

## **Submitted by the Interim Director-General of the Enterprise**

### **EFFECTIVE CONTROL**

**The Enterprise:** The ISA exercises a more direct form of control over the Enterprise. As an organ of the Authority, the Enterprise's activities are directly shaped by the policies set by the Assembly and the directives and control of the Council. While it will operate independently of the ISA Secretariat once it begins to function fully, its fundamental governance and policy direction remain intrinsically linked to the ISA. The draft regulations emphasize that the Enterprise will be subject to the same obligations as private contractors in many instances, but should acknowledge specific differences, for example, regarding equalization measures.

As an organ of the ISA, the benefits derived from the Enterprise's activities are intended to be shared for the benefit of humankind as a whole, in line with the Convention's principles. This aspect of benefit sharing is inherent to its very existence.

As an organ of the ISA, the benefits derived from the Enterprise's activities are intended to be shared for the benefit of humankind as a whole, in line with the Convention's principles. This aspect of benefit sharing is inherent to its very existence.

The topic of Effective Control particularly relevant for the Enterprise as it is fundamental to the proper functioning of Article 9(4) of Annex III of UNCLOS based on the following:

- Article 9(4) of Annex III of UNCLOS provides that any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work with respect to a reserved area. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in the area.
- The interpretation of “effective control” is important for this provision as well.
- If an interpretation of effective control is limited to assessing whether the State of Nationality of the applicant has adopted appropriate legislation, regulation or measures, or if the applicant conducts enough business in the State of Nationality, that could lead to undesirable results. One must look wider than that.
- It is pertinent to assess whether an applicant is effectively controlled by a national of another State Party. If that applicant is effectively controlled – for example because it is fully owned – by a national of a developed State, that particular national of a developed State would benefit from access to a reserved area. One could question whether that was intended when UNCLOS was agreed.
- Moreover, if that applicant gets access to a reserved area, this would mean that the Enterprise cannot conduct activities in those areas anymore. Such would be prejudicial to the Enterprise’s right to decide to intend to carry out activities in that reserved area.