportation is linked to extracting and lifting, yes it is in the activities, §96
- It depends very much of what is the situation

Flag States (cont'd)

- Three issues:
 - ISA/flag State (issue of inspectors) conflicting?
 - Sponsoring State/flag State, not an issue
 - Role for the contractor hiring the ship of a given State, and has full liability(art.22, A.III,L.O §199)
 - §200: this reflects the distribution of responsibilities for deep seabed activities between the contractor, ISA and the sponsoring State. Flag State out of the scene
- More questions than answers provided
- Main scenario in case of pollution: flag State's duties in the framework of Part XII

IMO and ISA

- Main international organization in maritime domain: e.g navigation, pollution, dumping
- Rules and standards of IMO apply to different kind of ships, offshore installations
- What about the Area? Two issues:
 - Navigation is under IMO + flag State jurisdiction
 - Installations have a specific regime, art.147(2) where rules of P. XI and those of ISA apply

IMO and ISA (cont'd)

- Art. 209 (2) pollution from activities in the Area, no reference made to IMO
- 1996 LP (hosted by IMO) on dumping, specific exclusion for waste from deep seabed mining
- Full competence of ISA: art.153 (5)
- Agreement adopted by both IO for mutual assistance in their respective fields of interests
- Competences are granted complementarity

To conclude

- Current stage: drafting a regulatory framework
- More questions than answers
- Time for scenarios rather than for certainty
- Exciting and challenging time to come