

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, **red font**, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 105 ter Other member States

Without prejudice to their obligations under Article 153(4), Part XI and Annex III of the Convention, member States shall, in particular, take all necessary and appropriate measures available to them to ensure that their natural and judicial persons, and ships flying their flags, do not prevent or impair Contractors from effectively complying with and performing their obligations, and enjoying their rights, under Part XI of the Convention, the Agreement, rules, regulations and procedures of the Authority and the terms and conditions of the Exploitation Contract.

Comment

It has been suggested to add a regulation to make clear that all member States must exercise jurisdiction and control over their natural and jurisdictional persons to prevent interference with Contractor rights.

This new regulation should be **deleted or amended to refer to the reciprocal duty of ‘reasonable regard’** between ISA Contractors and other marine users as well as to note that member States have a myriad of obligations to ensure rights of their citizens, including human rights.

This proposal (made by the three private sector contractors NORI, TOML and BMJ)¹ seems to prioritise the rights of a Contractor under its ISA contract above the rights of all other persons and States. This is not an accurate statement of the law. Activities in the Area are subject to UNCLOS Part XI. Article 147 requires Contractors to carry out their activities with reasonable regard for other activities in the marine environment, and activities in the marine environment are required to be conducted with reasonable regard for activities in the Area. There may be instances where there are legitimate potentially conflicting uses (e.g. equipment for a scientific project or submarine cables that run through the Contract area, environmental human rights defenders lawfully protesting at-sea, a neighbouring ISA contractor manoeuvring vessels and equipment nearby). In such instances, lawfulness and reasonableness is required. Recourse to mediation between parties may be helpful. There is no one user whose rights out-ranks the other.

Member States also have various obligations to ensure human rights are respected, including the right to protest, which has been the subject of much conversation in this Council.

The Regulations would be wrong in law to attempt to bind States always to prioritise the ISA Contract above all other persons and activities, as this DR105ter seeks to do.

¹ <https://www.isa.org.jm/wp-content/uploads/2024/05/DR105ter.pdf>