

Proposal by the Intersessional working group on DR 44 (General Obligations)

The intersessional working group on the general obligations contained in DR44 decided to present two options of drafting. Both drafting detail the actors who have the obligation to protect the environment in accordance with Article 145 of the Convention and according to the environmental principles and approaches set out in DR 2, in their respective areas of competence.

However, there is a possibility to refer to this article, or to reinstate these environmental principles and approaches, but in the latter case, the wording of the two articles would have to be harmonized.

The issue is expected to be discussed at the next Council session.

DR 44 (General obligations)

OPTION 1

1. The Authority, sponsoring States, the Enterprise, Contractors, flag States and the States of registry of or having authority over installations, structures and other devices shall take necessary measures to ensure effective protection of the Marine Environment from harmful effects which may arise [directly or indirectly] from Exploitation in the Area, in accordance with Regulations and Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan.

2. To this end they shall, as applicable in their respective areas of competence, apply the principles and approaches contained in regulation 2.

2. The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 above as required.

3. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.

DR 44 (General obligations)

OPTION 2

1. The Authority, sponsoring States, the Enterprise, Contractors, flag States and the States of registry of or having authority over installations, structures and other devices shall take necessary measures to ensure effective protection of the Marine Environment from harmful effects which may arise [directly or indirectly] from Exploitation in the Area, in accordance with Regulations and Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence:

(i) Apply the precautionary approach and the ecosystem-based management approach to the assessment management and prevention of risk of harm to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices;

(iii) Integrate Best Available Scientific Evidence in decision-making;

(iv) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area

(iv) bis Apply the polluter pays principle having due regard to the public interest; and

(vi) Ensure that damage or hazards are not transferred to the marine environment and that one type of pollution is not transformed into another one. This is especially related to avoiding toxic, persistent and bio accumulative substances.

2.The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 above as required.

3. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.

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