



Mining the seabed beyond national jurisdiction: The legal framework

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Topics

- General legal framework of the high seas and the Area (jointly referred to as areas beyond national jurisdiction (ABNJ))
- Development of the regime of the Area
- General principles of the regime of the Area
- The regime for mining in the Area
- The Netherlands and the Area



General legal framework

- United Nations Convention on the Law of the Sea (1982, LOS Convention)
 - 165 Parties, including The Netherlands and the EU all EU Members
 - Part VII – High Seas
 - Part XI – The Area
 - Part XII – Protection and preservation of the marine environment
 - Mining in the Area (not water column) governed by regime Part XI
- Agreement relating to the Implementation of Part X of the Convention (1994)
 - 144 Parties, including The Netherlands and the EU all EU Members
- Regime for States not party to the Convention (including US)
 - Customary international law
 - General principles of the Convention can be considered to reflect customary law
 - Specific regime not



US Position

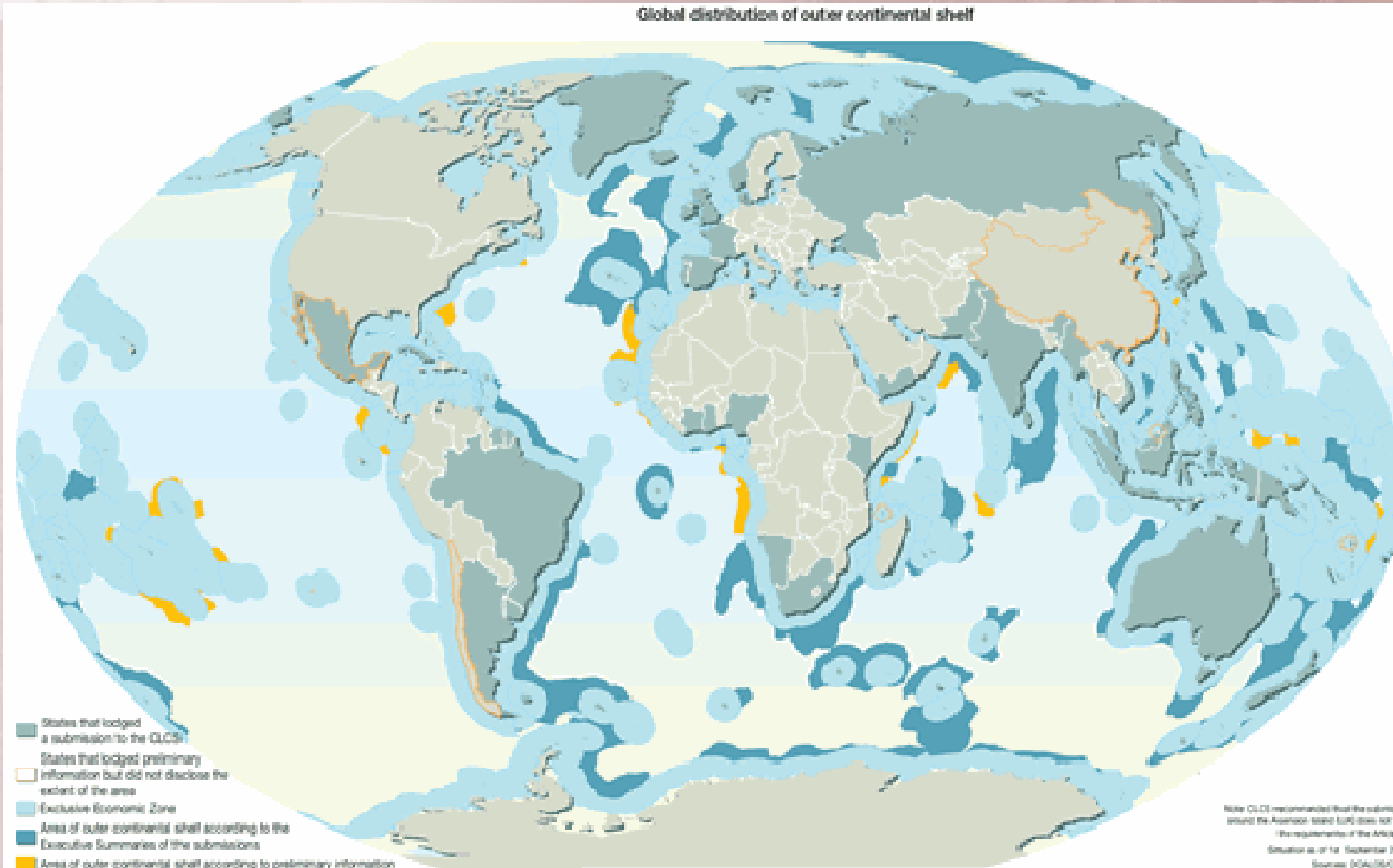
- Now for years, technological challenges meant deep seabed mining was only theoretical; today's advances make it very real. But it's also very expensive, and before any company will explore a site, it will naturally insist on having a secure title to the site and the minerals that it will recover. *The [LOS C]onvention offers the only effective mechanism for gaining this title.*
- *So as long as the United States is outside the convention, our companies are left with two bad choices either take their deep sea mining business to another country or give up on the idea. Meanwhile you heard from Senator Kerry and Senator Lugar, China, Russia, and many other countries are already securing their licenses under the convention to begin mining for valuable metals and rare earth elements*

(Hillary Rodham Clinton, Secretary of State Testimony before the Senate Committee on Foreign Relations, Washington, DC May 2012; emphasis provided))



Preliminary limits of the Area

Global distribution of outer continental shelf



- Areas in blue: 200-nautical-mile zones
- Areas in blue and yellow: area within CS shelves submitted to CLCS or in PI
- Areas in white and light blue: Area



Area – Development of the Regime

- Moratorium resolution (1969) and Principles resolution (1970) of United Nations General Assembly
- UNCLOS III (1973-1982): Part XI and Resolutions (PrepCom) and II (protection of pioneer investors)
- LOS Convention Part XI (1982)
- Reciprocating States regime (early 1980s) – temporary regime set up by mining States
- Part XI Agreement (1994): more market-oriented
 - No production ceilings
 - Decision making in International Seabed Authority (ISA) adapted
 - No obligatory transfer of technology to Enterprise (operative arm of Authority);
 - Enterprise for the time being not set up



Area – Selected general principles of the regime

- Area and its (mineral) resources are the common heritage of mankind; rights over resources vested in mankind
- Authority shall act on behalf of mankind
International organization; all Parties to the Convention members
Responsible for organizing and controlling mining activities in the Area
- Mining activities shall be carried out for the benefit of mankind; implies equitable sharing of economic and other benefits
- No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its mineral resources
- Exploration and exploitation of mineral resources of the Area has to be carried out in accordance with regime Part XI Adapted by 1994 Implementation Agreement



Area – Regime for mining

Detailed regime set out in:

- Section 3 (development of mineral resources) and (Authority) of Part XI
- Annex III to the Convention (Basic conditions of prospecting, exploration and exploitation)
- For all of the above: as adapted by the 1994 ~~IAA~~ Agreement
- **Mining Code (<http://www.isa.org.jm/en/mcode>)**
 - Developed and adopted by the Authority
 - On the basis of the framework of the Convention and the Agreement
 - Comprehensive set of rules, regulations and procedures to regulate prospecting, exploration and exploitation of minerals in the Area
 - Piecemeal approach; developed according to need regulation
 - Among others three regulations adopted by ISA for prospecting and exploration of:
 1. polymetallic nodules (2000)
 2. sulphides (2010)
 3. cobalt-rich crusts (2012)



Area – Regime for mining

- Activities in the Area shall be carried out by the Enterprise or in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing
- Sponsoring State has to ensure compliance of sponsored entity; Advisory opinion of Seabed Disputes Chamber of 1 February 2011 (<http://www.itlos.org/>) has elaborated on the nature of this obligation - implies a duty to adopt legislation

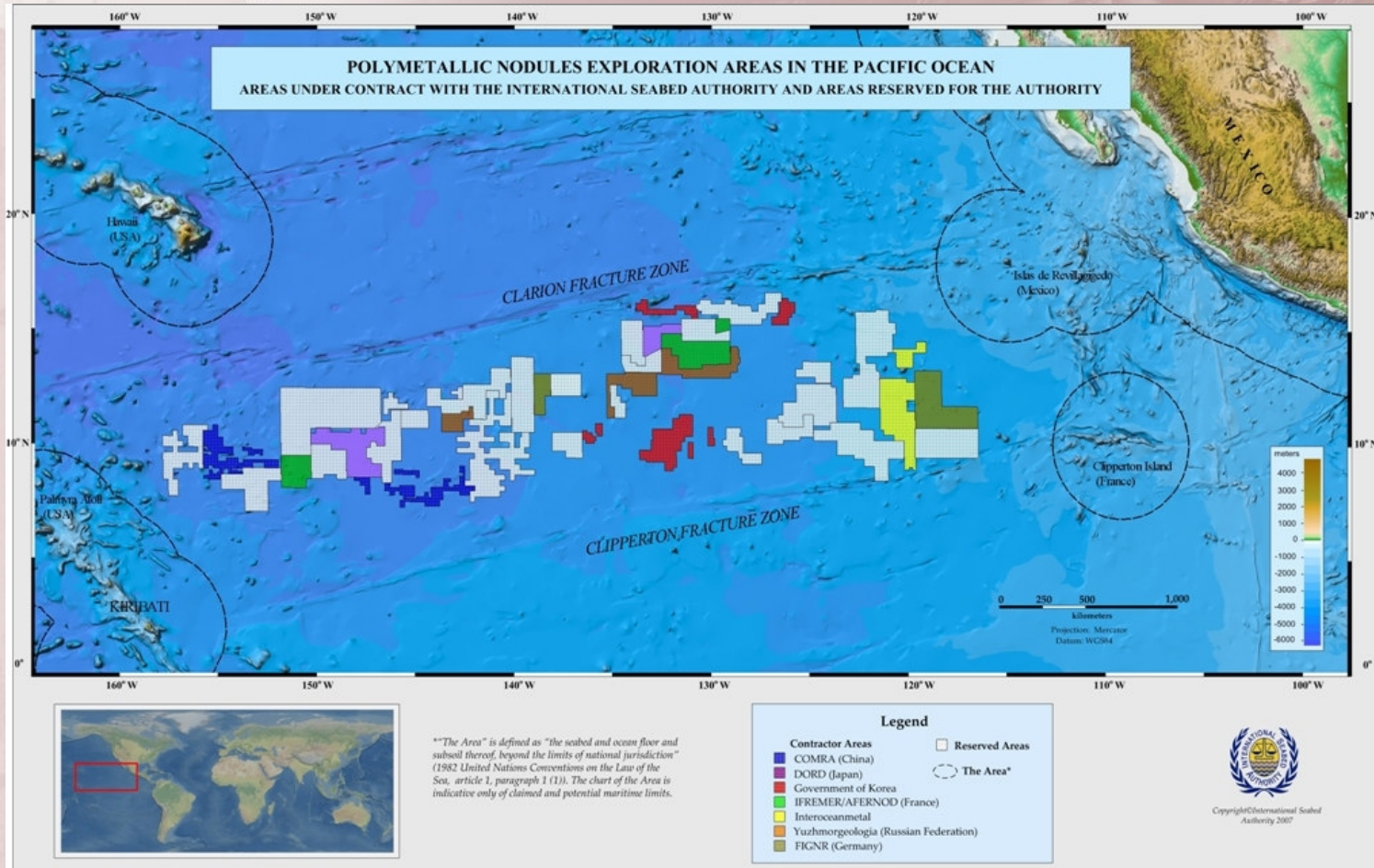


Area – Regime for mining (cont'd)

- Prospecting of mineral resources requires a ~~contract~~ written undertaking that the proposed prospector comply ~~with~~ Convention and other relevant rules
- Exploration and exploitation activities shall be ~~carried~~ carried out in accordance with a written plan of work; other ~~states~~ States parties: plan has to be in the form of a contract ~~with~~ the Authority
- Authority has to approve plan of work
- Application for an area has to divide area in ~~two~~ parts of equal estimated value to allow two mining operations
- Contractor shall have responsibility or liability ~~for~~ for any damage arising out of wrongful acts in the conduct of ~~operations~~ operations, account being taken of contributory acts or omissions ~~by~~ by Authority



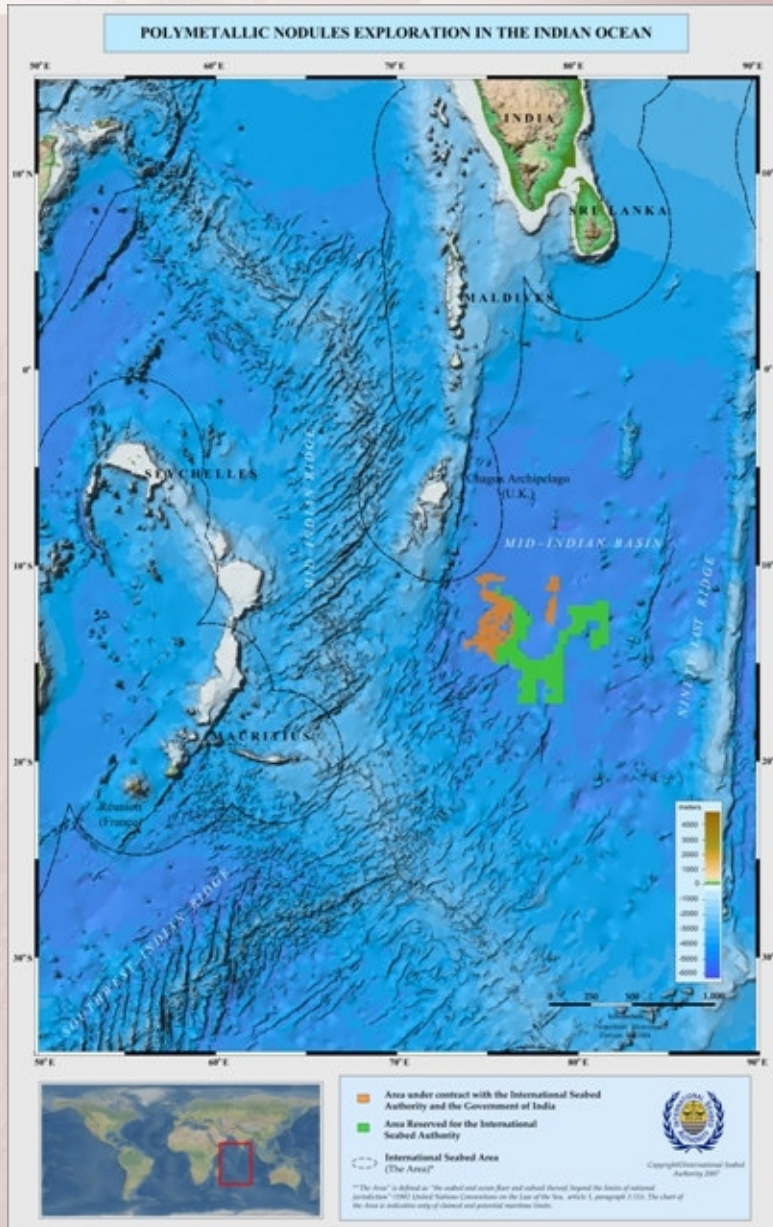
Area – Exploration areas and reserved areas



1. Areas in the Western Pacific;
2. Concerns polymetallic nodules



Area – Exploration areas and reserved areas



1. Areas in the Central Indian Basin in the Indian Ocean;
2. Concerns polymetallic nodules



The Netherlands

- Participant in Reciprocating States regime
- Party to the LOS Convention
- As such member of the ISA
- Actively participates in the ISA
- Currently Legal and Technical Commission of the ISA as a Dutch Member
 - LTC reviews applications for plans of work, supervision of exploration or mining activities, assessment of the environmental impact of activities and provide advice to the ISA's Assembly and Council on all matters relating to exploration and exploitation of non-living marine resources
 - LTC has developed the regulations on prospecting and exploration for polymetallic nodules; polymetallic sulphides; and cobalt-rich crusts
- No legislation regulating responsibilities of the Netherlands as a sponsoring states or the activities of companies that would like carry out mining activities in the Area