Current Legal Developments

International Seabed Authority

ISA Areas of Particular Environmental Interest in the Clarion-Clipperton Fracture Zone

Offsetting to Fund Scientific Research

Deep-sea mining in seabed areas beyond national jurisdiction (ABNJ), or ‘the Area’ as it is called in the 1982 United Nations Convention on the Law of the Sea (LOSC),\(^1\) is on the cusp of becoming a reality. The International Seabed Authority (ISA), established by LOSC Part XI, is mandated with developing and overseeing the regulatory regime for the Area.\(^2\) ISA’s mandate includes encouraging prospecting in the Area while ensuring effective protection of the marine environment and the promotion of marine scientific research.\(^3\) To date, ISA has granted twenty-one 15-year Exploration Contracts.\(^4\) These contracts require the licensed developers to undertake environmental baseline studies, to progressively relinquish percentages of the licensed areas,\(^5\) and commit to annual reporting and review.\(^6\) The ISA is currently in the process

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2 LOSC, Article 157.
3 LOSC; see, respectively, Annex III, Article 2, and Articles 143 and 145.
5 E.g., Decision of the Council of the International Seabed Authority relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters (ISBA/19/C/17: Regulation 25 of 22 July 2013).
6 ISBA/19/C/17 (n 5) Section 10—Annual reports.
of formulating a Mineral Exploitation Code\(^7\) and, as recently discussed in this journal, has some way to go to put in place a holistic environmental management strategy.\(^8\) The regulatory regime is therefore developing but incomplete. This is especially true of the fiscal regime for exploitation, for which costs and benefits need to be better understood and articulated with environmental management obligations.\(^9\)

The abyssal sediments of the extensive Clarion-Clipperton Zone (CCZ) in the central Pacific represent an established location where a number of State and State Party Contractors to the ISA have been undertaking exploration activities since 2001 and others, including private sector mining corporations, have subsequently been granted exploration licenses.\(^10\) Eventual exploitation in the CCZ will be informed by an Environmental Management Plan (EMP) adopted by the ISA in 2012.\(^11\) The CCZ-EMP sets out a framework of license blocks containing Preservation Reference Areas within each license block, as well as a mosaic of nine large Areas of Particular Environmental Interest (APEIS)\(^12\) outside the license areas (see Figure 1). The size and location of such

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\(^9\) In March 2015 the ISA published a Discussion Paper on the Development and Implementation of a Payment Mechanism in the Area for consideration by Members of the Authority and all stakeholders. This paper recalled a Technical Study published in 2013 (Technical Study No.11, 26 February 2013) and a working paper to develop a discussion of financial terms under contracts for the future exploitation of the Area. Available at http://bit.ly/19BLJC9; accessed 12 May 2015.

\(^10\) To date, thirteen exploration contracts have been granted in the CCZ (n 4). For a revision of the CCZ and of the developments in this area, see M Lodge, D Johnson, G Le Gurun, M Wengler, P Weaver and V Gunn, “International Seabed Authority Environmental Management Plan for the Clarion-Clipperton Zone: a partnership approach” (2014) 49 Marine Policy 66–72.

\(^11\) ‘Environmental Management Plan for the Clarion-Clipperton Zone’ (ISBA/17/LTC/7, 13 July 2011); Decision of the Council of the ISA relating to an environmental management plan for the Clarion-Clipperton Zone (ISBA/18/C/22, 26 July 2012).

\(^12\) The unexpected discovery of rich and diverse biological communities in the seabed of the CCZ led to a proposal, in 2007, of the establishment of a representative network of