

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 63

Incentives

~~1. The Council, taking into account the recommendations of the Commission and the Economic Planning Commission, may provide [financial] incentives [to Contractors and/or] pursuant to Article 11 of Annex III to the Convention, to Contractors entering into joint arrangements with the Enterprise, in accordance with the applicable Standards and taking into consideration Guidelines rules set out in Standards.~~

f1. Alt. The Council may, taking into account the recommendations of the Commission and the Economic Planning Commission in accordance with the applicable Standard, provide for incentives, including Financial Incentives, on a uniform and nondiscriminatory basis, to Contractors to further the objectives set out in Article 13(1) of Annex III to the Convention.]

2. Those incentives shall be applied on a uniform and non-discriminatory basis, to further the objectives set out in Article 13(1) of Annex III to the Convention [including, where applicable, the objective of stimulating the transfer of technology to, and training the personnel of, the Authority and of developing States.]

3. The Council shall ensure that, as a result of the Financial Incentives provided to Contractors, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to other Contractors and/or land-based miners.

4. Any incentives shall be fully compatible with the policies and principles under Regulation 2, any applicable Standards and shall take into consideration the relevant Guidelines.

5. A Financial Incentives Registry shall be established, maintained and published through the Seabed Mining Register, pursuant to Regulation 92.

Comments

- There has been support for the alternative wording of paragraph 1, which is now retained (with the removed previous iteration remaining visible). Minor refinements to the language have been suggested for the purposes of ensuring better drafting and consistency in terminology.
- There have been continued discussions between Members as to whether incentives other than financial incentives should be addressed in this Regulation (and more generally in the Regulations). Members are invited to consider this point further.

We remain concerned about the inclusion of DR63. Article 13(1) of Annex III of UNCLOS sets principles for (i) the ISA's development of RRP, and (ii) the negotiation of (individual) contracts. DR63 seems to envisage the Council taking periodic decisions to apply incentives to Contractors. Arguably this is **not within the scope of Article 13(1), and it is hard to see how it can be non-discriminatory**, if there are some Contracts already in place on the original

financial terms, and at a later date, subsequent Contractors are given new and different incentives in their financial terms.

If DR63 is retained, we recommend that in **paragraph (2)** the bracketed text is deleted and replaced with “*namely, to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing States or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States.*”

We consider this is a more accurate reflection of UNCLOS, which mandates that incentives not only include support for those activities, but are limited to support for those activities. It is our understanding that the appropriate and logical legal construction of Articles 13(1) and 13(14) of Annex III read together is that the objectives for which incentives may be provided are only those in paragraph 1(d). This makes sense: as subsidisation is explicitly prohibited, and Contractors are already required to employ best environmental practices. So for what – other than supporting the Enterprise and developing states – could Contractors possibly be incentivised?

We support the creation of a Registry, as proposed by France.

We suggest a new **paragraph (6)**: “*The Council shall not permit any incentive, or other arrangement from which a Contractor may benefit, that would infringe the prohibition against subsidisation contained in section 6 of the Annex to the 1994 Agreement, in accordance with any applicable Standards and taking into account Guidelines.*”

We would also welcome discussion of the key policy question raised previously by member States such as Spain, United Kingdom and Australia, whether non-financial incentives are even included in the scope of UNCLOS Annex III (and if so, what other types of incentives may be offered?)