PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT IN THE AREA UNDER UNCLOS

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A. INTRODUCTION

The protection and preservation of the marine environment forms a key part of the 1982 Convention on the Law of the Sea (UNCLOS or LOSC). Part XII of the UNCLOS on the protection and preservation of the marine environment was negotiated as part of the package deal which led to the adoption of the Convention.1 Whereas Part XII establishes the foundation for the international environmental law of the sea,2 the Convention has other provisions on the protection of the marine environment in several of its Parts.3 Specifically Part XI contains provisions for the protection of the marine environment in the Area.4 The negotiators at UNCLOS III recognized the importance of preserving the marine environment in the Area which, together with its resources, forms the common heritage of mankind.5 Given the fact that Part XII negotiations were concluded before those of Part XI, it was not necessary to repeat the basic text of Part XII in the provisions for the Area since the Convention is to be applied and interpreted as an integrated whole and in context. Thus in the informal consultations concerning Part XI—which led to the 1994 Implementation Agreement6—it was decided to remove the issue of

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1 The Convention was adopted on 30 April 1982 by vote of 130-4-17. It was opened for signature on 10 December 1982 at Montego Bay, Jamaica.
3 Such as Arts. 21(1)(f) on the coastal State adopting laws and regulations for the preservation of the marine environment and 56(1)(b)(iii) regarding the protection and preservation of the marine environment in the EEZ by the coastal State.
4 Art. 1(1) of the UNCLOS states that the “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.
5 See Art. 136 of the UNCLOS. Art. 140 provides that activities in the Area shall be carried out for the benefit of mankind as a whole.
6 According to Art. 2 of the Annex to the 1994 Agreement, the provisions of the Agreement and Part XI are to be interpreted and applied together as a single
environmental considerations from the list of difficult issues, since it was no longer considered to be a controversial issue in the context of deep seabed mining.

With regard to UNCLOS, Rüdiger Wolfrum has written extensively on the issues of the preservation of the marine environment which are dear to him. Indeed, no fewer than ten of his many monographs deal with issues of the environment. This contribution will consider the provisions of the protection of the marine environment from the perspective of the Area by dealing with the concepts of due diligence, precautionary approach, environmental impact assessment (EIA), and cooperation. Where it is relevant, the jurisprudence of the Tribunal will be cited.

B. RELEVANT INSTRUMENTS

Besides UNCLOS and the 1994 Agreement, there are the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area which were adopted on 13 July 2000 by the Council and the Assembly of the International Seabed Authority (ISBA). Almost a decade later, the same principal organs of the Authority adopted the Regulations on Prospecting and Exploration for Polymetallic Sulphides on 7 May 2010. The two sets of regulations adopted so far are on prospecting and exploration. This is because exploitation for deep sea minerals has not yet begun. As such there is no experience on what the impact could be in practice on the marine environment. However, the main impacts of exploration activities on the marine environment are expected to occur at the seafloor, while seafloor sediments will be brought up along with the mineral ores and discharged on the surface.

The current knowledge of the potential impacts of deep sea mining in