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What is the Area and the International Seabed Authority?

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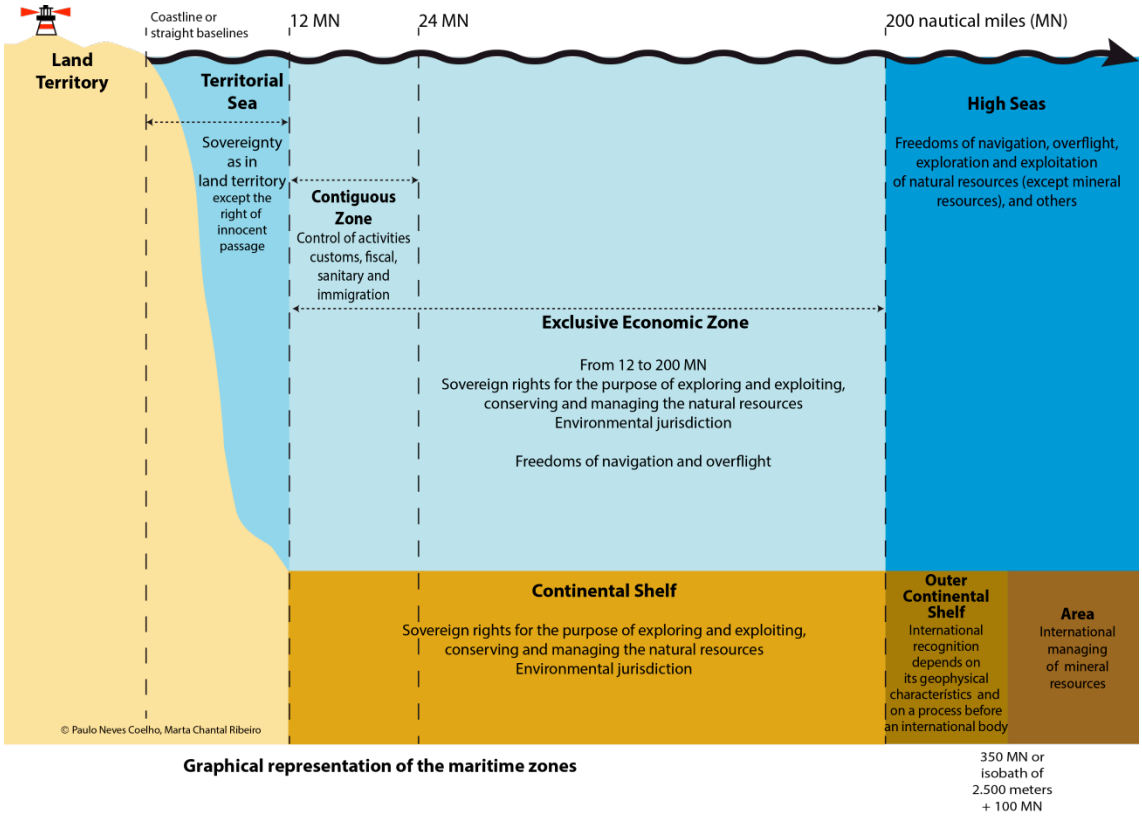
The International Seabed Authority is one of the organizations expressly created by the United Nations Convention on the Law of the Sea, of 10 December 1982 (hereinafter UNCLOS or 'the Convention'). This Convention came into force in 16 November 1994 and establishes the primary framework of the Law of the Sea applicable nowadays.

The Convention divides the ocean in six major maritime zones. Four of these zones are under some form of coastal State jurisdiction: the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. The other two correspond to the maritime zones beyond national jurisdiction: the high seas and the areas of the seabed beyond the continental shelf, termed "the Area".



Graphical representation of the maritime zones

The Area has the status of 'common heritage of mankind'. The International Seabed Authority is the body entitled to act on behalf of the mankind as a whole (UNCLOS, art. 137(2)) and, hence, to give concrete content to the principle of the common heritage of mankind (see [3], p. 544).

The conception of the Area finds its roots in the speech of the Maltese Ambassador Arvid Pardo before the General Assembly of the United Nations on 1/11/1967. With the aim of preventing harm resulting from the

appropriation of seabed resources by States, Pardo proposed reserving the seabed and the ocean floor, and the subsoil thereof, beyond national jurisdiction, exclusively for peaceful purposes and the use of their resources for the common interests of mankind.

The 1967 Pardo proposal went far beyond the regime that was eventually agreed in 1982. Under the 1982 Convention, the Area encompasses only the mineral resources on or beneath the seabed, including polymetallic nodules (UNCLOS, art. 133). The mineral resources may be solid, liquid or gaseous. This is the precise content of the common heritage of mankind (UNCLOS, art. 136: *"The Area and its resources are the common heritage of mankind"*). No State can claim or exercise sovereignty or sovereign rights over any part of the Area, nor can any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation can be recognized (UNCLOS, art. 137). The objects of an archaeological and historical nature found in the Area are also worthy of attention (UNCLOS, art. 149).

The International Seabed Authority (hereinafter Authority) is an autonomous international organization through which States Parties to UNCLOS organize and control activities in the Area, particularly with a view to administering the related mineral resources (UNCLOS, art. 157(1)). The Authority exercises its powers in accordance with the regime established in Part XI of UNCLOS and the 1994 Implementation Agreement (Agreement relating to the Implementation of Part XI of the Convention). This agreement goes far beyond the mere implementation of Part XI, since it is, in its nature, a true revision of the regime agreed in 1982. The final result was the blurring of the model established in 1982 to the possible disadvantage of developing States and possibly also for the concept of the 'common heritage of mankind' in itself.

The Authority became fully operational in June 1996 and has its headquarters in Kingston, Jamaica (UNCLOS, art. 156). The Authority is composed of three principal organs (the Assembly, the Council, and the Secretariat) and two specialized organs (the Legal and Technical Commission and the Finance Committee) (UNCLOS, art. 158(1) and 163; 1994 Implementation Agreement, Section 1(4), and Section 9). The Council plays the major decision-making role (see [1], p. 240 and 244). The Enterprise was designed to be the Authority's mining arm, but as a result of the 1994 implementing agreement it has not been established as an independent entity – and this seems unlikely in the foreseeable future.

The powers and functions of the Authority are those expressly conferred by UNCLOS. Furthermore, the Authority has also incidental powers (UNCLOS, art. 157(2)), but, in general, these powers are subject to a narrow interpretation.

The fundamental competences of the Authority are to regulate exploration and mining in the deep seabed and to ensure that the marine environment is protected from any harmful effects which may arise during exploration and mining activities (UNCLOS, art. 145). The Authority also has the responsibility to promote and encourage marine scientific research in the Area and to disseminate the results of such research (UNCLOS, art. 143 and 256). In contrast, the Authority has no competence over other activities in the seabed and subsoil, and over activities in the water column. The regulation or control of activities such as shipping, fishing, bioprospecting for genetic resources, marine scientific research in general and laying of cables or pipelines are not included in the competences of the Authority (UNCLOS, art. 87, 112 and 147). Nevertheless, these activities should be conducted with reasonable regard for the activities in the Area (UNCLOS, art. 87(2) and 147(3)). Although the Authority is bound by the general obligation to protect and preserve the marine environment (UNCLOS, art. 192), the Convention does not give it specific powers to protect the marine environment, including its biodiversity.

The exploitation of the Area is yet to start. When the day arrives, the Authority will have to provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through an appropriate mechanism, on a non-discriminatory basis (UNCLOS, art. 140(2); see also the 'Economic Assistance' provisions: UNCLOS, art. 151(10); 1994 Implementation Agreement, Section 7).

So far only prospecting and exploration activities have been initiated in restricted zones of the Area. The Authority has entered into 15-year contracts for exploration of the deep seabed with thirteen contractors. Eleven of these contracts are for exploration for polymetallic nodules in the Clarion Clipperton Fracture Zone. Another two contracts are for exploration for polymetallic sulphides in the South West Indian Ocean Ridge and the Mid-Atlantic Ridge. Among other duties, each contractor is required to propose a programme for the training of nationals of developing States. The legal framework applicable to prospecting and exploration activities is called the 'Mining Code'. This code is a comprehensive set of rules, regulations and procedures issued by the Authority. States that sponsor such activities have rigorous responsibilities to establish legal and administrative frameworks to monitor this work (see Advisory Opinion of the Seabed Disputes Chamber of ITLOS, Case 17, February 1, 2011) (see [4], p. 755).

Within the context of prospecting, exploration and (future) exploitation activities in the Area, the protection of the environment is of major importance. There is the possibility of establishing 'Preservation Reference Areas' and 'Areas of Particular Environmental Interest'. In 2012 Areas of Particular Environmental Interest have been agreed for the Clarion-Clipperton Zone.[1]

The regime of the Area does not affect the establishment of the outer limits of the continental shelf (UNCLOS, art. 134(4)). Consequently, the exact delimitation of the Area depends on the outcome of the submissions presented by the coastal States to the Commission on the Limits of the Continental Shelf. In this scenario, the Authority will be responsible for the distribution of payments or contributions with respect to the exploitation of non-living resources of the continental shelf beyond 200 nautical miles (UNCLOS, art. 82(4)).

For more information:

[1] Churchill R. & Lowe V. (1999). *The Law of the Sea*, 3rd ed. Manchester University Press, Juris Publishing, Manchester, 494 p.
[2] Dupuy R.J. & Daniel Vignes D. (eds) (1985). *Traité du Nouveau Droit de la Mer*, Paris, Economica, 1985 ; translated as : *A Handbook on the New Law of the Sea*, Dordrecht-Boston-Lancaster, Martinus Nijhoff Publishers, vol. I and II, 1991.
[3] Franckx E. (2010). The International Seabed Authority and the Common Heritage of Mankind: The Need for States to Establish the Outer Limits of their Continental Shelf. *International Journal of Marine and Coastal Law*, vol. 25, 543-567.
[4] Freestone D. D. (2011). Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area. Advisory Opinion of the Seabed Disputes Chamber of ITLOS. *American Journal of International Law*, vol. 105, 755-761.
[5] Lodge M. (2011). Some Legal and Policy Considerations Relating to the Establishment of a Representative Network of Protected Areas in the Clarion-Clipperton Zone. *International Journal of Marine and Coastal Law*, vol. 26, 463-480.

[1] When ISA Council approved the environmental management plan for the Clarion-Clipperton Zone, it decided that "… for a period of five years from the date of the present decision or until further review by the Legal and Technical Commission or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in areas of particular environmental interest referred to in the annex;" (26 July 2012, Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone. Doc ISBA/18/C/22). See also [5].

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List of relevant webpages:

1. General
http://www.isa.org.jm/en/home
http://www.un.org/Depts/los/clcs_new/clcs_home.htm
http://www.un.org/Depts/los/index.htm

2. Arvid Pardo speech:

http://www.un.org/Depts/los/convention_agreements/texts/pardo_ga1967.pdf

3. ITLOS Advisory Opinion:
http://www.itlos.org/index.php?id=109&L=1AND1%253D1