STATE PRACTICE IN DEEP SEA MINING: THE CASE OF THE PEOPLE'S REPUBLIC OF CHINA

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CHINA AT UNCLOS III

After the People's Republic of China (PRC) took the seat in the United Nations as the sole legitimate government of the whole China in 1971, the PRC sent delegations to attend the UNCLOS III from the beginning to the end (1973-1982). During UNCLOS III, China submitted a working paper specifically on "General Principles for the International Sea Area".

CHINA AT UNCLOS III-2

China's concept of the "international sea area" is different from that of the "international seabed area" as the Chinese concept does not limit itself to the deep seabed only.

China did not use the term "high seas" referring to the international sea area as China viewed the term "high seas" as obsolete, appearing in the four 1958 Geneva Conventions to which China did not accede, and in China's eyes, the Geneva Conventions were representative of the

CHINA AT UNCLOS III-3

In 1972, the Chinese delegation expressed the view that the international regime should not regulate only the seabed exploration and exploitation activities. If the regulatory scope of the international seabed area were only limited to the development of seabed mineral resources, it would not conform to the interests of the developing countries,

CHINA AT UNCLOS III-4

Later on, when the international regime for the deep seabed was finally formed, China shifted its original position so as to support the newly established regime for the deep seabed only.

CHINA AT UNCLOS III-5

While criticizing the superpowers, China considered that the “parallel system of exploitation” put forward by one superpower to be a bad idea

CHINA AT UNCLOS III-6

Later on, China changed its stand and did not oppose the establishment of the parallel system both as a compromise and as a provisional arrangement provided that the necessary technology and resources for the Authority and the Enterprise were guaranteed

CHINA AT UNCLOS III-7

The Chinese delegation was dissatisfied with the final arrangement for the legal regime of deep seabed mining.

“Resolution II of the Conference, governing preparatory investment in pioneer activities relating to polymetallic nodules, has done too much in the way of meeting the demands of a few industrialized nations and given them and their companies some privileges and priorities. We consider that inappropriate”.

OPERATIONAL MECHANISM

In 1982 China sent a letter to the chairman of the UNCLOS III stating that it had spent 80 million RMB (ca. $US40 million) on polymetallic nodule investigations, but China did not ask to be listed as a potential pioneer investor

OPERATIONAL MECHANISM-2

China began its investigation of seabed mineral resources at the end of 1970s. After various surveys, an application area totaling 300,000 sq km was delineated.

OPERATIONAL MECHANISM-3

The China Ocean Mineral Resources Research and Development Association (COMRA) was eventually established in 1990

COMRA was defined as a state enterprise at that time

OPERATIONAL MECHANISM-4

A milestone national conference was held in October 1999 regarding China's future strategy for deep seabed activities. The following consensus was reached through the conference: (a) to formulate a national strategy for the Area; (b) to adhere to the policy of being actively involved in activities in the Area and to strengthen China's status in Area affairs and in the international arena; (c) to adopt the policy of "continuously carrying out deep sea surveys, greatly developing deep sea technology, and establishing in due time a deep sea industry"; and (d) to single out three stages of development for the first half of the twenty-first century: resource prospecting and mining site application, studying and developing the deep sea technology, and establishing a deep sea industry

CHINA AND PREPCOM

PrepCom was established in December 1982 when 117 States and two other entities signed the Convention

In 1983 the PrepCom held its first session where a Plenary and four special commissions were established to implement the mandates entrusted

CHINA AND PREPCOM-2

The most important result from the PrepCom meetings lie in two areas: the arrangement for the registration of pioneer investors based on Resolution II, and the adoption of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (the 1994 Agreement).

CHINA AND PREPCOM-3

Based on the Arusha Understanding, a prospective pioneer investor may allocate 52,300 sq km for itself

COMRA was registered on 5 March 1991

CHINA AND PREPCOM-4

At the summer meeting of the PrepCom in 1991, China's obligation as a pioneer investor was discussed. Since the PrepCom treated differently the registration of India from other pioneer investors and imposed fewer obligations on it, China requested for the same treatment since China and India were both developing countries.

With much effort made by the Chinese delegation and repeated consultations at the

CHINA AND PREPCOM-5

The 1994 Agreement came into effect on 28 July 1996. It has changed, to some fundamental extent, the original deep seabed regime created by Part XI of the LOS Convention, though the principle of the common heritage of mankind continued to be maintained. The major changes are reflected in the following eight areas:

(a) The burden of costs on States parties has been reduced.

(b) The privileges of the Enterprise have been cancelled so that it will become a normal enterprise.

(c) The new regulations have simplified the decision-making process.

(d) The special provisions on the Review Conference in Article 155 (1)(3)(4) of the LOS Convention have been overridden by normal procedures of review and amendment.

(e) The obligation to transfer technology on a compulsory basis by contractors to the Enterprise has been cancelled.

(f) The production limit has been lifted.

(g) Developing land-based producer countries which are adversely effected by the production of minerals from the Area will be economically assisted by way of a fund to be

CHINA AND PREPCOM-6

China actively participated in the consultations and it was one of the six proposing States (with Fiji, Germany, India, Indonesia and the United States) of the final draft Agreement

CHINA AND ISA

The ISA has been fully operational since June 1996

The first Council of the ISA was elected by the Assembly at the second session of the ISA in March 1996.

China was elected as a member in Group B. From 2013, China has joined Group A.

CHINA AND ISA-2

Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area were finally adopted in July 2000

China participated in the deliberations of the mining code and the Chinese delegation made several contributions to the progress of the negotiations

CHINA AND ISA-3

On 22 May 2001, the ISA officially signed the exploration contract with the COMRA in Beijing, formalizing the relationship between the two. The contract enables the COMRA to continue its exploration activities for polymetallic nodules in the northeast Pacific Ocean and gives the COMRA exclusive rights to explore the area allocated to it

CHINA AND ISA-4

The duration of the contract is 15 years and can be extended for periods of not more than 5 years each afterwards.

As at 31 January 2016, 23 contracts for exploration had entered into force (14 for polymetallic nodules, 5 for polymetallic sulphides and 4 for cobalt-rich ferromanganese crusts).

CHINA AND ISA-5

Contracts for polymetallic nodules: COMRA, 22 May 2001, Clarion-Clipperton Fracture Zone, 21 May 2016; China Minmetals Corporation To be signed Clarion-Clipperton Fracture Zone (reserved area)

Contracts for polymetallic sulphides: COMRA, 18 November 2011, South-west Indian Ridge, 17 November 2026

Contracts for cobalt-rich ferromanganese crusts: COMRA, 29 April 2014, Western Pacific

CHINA AND ISA-6

On 3 March 2016, the ISA Legal and Technical Commission selected first-ranked and alternate candidates for the Global Sea Mineral Resources NV (GSR), China Ocean Mineral Resources Research and Development Association (COMRA) and Japan Oil, Gas and Metals National Corporation (JOGMEC) training programmes.

CHINA'S LEGISLATION

Mineral Resources Law, enacted in 1986 and amended in 1996.

The law provides a general legal framework for mining activities in China

China adopted a licensing-type system for mineral resources exploration and exploitation

CHINA'S LEGISLATION-2

Regarding maritime legislation, China has two basic laws:

1992 Law on the Territorial Sea and Contiguous Zone

1988 Law on the Exclusive Economic Law and Continental Shelf

China is preparing a comprehensive Ocean Law.

On 15 May 1996, China ratified the LOSC

CHINA'S LEGISLATION-3

Other related laws:

Law on Environmental Impact Assessment, 2002

Law of on the Administration of the Use of Sea Areas, 2001

Marine Environment Protection Law, 1982 (amended 1999 and 2014)

NEW LEGISLATION

In 2014, the draft Law on Exploring and Exploiting Resources in Deep Seabed Area, drafted by the NPC Environmental and Resources Protection Committee, has been included in the Legislative Plan of the 12th National People's Congress Standing Committee.

NEW LEGISLATION-2

Law on Exploring and Exploiting Resources in Deep Seabed Area of the PRC was adopted on 26 February 2016 and will come into force on 1 May 2016.

It contains 7 chapters and 29 articles.

NEW LEGISLATION-3

Deep Seabed Area refers to the seabed, ocean floor and subsoil thereof, beyond the limits of national jurisdiction of China and other countries.

The Law is designed to regulate the exploring and exploiting activities, promote research on deep sea science and technology and resource investigations, protect marine environment, promote the sustainable use of deep seabed resources, and safeguard the common interest

NEW LEGISLATION-4

Any PRC citizen, legal person, or other organization, before applying to the ISA, shall apply to the competent authority of the State Council

The approved applicant can conduct exploration and exploitation only after it has signed such contract with ISA

Transfer or any substantial change should be subject to the approval of the competent authority of the State Council

NEW LEGISLATION-5

The contractor should, within the reasonable and feasible limits, adopt necessary measures to prevent, reduce and control pollution or other harm to the marine environment arising from its activities in the area of exploration and exploitation.

NEW LEGISLATION-6

The State supports research on deep sea science and technology and resource investigations

NEW LEGISLATION-7

The competent authority of the State Council should monitor and inspect the activities of the contractor.

The Law also provides legal liability.

NEW LEGISLATION-8

The Law is more like an administrative rule. It provides details on how to apply and approve the activities.

It does not provides the responsibilities of a sponsoring State, nor rights of a contractor.

It is curious why it uses the term ‘Deep Seabed Area’ instead of ‘International Seabed Area’.

NEW LEGISLATION-9

Since the Law is very general, there should be detailed regulations to be worked out for the implementation of the Law

The coordination of the Law and the relevant regulations adopted by the ISA in terms of implementation. There might be a potential conflict between the two.

CONCLUSION

China’s deep seabed exploration began under the centrally planned economic system, but after two decades, China’s economic system has shifted fundamentally to that of a market-oriented economy

It affects China’s attitude and policy on deep seabed mining.

CONCLUSION-2

As a potential producer of deep seabed minerals, China may have conflicts of interest with land-based producers.

Such potential conflicts may be resolved under the LOSC or the WTO framework.

CONCLUSION-3

As a rising big power, China's commitment to the international deep seabed regime may invite close and strong attention from the whole world community.

CONCLUSION-4

With the rapid growth of its economy, China demands more mineral resources.

The new Law provides a legal basis for Chinese companies to engage in more activities in the Area.