

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 37 bis

Transfer of Technology

The Contractor shall adhere to and implement the commitments set out in the Plan of Work for the transfer of technology, in line with the applicable Standards, and taking into account Guidelines.]

Comment

It has been suggested to insert a new draft regulation 37 bis. to highlight the importance of the obligations related to transfer of technology, cf. articles 144 and 274 of the Convention and section 5 of the Annex to the Agreement. Further discussion on inclusion, content and placement will be welcomed.

We support the important point raised by Ghana on behalf of the African Group in July 2024 that the draft Regulations do not adequately cover the issue of transfer of technology. This placeholder is welcome as an acknowledgement of the omission, but obviously is not adequate to deliver in its current format.

Articles 144 and 274 of the Convention, and section 5 of the Annex to the 1994 Agreement impose specific obligations upon the ISA, States Parties (and Contractors, where so requested), in relation to acquiring, promoting, encouraging or facilitating the transfer to developing States and the Enterprise of technology and scientific knowledge relating to activities in the Area, so that all States Parties benefit therefrom. The Regulations need more work to uphold and enforce those obligations, especially in terms of the obligations placed specifically upon the ISA i.e. to

Article 144

- Acquire technology and related knowledge;
- Promote and encourage technology transfer to developing States and the Enterprise;
- Initiate programmes for transfer of technology to developing States and the Enterprise;
- Promote measures directed towards the advancement of technology of developing States and the Enterprise.

Article 274

- Make available to all States the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States (subject to the legitimate interests of technology holders);
- Assist developing States in the acquisition of necessary, processes, plant and other technical know-how, including through financial arrangements provided for in UNCLOS.

Annex 5 to the 1994 Agreement:

- Request Contractors and sponsoring States to co-operate in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture or by developing States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights.

We note that these are multiple, specific, active duties for the ISA, containing terms that will need defining and operationalising to be effective. We do not believe the ISA's obligations here can be fulfilled simply by delegating a single obligation, vaguely, to Contractors as per this DR37 bis. We suggest more work could be undertaken by delegates – perhaps via a working group – to flesh out these obligations in a more thorough and meaningful manner.