“From Paper to Practice”

ISA functions to oversee exploitation

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Overview

1. UNCLOS on ISA functions
2. Other extractive regulators
3. Principles of best regulatory practice
4. Special ISA characteristics
The ISA is the organisation through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area on behalf of mankind as a whole.

The ISA shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance [with UNCLOS, the rules, regulations and procedures of the ISA, and approved plans of work]

[UNCLOS Articles 153 and 157]

Exploration and exploitation shall be carried out only in areas specified in plans of work approved by the ISA, and every approved plan of work shall provide for control by the ISA of activities in the Area

[UNCLOS Annex III]
The ISA shall have such powers as are implicit and necessary  
[UNCLOS Article 157]

The ISA has right to exercise functions of control and regulation  
[UNCLOS Article 153]

This includes:
- approval of plans of work,
- issue of contracts,
- inspecting installations used for activities in the Area.  
[UNCLOS Article 153 and Annex III, Article 3]

ISA has powers in certain circumstances to:
- issue warnings to contractors,
- impose monetary penalties on contractors,
- issue (environmental) emergency orders to adjust or suspend operations,
- suspend a contract,
- terminate a contract.  
[UNCLOS Annex III, Article 18]
Annex III, Article 17: ISA shall adopt and uniformly apply rules and procedures for the exercise of its functions including:

(i) size of area
(ii) duration of operations;
(iii) performance requirements;
(iv) categories of resources;
(v) renunciation of areas;
(vi) progress reports;
(vii) submission of data;
(viii) inspection and supervision of operations;
(ix) prevention of interference with other activities in the marine environment;
(x) transfer of rights and obligations by a contractor;
(xi) procedures for transfer of technology to developing States and for their direct participation;
(xii) mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment;
(xiii) definition of commercial production;
(xiv) qualification standards for applicants.
Other extractive regulators

<table>
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<th>Policy, strategy, planning</th>
<th>Development of technical specifications</th>
<th>Issue and review of rules</th>
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<td>Cadastre and mapping</td>
<td>Data collection, analysis, management</td>
<td>Receiving applications, and contractor reports</td>
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<td>Due diligence</td>
<td>Public consultation</td>
<td>Approvals</td>
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<td>Environmental permit</td>
<td>Contract negotiation and issue</td>
<td>Technical review of applications and reports</td>
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<td>Contract management</td>
<td>Performance monitoring</td>
<td>On-site inspectorate</td>
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<td>Production and technical audits</td>
<td>Enforcement</td>
<td>Measurement and valuation of minerals</td>
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<td>Mine closure</td>
<td>Revenue collection and administration</td>
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<td>Financial audits</td>
<td>Dispute resolution</td>
<td>Coordination with other relevant authorities</td>
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**Note:**
- Production rules
- Environmental management
- Health and safety
- Financial rules
Special ISA characteristics

- State membership organisation
- Common heritage of mankind
- Interaction with state sponsorship, flag state, high seas regimes
‘Good regulation’

• Many examples of poor regulation leading to poor economic, environmental, or social outcomes.

• “Good regulation helps to make countries healthier, happier, cleaner, more prosperous and safer, while supporting innovative solutions to the challenges faced, and thereby serves the interests of all citizens” [OECD].

• What does ‘good regulation’ look like?
5 principles of best regulatory practice

**Transparent** (includes clarity on policy and rules, avoiding uncertainty, explaining decisions, enabling informed involvement of stakeholders, openness to public scrutiny)

**Targeted** (includes timeliness, practicality, mobilising resources, the regulatory authority having relevant powers, avoiding a scatter gun approach, regular review of regulatory practices)

**Proportionate** (includes efficiency, a risk-based approach: intervention only where necessary and remedies appropriate to the risk, collaboration with other regulatory actors, practicality and affordability)

**Accountable** (includes clarity on roles, responsibilities and decision making processes, operating to clear objectives, basing decisions on sound data and justification, enforceability, higher authority oversight, accessible appeals process)

**Consistent** (includes predictability, impartiality and equity in application, regulation founded on coherent and long-term focussed policy, joined-up working between divisions / other regulators)
Food for thought

- Regulatory agility?
- Resourcing and staffing?
- Separation of independent functions?
- Coherence with other regulators?
- Inclusiveness (of all mankind)?