

Insurance and Compensation Funds for Deep Seabed Mining Liability

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The Role of Financial Assurances

- **Secure compensation**
- **Secure environmental protection measures**
- **Social license to operate**
- **Level playing field?**

Article 235 - Responsibility and liability

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, **as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.**

Evolution of Civil Liability

- **1963 Vienna Convention on Civil Liability for Nuclear Damage (1977) + 1997 Protocol (2003) + Convention on Supp. Compensation (2015)**
 - **Paris Convention**
 - **1992 Oil Pollution Civil Liability Convention and Fund Convention (1996) + 2003 Supp. Fund Protocol (2018)**
 - **Bunker Oil (2008)**
 - **1999 Liability Protocol to Basel Convention (transboundary movement of waste) (nif,12/20)**
 - **2003 UNECE Protocol on Civil Liability (Industrial Accidents & Watercourses) (nif, 1/16)**
 - **2005 Liability Annex (VI) to Antarctic Protocol (not in force)**
 - **2008 Guidelines for Determination of Liability and Compensation for Damage from Pollution of Marine Environment in the Mediterranean Sea (non-binding)**
 - **2010 HNS Convention (not in force, 5/12)**
 - **2010 Supp. Protocol on Liability to Cartagena Protocol on Biosafety (2018)**
- **Greater focus on treaty (public law) aims**
 - **More inclusive approach to environmental harm**
 - **Ancillary to administrative measures**
 - **Political acceptability remains limited**

Basic Structure

Common features

- **Channeled liability**
- **Strict liability**
- **Liability caps**
- **Financial assurances**
- **Claims procedures**

Differentiation

- **Forms of assurance**
- **Coverage**
- **Contribution schemes**
- **Legal form**

Forms of Assurance

form

- **Insurance – mandatory**
 - Commercial / mutual
- **Bonds, Guarantees, other security**
- **Compensation Funds**
 - Purpose
 - subsidiary
 - Enhanced coverage
 - Risk spreading
- **Trust funds?**
 - Greater flexibility

responsibility

- **Operator**
- **Operator**
 - Receivers (oil/HNS)
 - Host state (nuclear)

Insurance

- **Availability at commercial terms**
 - coverage
- **Object of insurance?**
 - Ship
 - Operation
- **Certification**
 - By whom?
- **Opportunities for risk pooling?**

Contributions to Fund

- **Who contributes?**
 - Operators
 - Beneficiaries of activity (receivers)
 - States
- **Basis of contribution**
 - Total requirement / proportion
 - Ex ante (oil) or ex poste (HNS)
 - Tied to activity
 - Separate accounts?
 - Compliance-based

Coverage

Forms of (Environmental) Losses

- **Accidental** ✓
 - Unanticipated
 - Not in normal course
- **Unanticipated** ?
 - Arise in normal course
 - Damage not predicted or permitted
 - Uncertain impacts
 - New knowledge
 - Threshold test – significance
- **Permitted** ✗
 - Predicted impacted
 - Arise in normal course

Deep Seabed Mining Incidents

- Ship accidents
- Riser pipe breaks
- Equipment failures
- Non-compliance issues
 - Plumes
 - Biological disturbances

Victims

- Other ocean users
- Cable
- Responders
- Coastal States
- CHM?

Coverage

- **Allowable Damages**

- Loss of profit/property/person
- Prevention costs
- Reinstatement
- Offsets
- Pure ecological harm



“Reasonable and actually incurred”

- **Geographic limitation**

- Territory + territorial seas + EEZ ✓
- ABNJ



But see Antarctic and Med. Guidelines

- **Activity specific**

- Activities in the Area?

Claims Administration

- **Claims**
 - **Jurisdiction**
 - **Exclusivity**
 - **Standing/immunities**
 - **Recognition and enforcement**
- **Need for fund administrator?**

Thank you.

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