

Role and Responsibilities of Sponsoring States in a DSM Context

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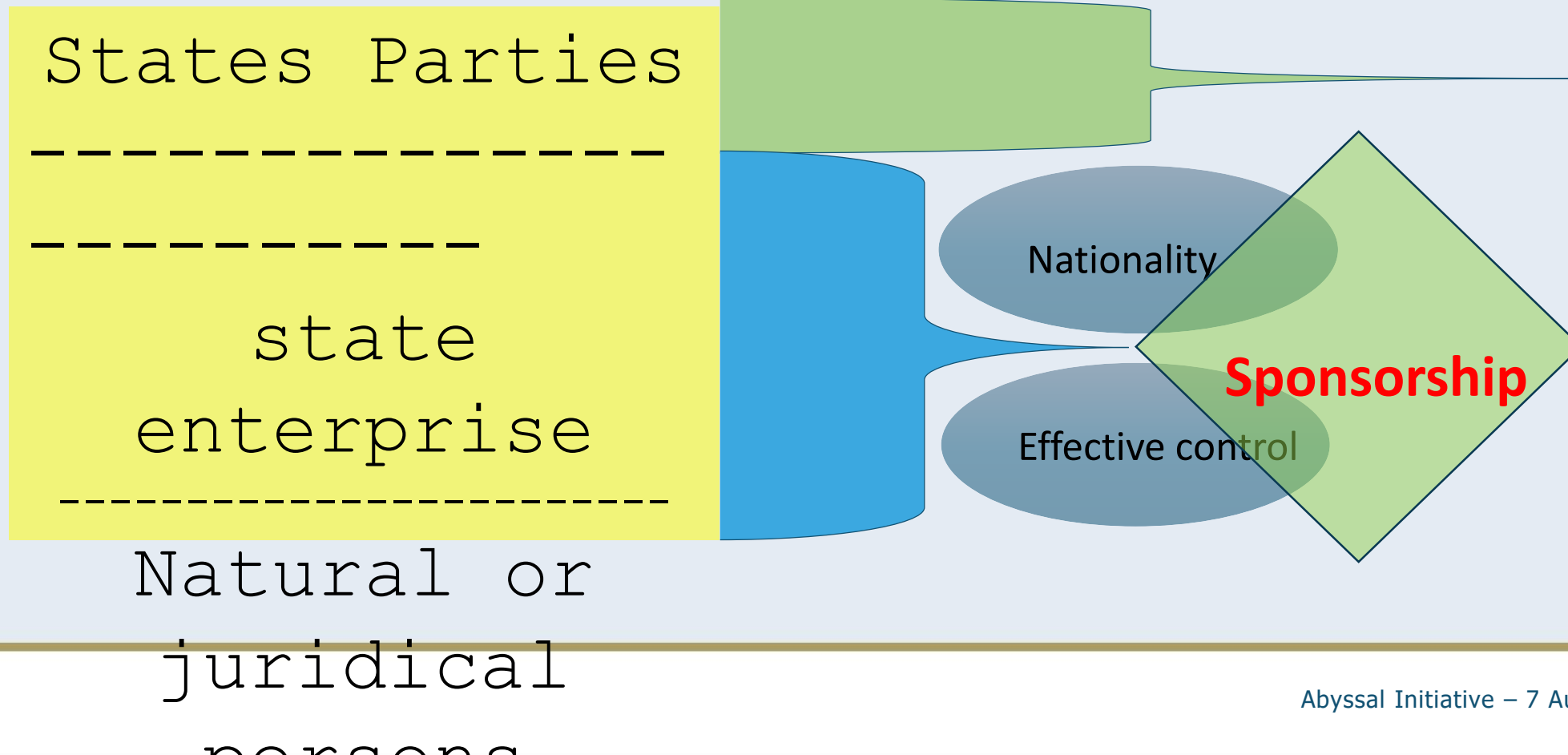
System of Exploration and Exploitation

- Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole
- Activities in the Area shall be carried out
 - a) by the Enterprise;
 - b) in association with the Authority by State Parties, or state enterprises or natural or juridical persons which possess the nationality of State Parties or are effectively controlled by them or their nationals, **when sponsored** by such States, or any group of the foregoing which meets the requirements of UNCLOS (Part XI and Annex III)
- Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and approved by the Council, after review by the Legal and Technical Commission.
- In the case of activities in the Area carried out as authorized by the Authority, the plan of work shall be in the form of a contract.





Sponsorship Mechanism





As a Member of the Authority

Protection and preservation of marine environment

Development of marine scientific research

Transfer of marine science and marine technology

Peaceful settlement of disputes

Participation in the meetings of the Authority

Contribution to the budget of the Authority





Sponsorship Requirements

- Generally each applicant shall be sponsored by the State Parties of which it is a national.
 - a) If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, all States Parties involved shall sponsor the application.
 - b) If the applicant is effectively controlled by another State Party or its nationals, both States parties shall sponsor the application.
- The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.





Responsibilities of the Sponsoring State(s)

- The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of Part XI and Annex III of UNCLOS and the rules, regulations and procedures of the Authority, and the approved plans of work. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139. (Para 4 of article 153)
- The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction. (Annex III, article 4, para. 4)





Responsibility to Ensure Compliance & Liability for Damage

- ▷ 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.
- ▷ Without prejudice to the rules of international law and Annex III, article 22, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability; States Parties or international organizations acting together shall bear joint and several liability. 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.
- ▷ States parties that are members of international organizations shall take appropriate measures to ensure the implementation of this article with respect to such organizations.





Certificate of Sponsorship

- ▷ Name of the applicant
- ▷ Name of the Sponsoring State
- ▷ A statement that the applicant is
 - a) A national of the sponsoring State; or
 - b) Subject to the effective control of the sponsoring State or its nationals
- ▷ A statement by the sponsoring State that it sponsors the applicant;
- ▷ The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement;
- ▷ A declaration that the sponsoring State assumes responsibilities in accordance with article 139 and article 153, paragraph 4 and Annex III, article 4, paragraph 4.
- ▷ Duly signed on behalf of the State by which it is submitted.





Road to ITLOS Advisory Opinion 1 Feb 2011

- ▷ 10 April 2008, two application for approval of plans of work by NORI and TOML
- ▷ 5 May 2009, two applicants requested defer of consideration of application
- ▷ At the 15th session, LTC decided to defer further consideration
- ▷ 1 March 2010, the Republic of Nauru submitted a proposal to seek an advisory opinion from the Seabed Disputes Chamber of ITLOS on a number of specific questions regarding responsibility and liability of sponsoring States
- ▷ At the 16th session, on 6 May 2010, the Council decided to request an advisory opinion on three more abstract but concise questions.
- ▷ written statements were submitted to ITLOS by 12 States Parties: the united Kingdom, Nauru, the Republic of Korea, Romania, the Netherlands, the Russian Federation, Mexico, Germany, China, Australia, Chile, and the Philippines.
- ▷ Nine States Parties expressed their intention to participate in the oral proceedings: Argentina, Chile, Fiji, Germany, Mexico, Nauru, the Netherlands, the Russian Federation and the united Kingdom.
- ▷ For the Republic of Nauru: Mr Peter Jacob, First Secretary, Nauru High Commission in Suva (Fiji), and Mr Robert Haydon, Advisor





Three Questions under Advisory Opinion 1 Feb 2011

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





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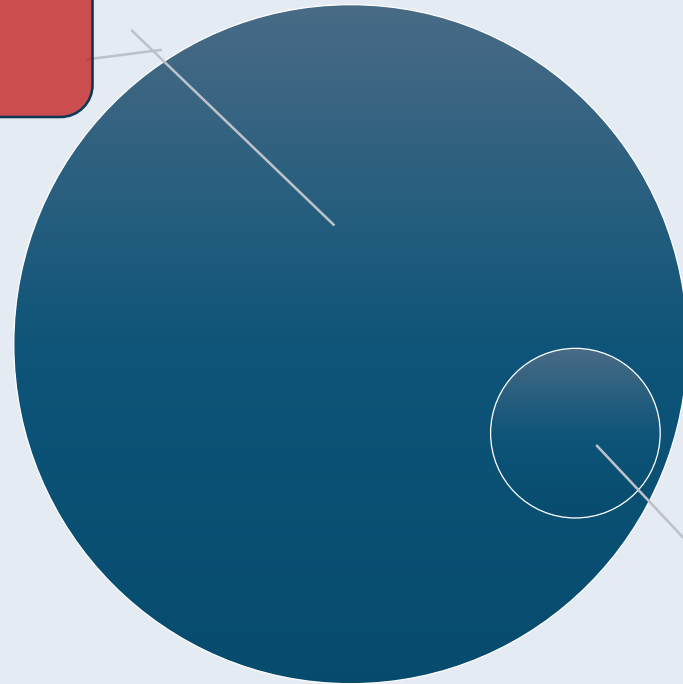
Contribution to the budget of the Authority





Developing States v. Developed States

General Rule: Equally applicable



Exception: Precautionary approach





Primary Obligation

“Responsibility to ensure”

Obligation of “due diligence”

Obligation of conduct \neq obligation of result

Obligation to make best possible efforts

- The standard of due diligence may vary over time and depends on on the level of risk and on the activities involved (Exploration v. Exploitation)
- “Due diligence” obligation requires the sponsoring State to take measures within its legal system
- The measures must consist of laws and regulations and administrative measures
- The measures must be “reasonably appropriate”





Direct Obligations

Obligation to assist the Authority

Obligation to apply a precautionary approach (role in REMPs)

Obligation to apply the “best environmental practice”

Obligation to adopt measures to ensure the provisions of guarantees

Obligation to provide recourses for compensation

Under a due diligence obligation to ensure compliance by the sponsored contractor with its obligation to conduct an EIA (Including Public consultation)





Roles and responsibility under Exploration Regulations

- Submission of an application by designated representative or the authority designated for that purpose by the sponsoring State or States.
- An application by state enterprise shall include Statement certifying that the applicant has necessary financial resources to meet the estimated costs of the proposed plan of work for exploration.
- Not to monopolize the conduct of activities in the Area with regard to polymetallic nodules or to preclude other States Parties from activities in the Area with regard to polymetallic nodules.
- Training programme drawn up by the contractor in corporation with the Authority and the sponsoring State or States.
- Contractors, sponsoring States and other interested States or entities shall cooperate with the Authority in the establishment and implementation of programmes for monitoring and evaluating the impacts of deep seabed mining on the marine environment.
- In case of the contractor does not provide the Council with such a guarantee of its financial and technical capability to comply promptly with emergency orders, the sponsoring State shall, take necessary measures to ensure that the contractor provides such a guarantee.





Roles and responsibility under Exploration Regulations (cont'd)

- Sponsoring State to examine the evidence if any provided by the coastal States and submit observations in respect to a serious harm or a threat of serious harm to the marine environment.
- In the contractors annual reports, where the contractor is a State enterprise, the sponsoring State shall issue a statement of the actual and direct exploration expenditure of the contractor in carrying out the programme of activities during the contractor's accounting year.
- The SG shall provide relevant information contained in the reports of inspectors to the contractor and its sponsoring State where action is necessary.
- Unless otherwise indicated by the sponsoring State or States at the time of making the application for an extension, sponsorship shall be deemed to continue throughout the extension period and the sponsoring State or States shall continue to assume responsibility in accordance with article 139 and article 153, paragraph 4 and Annex III, article 4, paragraph 4 of UNCLOS.





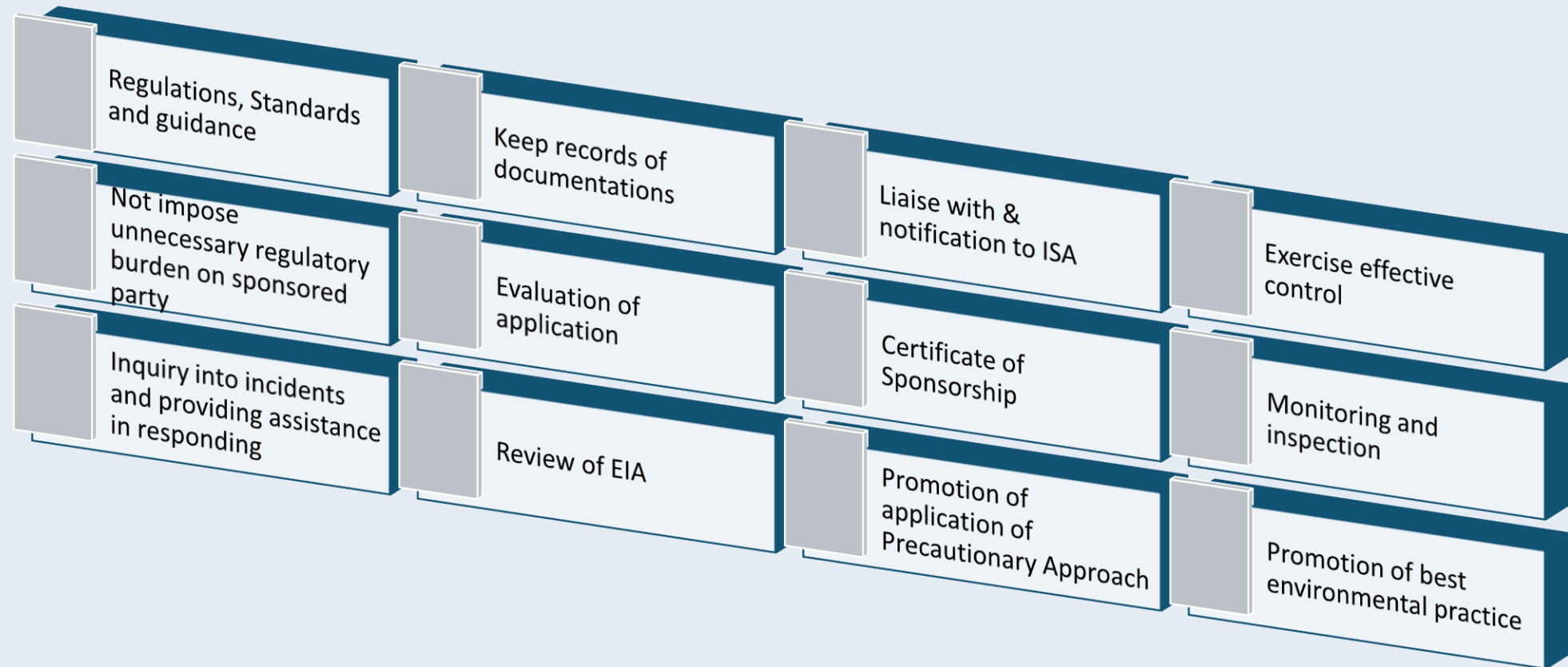
Termination of sponsorship

- Each contractor shall have the required sponsorship throughout the period of the contract.
- If a State terminates its sponsorship it shall promptly notify the Secretary-General in writing. The sponsoring State should also inform the SG of the reasons for terminating its sponsorship. Termination of sponsorship shall take effect six months after the date of the notification by the SG, unless the notification specifies a later date.
- In the event of termination of sponsorship the contractor shall, with the six months or a specified later period, obtain another sponsor. Such sponsor shall submit a certificate of sponsorship as required. Failure to obtain a sponsor within the required period shall result in the termination of the contract.
- A sponsoring State shall not be discharged by reason of the termination of its sponsorship from any obligations accrued while it was a sponsoring State, nor shall such termination affect any legal rights and obligations created during such sponsorship.





Detailed Obligations under national legislation





THANK YOU

