

**International Conference on Legal, Scientific and Economic
aspects of Deep Seabed Mining**

**Liability of sponsoring State and its
implementation in Domestic law of States
Parties:
focusing on Korean experience and
practice**

KMI

Choi Jee-hyun

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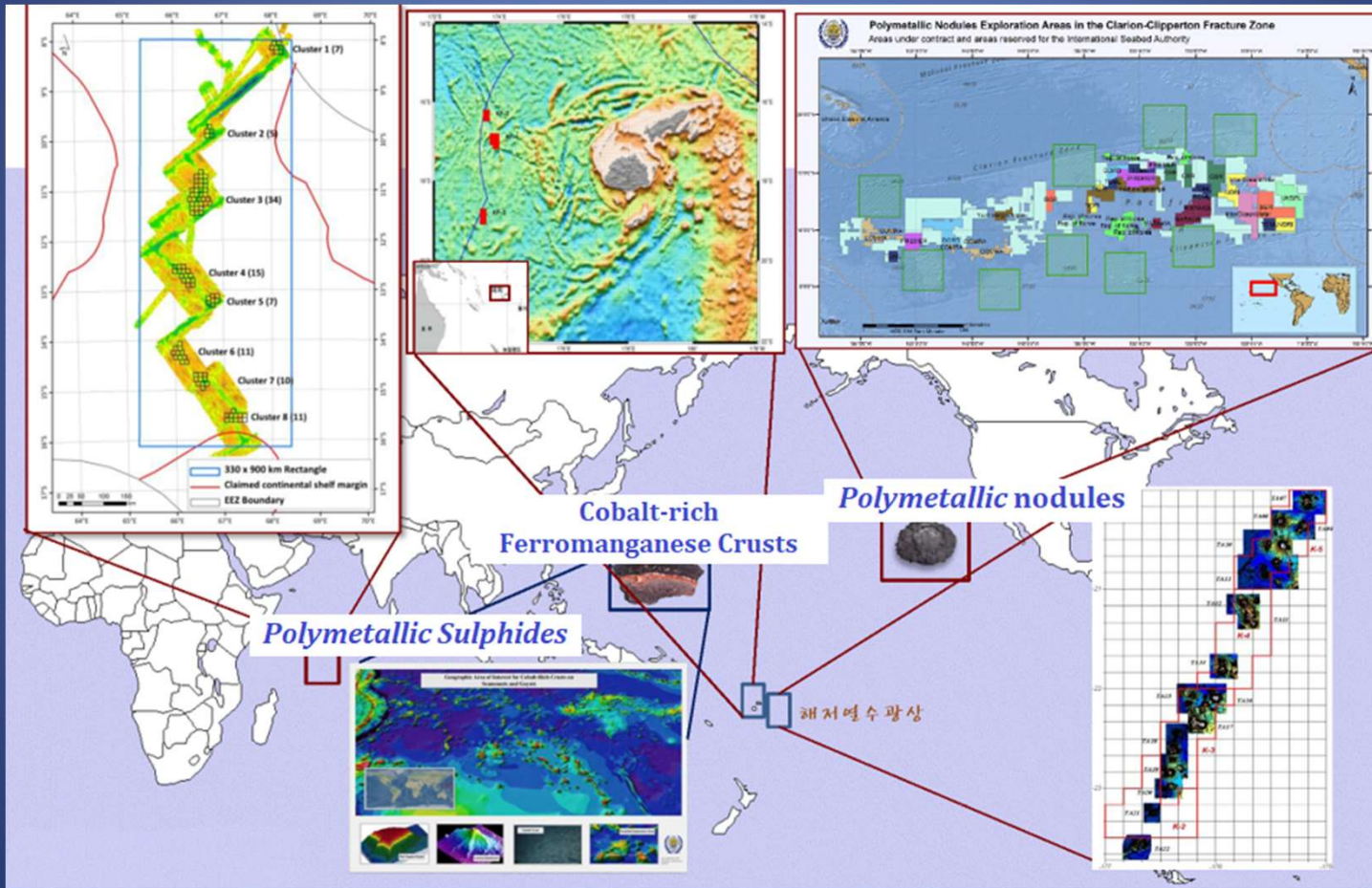
- In 1984, KORDI executed the first MSR in the Clarion-Clipperton area
 - Failed to meet the preparatory investment requirement in the resolution II of the Third United Nations Conference on the Law of the Sea
- In 1994, Korea registered 150,000 km² mining field in the Clarion-Clipperton area
- In 2001, Korea had contract about the exploration of the the Clarion-Clipperton area (*Polymetallic* nodules) with the Authority
- In 2002, Korea finally obtained the exploration rights of 72,000 km² mining field in the Clarion-Clipperton except for the reserved area
- In the Council of the ISA
 - ('96~'08) Group E member ('09~'now) Group B member

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- Korean Government has the 3 contract over 3 mining fields.

Location	Mineral	Contractor	ISA Approval	Expiration Date	km ²
Northeastern Pacific Ocean Clarion-Clipperton	<i>Polymetallic nodules</i>	Government of Republic of Korea (Ministry of Oceans and Fisheries)	2002	2021	75,000
Indian Ocean	<i>Polymetallic Sulphides</i>	Government of Republic of Korea (Ministry of Oceans and Fisheries)	2012	2029	10,000
Western Pacific Ocean	Cobalt-rich Ferromanganese Crusts	Government of Republic of Korea (Ministry of Oceans and Fisheries)	2016	2033	3000
계	3 mining fields, 85,000km ²				

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Background

- A step for Exploration or Exploitation of the Area
 - License application
 - Reserved area
 - Annex III of UNCLOS, Article 9
 - The Enterprise
- In April 2008, Nauru and Tonga, two small Pacific Island developing states, each put forward a proposal for activities in reserved areas

2011 ISA Advisory Opinion

Background

- Sponsoring a commercial entity:
Nauru Ocean Resources Inc.
Tonga Offshore Mining
- In 2009, a request of postpone of application for the concern about the liability of damage
- In March 2010, Nauru requested the ISA Secretary-General to seek an advisory opinion
- On 6 May 2010 at its sixteenth session. the Council of the ISA request an advisory opinion to the Seabed Dispute Chamber of the ITLOS
- On 1 February 2011, Advisory Opinion was delivered

2011 ISA Advisory Opinion

3 Questions were requested to deliver by the Council of the ISA

- Operative Clause of Advisory Opinion of Seabed Dispute Chamber (para. 242)

- Question 1: What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?

- Replies to Q 1:

Sponsoring States have two kinds of obligations under the Convention and related instruments:

A. The obligation to ensure compliance by sponsored contractors

B. Direct obligations

2011 ISA Advisory Opinion

3 Questions were requested to deliver by the Council of the ISA

- Operative Clause of Advisory Opinion of Seabed Dispute Chamber (para. 242)

- Question 2: What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2(b), of the Convention?
- Replies to Q 2:
 - The conditions for the liability of the sponsoring State to arise are:
 - (a) failure to carry out its responsibilities under the Convention; and
 - (b) occurrence of damage <casual link between a +b>
 - in parallel and are not joint and several
 - Article 139, para. 2.

2011 ISA Advisory Opinion

3 Questions were requested to deliver by the Council of the ISA

- Operative Clause of Advisory Opinion of Seabed Dispute Chamber (para. 242)

- Question 3: What are the necessary and appropriate measures that a sponsoring State must take in order to fulfill its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?

* Article 139

1. Responsibility to ensure compliance and liability for damage 1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.

2.

- Replies to Q 3:
To adopt the law and regulation
The law and regulation should cover the obligations of the contractor after the completion of the exploration phase

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- The Draft of the Act on Exploration for and Exploitation of Resources in the Deep Seabed Area (The Draft of the Act on Deep Seabed Area, or *The Draft Act*, hereinafter)
 - Legislation for the implementation of the UNCLOS and Part XI Implementation

Sections	Articles
I. General Provisions	Article 1 Object and Purpose Article 2 Definition Article 3 Relations with the treaty Article 4 Liability and Responsibility of the State Article 5 Fictitious Application under other laws and regulations
II. Master Plan	Article 6 Establishment of the Master Plan Article 7 Establishment of the Commission
III. Permit etc	Article 8 Procedures for Prospecting Article 9 Permit of Exploration and Exploitation Activities Article 10 Recommendation for Joint Venture Article 11 Issue of sponsorship of Government Article 12 Revocation of the Permit Article 13 Termination of sponsorship Article 14 Rights and Obligation of operators Article 15 Transfer of Rights and Obligation

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Sections	Articles
IV. Promotion on Deep Sea-bed Activities	Article 16 Fostering of Deep Sea-bed Activities Article 17 Establishment of Deep Sea-bed Activities Authority Article 18 Delegation of government authority
V. Supplymentary Rules	Article 19 Environment Preservation Measures Article 20 Preservation of rare or fragile ecosystems Article 21 Contingency Measures Article 22 Inspection and Supervision Article 23 Corrective Order Article 24 Commission
VI. Penalty	Article 25 Penalty Article 26 Penalty Article 27 Dual Liability Article 28 Charge

The Act of Implementation- Contents

- Application scope of this Act
 - Activities(prospecting, exploration, exploitation) in the Area beyond the national jurisdiction.
 - Implementation of international obligations and domestic procedures for the people of the Republic of Korea engaged in activities in the Area
 - “Resources of the Area” refers to all mineral resources *in situ* in the Area and subsoil thereof
 - “Seabed Mining Business Operator” means a natural or juridical person who has obtained the permit of the exploration and exploitation in the Area
- Provide the frame work of Korean deep sea-bed mining
 - Basic plans of work for exploration and exploitation of the Area, Establishment of a review committee for activities in the Area (Articles 6-7)
- Legislation outline - notification, authorization, support and revocation (The Act on Deep Seabed Area, Articles 8-9 and Articles 11-13).
 - notification (prospecting), and permit (exploration, exploitation) depending on the level of activities
 - Approach in prospecting, exploration, or exploitation is the same as that of the Authority’s Exploitation Regulation with the approach of notification and authorization.
 - Prevention of the exploration or exploitation activities until having become a contract with the Authority.
 - A joint venture recommendation with a view to strengthen international competitiveness.

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- Rights, Obligations, and Transfer of Rights for persons engaged in the seabed mining business operator (Articles 14–15)
 - exclusive exploration or exploitation rights of the seabed mining business operator
 - rights of the seabed mining business operator, obligation of implementation of contractual duties, compliance with domestic regulations related to safety
 - assignment or assumption of rights and obligations
- Support for Promotion of activities in the Area (Articles 16–18).
 - support for the promotion of activities in the Area
 - expansion of support and promotion, such as support of industries related to activities in the Area
 - establishment of the professional enterprise group for implementation and support of the activities

The Act of Implementation- Contents

- Implementation of the 2011 ITLOS Advisory Opinion
- Question 1 and its Replies
 - No Article in the Act
 - Need to declare obligation to ensure in the Act
 - Article 4 (1) of the Act
State has its obligation to ensure that Korean nationals conform UNCLOS and other rules.

The Act of Implementation- Contents

- Implementation of the 2011 ITLOS Advisory Opinion
- Questions 2 and its Replies
 - Article 139, para 2 (UNCLOS)
 - 2. A State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.....
 - Article 9 para. 2 requirements to get the Permit of Exploration and Exploitation Activities
 - Article 9, para 2 of the Act
 - ② The person who wants get Permit of Exploration and Exploitation Activities should apply for permit of exploration or exploitation respectively according to the Decree of Ministry of Oceans and Fisheries together with below documents of
 1. applicant and its details
 2. location, extent, minerals of exploration area or exploitation area
 3. business plan
 4. proving financial capabilities, investment capabilities and technical capabilities
 - 5. environmental impact assessment**
 - 6. contingency plan in response to serious harm to marine environment**
 - 7. any other document by the decree of Ministry of Oceans and Fisheries**

The Act of Implementation- Contents

• Questions 3 and its Replies

- The Convention requires the sponsoring State to adopt, within its legal system, laws and regulations and to take administrative measures that have two distinct functions, namely, to ensure compliance by the contractor with its obligations and to exempt the sponsoring State from liability.
- The scope and extent, not defined, but may include the establishment of enforcement mechanism
 - Article 12, revocation of permit
Minister of Oceans and Fisheries can revoke the permit of Exploration and Exploitation Activities or suspend it after review procedure of the Review Committee in case of :
 - (a) Getting the Permit of Exploration and Exploitation Activities without qualification or in other improper way
 - (b) Termination or Suspension of Contract from the ISA
 - (c) Delaying the contract with the ISA after issue of sponsorship in a unreasonable way
- The provisions that the sponsoring State may find necessary to include in its national laws may concern, *inter alia*, financial viability and technical capacity of sponsored contractors, conditions for issuing a certificate of sponsorship and penalties for non-compliance by such contractors.
 - Article 16 para. 1 - technical capacity of sponsored contractor
 - Article 11 – conditions for issuing a certificate of sponsorship
 - Article 25/26 – penalty
- A provision for enforcement measures for environment protection adopted by the ISA

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- The Draft the Act on Exploration for and Exploitation of Resources in the Deep Seabed Area
- Participation of private companies of Korea
 - *Daewoo Shipbuilding & Marine Engineering co. Ltd, Samsung Heavy Industries, SK Networks, and LS-Nikko Copper*
- On deliberation in the National Assembly of Korea
- In 2020, National Assembly Election of Korea
- Lower Decree Elaboration to satisfy sponsoring State obligation of Korea.