



INTERNATIONAL LEGAL FRAMEWORK FOR PREVENTION OF MARINE POLLUTION FROM DEEP-SEA MINING

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Abstract - *The research discusses the international legal mechanism for preventing pollution of the marine ecosystem during the extraction of mineral resources. As land-based mineral deposits are being depleted, there is a growing interest in exploring and extracting resources from the sea. The growing demand for these resources has raised concerns about the environmental impact of deep-sea mining activities on marine ecosystems. It is significant to carefully balance the need for these resources with the protection of the marine environment. It is crucial to balance the demand for these resources with the need to safeguard marine ecosystems. More and more countries are beginning to develop activities to evolve marine resources in deep-sea areas. In this regard, the preservation and protection of the environment during the development of marine mineral raw materials affects the interests of not only an individual state, but also the entire world community as a whole. Therefore, cooperation at the international level is a key to ensuring the responsible and sustainable development of marine mineral resources.*

Keywords: *International Maritime Law, marine pollution, UNCLOS, marine environment, sustainable development.*

INTRODUCTION

The growing demand for resources located in the sea has led to increased interest in deep-sea mining as a potential solution to supplement dwindling mineral deposits on land. However, this has also raised concerns about the environmental impact of deep-sea mining activities on the marine ecosystem.

Aware of the need to improve international and national instruments used in this sphere of law, in 1982 many States developed The United Nations Convention on the Law of the Sea (UNCLOS), to which 168 countries and the European Union have joined to date. UNCLOS in Part XI, together with its 1994 Implementation Agreement relating to Part XI, sets forth the international legal framework for activities related to deep seabed mining and marine scientific research in the Area. The creation of UNCLOS was due to the constant intensification of international maritime law. The issues of improving the international legal mechanism for preventing marine pollution from mining are urgently overdue in the scientific world community, due to the fact that activities in the field of prospecting, exploration and extraction of mineral resources have a significant impact on the sustainable development of all countries. The Convention also provides the framework for further development of specific areas of the law of the sea.

There is an urgent need today to identify and establish existing gaps and conflicts in the system of international legal prevention of marine pollution during the development of minerals in the depths of the sea, as well as further improve this mechanism in order to maintain the natural resource potential of the marine ecosystem. The creation of an effective system of legal regulation of the relations under consideration seems to be one of the most important areas for improving international law and national legislation in the field of environmental management within marine spaces.

In 2015 in an attempt to find new ways to achieve sustainable development the UN General Assembly adopted Resolution No. A/RES/70/1 - "Transforming our world: The 2030 Agenda for Sustainable Development". It is informally called Charter for People and Planet in the 21st Century - characterizes its significance for the entire world community. The UN General Assembly has recognized the need for transformations and fundamental changes to achieve social justice in all spheres of human life. Among the 17 goals identified by Resolution No. A/RES/70/1, the research issues address in Goal 14 "Conserve and sustainably use the oceans, seas and marine resources for sustainable development".



The tasks facing the world community include the following: prevention and reduction marine pollution of all kinds; sustainable management and protection of marine and coastal ecosystems to avoid significant adverse impacts; minimization and address of the impacts of ocean acidification, including through enhanced scientific cooperation at all levels; conservation of at least 10 per cent of coastal and marine areas; increase the economic benefits to small island developing States and least developed countries from the sustainable use of marine resources; increase scientific knowledge, develop research capacity and transfer marine technology; enhancement of the conservation and sustainable use of oceans and their resources by implementing international law, which provides the legal framework for the conservation and sustainable use of oceans and their resources¹.

Since the 1950s coastal states have increasingly recognized the necessity of cooperation in various maritime domains. Collaborative mechanisms have been established to address issues like maritime safety, marine environmental protection, fisheries management, and sustainable marine development². These mechanisms have aided coastal states in mitigating jurisdictional disputes. Countries should take more effective measures to protect the marine environment, both within and beyond national jurisdiction. In the pursuit of common societal interests, the international community should address issues of universal concern with a spirit of solidarity.

Therefore, the preservation and protection of the environment during the development of marine resources is a global concern. The impact of deep-sea mining activities can have far-reaching consequences that go beyond national boundaries. It is crucial for countries to work in cooperation with each other and establish regulations and practices that prioritize sustainability and environmental protection in order to safeguard the ocean for present and future generations. Collaboration and cooperation at the international level are key to ensuring the responsible and sustainable development of marine resources.

RESEARCH METHODS

The research uses doctrinal and comparative methods. Doctrinal methods are used as a specific way of thinking about the international legal system. They help to build a theoretical framework for analysis of the international maritime law norms. Comparative methods operate as the comparative study of techniques of interpretation of international maritime law rules and principles by the participants of the international legal system. Comparative international law methods are used to confirm that abstract rules and principles acquire concrete meaning by the way they are interpreted and subsequently applied in practice by international law actors

RESULTS AND DISCUSSION

Issues of marine environment protection are urgent problems of the modern world, which are closely related to the sustainable development of all mankind. The international legal mechanism for preventing pollution of the marine environment during the extraction of minerals is currently fragmented and requires significant changes in order to create a more effective environmental safety policy.

Rio+20, the 2012 United Nations Conference on Sustainable Development has recognized in its outcome document, entitled “The Future We Want” (№ A/RES/66/288), that “oceans, seas and coastal areas form an integrated and essential component of the Earth’s ecosystem and are critical to sustaining it, and that international law, as reflected in the United Nations Convention on the Law of the Sea, provides the legal framework for the conservation and sustainable use of the oceans and

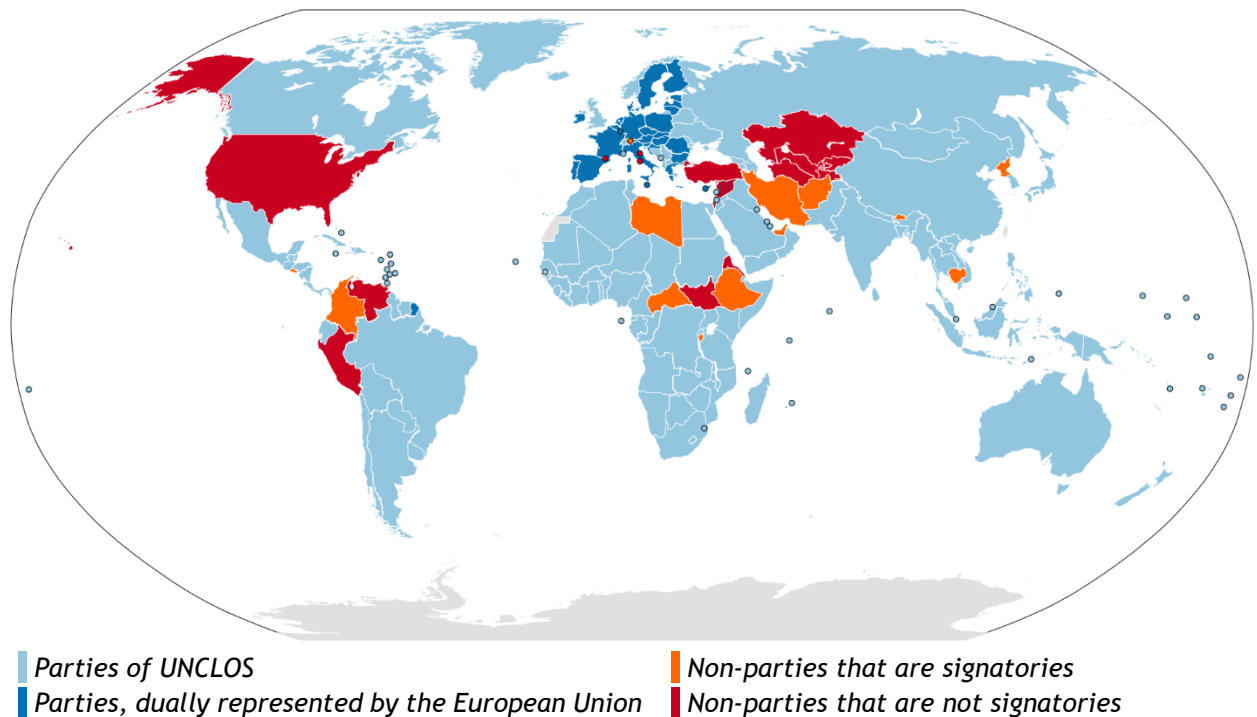
¹ Resolution № A/RES/70/1 “Transforming our world: the 2030 Agenda for Sustainable Development” (adopted by the General Assembly on 25 September 2015). URL: <https://undocs.org/ru/A/RES/70/1>

² Zou K., Chang Y. C. Preserving Community Interests in Ocean Governance towards Sustainability: An Editorial Note //Sustainability. – 2023. – T. 15. – №. 22. – C. 15894.

their resources”³. The document emphasizes the need for rational use of maritime spaces and their resources, as it helps solve such important problems as combating poverty, ensuring sustainable economic development, addressing the effects of climate change, creating sustainable livelihoods, and providing decent work. The Declaration focuses on the need to build a society in harmony with nature, as well as to follow the developed guidelines in humanity’s efforts to restore the ecosystem health and integrity.

The most important document in the sphere of the effective protection of the marine environment is the United Nations Convention on the Law of the Sea of 10 December 1982. The Convention has been ratified by 168 parties (*Figure 1*). These include 164 United Nations Member States, a United Nations Observer State (Palestine), the European Union, the Cook Islands and Niue. The Convention demonstrated that it was possible to negotiate a treaty on complex interests of the utmost importance in a global multilateral forum and arrive at a generally acceptable result. However, one of the most significant States that have neither signed nor ratified UNCLOS are the United States, Germany, the United Kingdom. It considers that Part XI establishes bureaucratic and extremely costly arrangements for deep seabed mining. To address certain difficulties with the seabed mining provisions contained in Part XI of the Convention, which had been raised, primarily by the industrialized countries, the Secretary-General convened in July 1990 a series of informal consultations which culminated in the adoption, on 28 July 1994, 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.

Figure 1



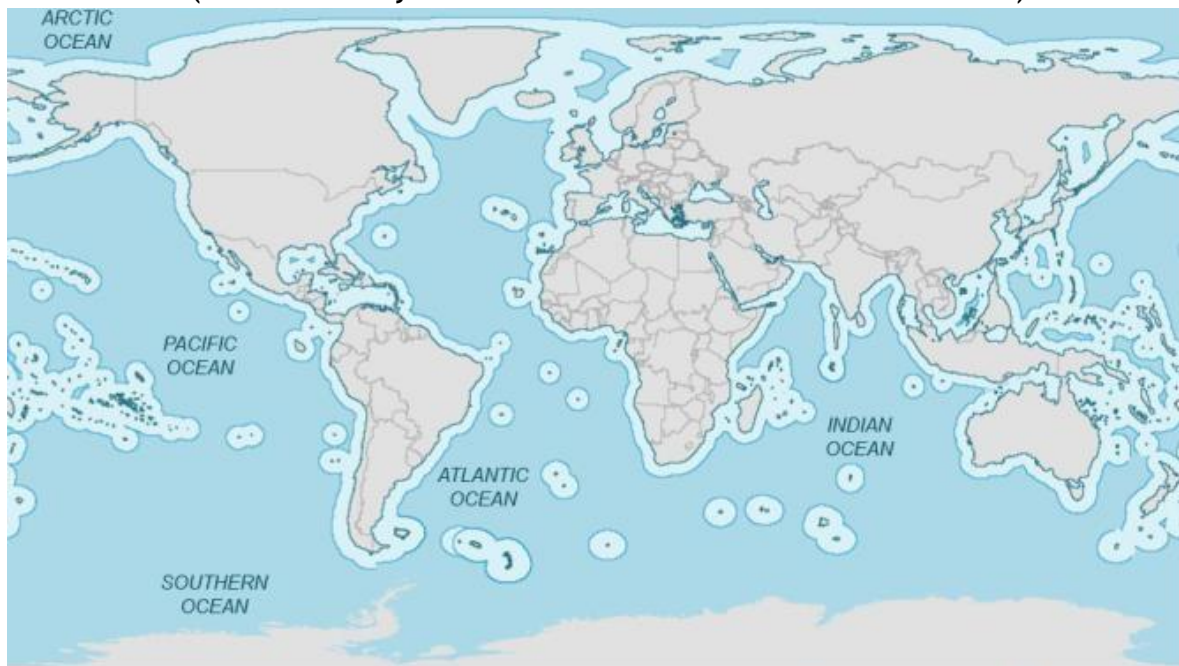
In an ever-changing world marine environmental protection is a pressing global concern. Deep sea mining is the extraction of minerals from the seafloor. Interest has been growing over the last 20 years in exploitation of mineral resources in the deep sea. These are extensive or highly concentrated deposits typically found offshore at depths over 200 metres. There are 4 main types of resource that are of current commercial potential: polymetallic (manganese) nodules (rich in manganese, nickel, copper and cobalt), seafloor massive sulphides (rich in copper, silver, gold, zinc and lead) cobalt-rich

³ Resolution № A/RES/66/288 “The future we want” (adopted by the General Assembly on 27 July 2012). URL: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_66_288.pdf

ferromanganese crusts (rich in cobalt, nickel and platinum) and phosphorite nodules (rich in calcium phosphates)⁴. They are abundant in the Pacific Ocean, especially in the Clarion-Clipperton Zone, in the central-eastern Pacific and around islands in the southwest Pacific. The deep sea also hosts rare earth minerals which are important materials used in the manufacture of high technology products such as televisions and automobiles, and are also useful in green energy technologies like wind turbines. Considering the purposes for which they are used, it is not surprising that the demand for these minerals is increasing sharply.

The International Seabed Authority (ISA) is an autonomous international organization established under the UN Convention on the UNCLOS to organize and control the exploration for and exploitation of seabed mineral resources in areas beyond the limits of national jurisdiction. Part of ISA's responsibilities is to take the necessary measures with respect to activities in the Area to ensure the effective protection of the marine environment from pollution and other hazards which may arise in the Area. Marine Areas Beyond National Jurisdiction (ABNJ), commonly called the high seas, are those areas of ocean for which no one nation has sole responsibility for management. In all, these make up 40 percent of the surface of our planet, comprising 64 percent of the surface of the oceans and nearly 95 percent of its volume⁵(Figure 2).

Figure 2
(Ocean Areas Beyond National Jurisdiction are shown in dark blue)



The nature of the high seas as a global commons presents particular problems of environmental conservation. Therefore, the mission of ISA is to be the organization through which States parties organize and control activities in the Area, which is the common heritage of humankind, to promote the orderly, safe and responsible management and development of the resources of the Area for the benefit of humankind as a whole, including by ensuring the effective protection of the marine environment.

⁴ Mukherjee S., Ghosh K. K., Chanda A. Marine Mineral Resources //Environmental Oceanography and Coastal Dynamics: Current Scenario and Future Trends. – Cham: Springer International Publishing, 2023. – C. 269-324.

⁵ Harden-Davies H. 9 Marine Areas beyond National Jurisdiction //Oceans and Society: An Introduction to Marine Studies. – 2023.



Last year ISA considered and adopted *the Strategic Plan of the Authority for the Period 2024-2028*⁶. The Plan takes into account the new situation of the deep ocean activities in the international community and the new developments in deep sea mining. This is the significant document to ensure the effective protection of the marine environment, especially in the context of adopting rigorous environmental regulations during the exploitation.

To this end, ISA shall adopt appropriate rules, regulations and procedures for, inter alia:

- (a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging and operate, excavation, disposal of waste, construction ion or maintenance of installations, pipelines and other devices related to such activities and
- (b) the protection and conservation of the natural resources of the Area and the prevention of damage to flora and fauna of the marine environment.

The “Mining Code” refers to the whole comprehensive set of rules, regulations and procedures issued by ISA to regulate prospecting, exploration and exploitation of marine minerals in the international seabed Area or “the Area” (defined as the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction)⁷. The Mining Code is still under development, but once complete will cover all environmental, financial, reporting and regulatory obligations incurred by seabed mining operations (called “contractors” due to their contractual relationship with the ISA) and the ISA itself. No mineral exploitation can occur until all elements of the Mining Code are finalized. ISA adopted three sets of exploration regulations covering the prospecting and exploration for:

- polymetallic nodules (2000 and revised in 2013);
- polymetallic sulphides (2010);
- cobalt-rich ferromanganese crusts (2012).

These regulations are supplemented by a series of recommendations for the guidance of contractors and sponsoring States issued by the Legal and Technical Commission and periodically updated.

ISA began to develop regulations to govern the exploitation of mineral resources in the Area in 2014 with a series of scoping studies. Exploitation regulations aim to balance economic needs with rigorous environmental protection. Once in place, they will require any entity planning to undertake activities in the international seabed area to abide by stringent global environmental requirements. The regime to be established also requires a portion of the financial rewards and other economic benefits from mining to be paid to ISA to then be shared according to “equitable sharing criteria.” The LTC has prepared draft exploitation regulations following a transparent process and broad public consultations. The draft regulations will need to be adopted by the Council before any contract for mineral exploitation can be issued.

A serious issue remains unresolved about the obligations of the guarantor States in carrying out activities in the International Seabed Area and the degree of their responsibility for the negative impact on the territory of the Area during deep sea mining. However, no private corporation can claim the right to explore or exploit resources in the Area until it is sponsored by a State party to UNCLOS. The guarantor States are obliged to ensure that the contractor complies with its obligations under the contract with the Ministry of Internal Affairs. This duty is to exercise due diligence and may require a unilateral change in the laws of the country, since measures that are considered sufficiently conscientious at a certain point may become insufficiently conscientious in the light of, for example, new scientific or technical knowledge. Most States may find it necessary to introduce new laws, administrative procedures and resources to provide the requisite rules, regulations and procedures. Otherwise, according to the Chamber, they may be held liable for damage (including to the marine environment) caused by their failure to exercise due diligence.

⁶ <https://www.isa.org.jm/strategic-plan-2024-2028/>

⁷ Singh P. A. The two-year deadline to complete the International Seabed Authority’s Mining Code: Key outstanding matters that still need to be resolved //Marine Policy. – 2021. – T. 134. – C. 104804.



In 2022, Circular Metals Tuvalu Ltd was entrusted by the Government of Tuvalu, which is both a small island developing State and a least developed country that does not have sufficient capacity, infrastructure and financial resources, which makes it particularly vulnerable⁸. As a developing State, Tuvalu can benefit from a system of reserved areas. Such areas are introduced by developed States when they apply to the ISA for exploration rights. They are then stored in a "site bank" reserved for developing country or Enterprise access. The application area of the company in question covers 74,460 km² in the Clarion-Clipperton zone in the Pacific Ocean. The Secretariat is assessing the resources of the reserved territories. This is the seventh application for a work plan for exploration in the Area received from a small island developing State. However, in April 2022, Tuvalu decided to cancel the sponsorship of Circular Metals Tuvalu Ltd. for exploration of polymetallic nodules, which may entail international legal consequences.

This is the first unilateral termination of state sponsorship of deep seabed mining activities in the Area. When explaining this decision, Tuvalu's Foreign Minister stated that sponsorship had been reversed after "concerns by the government as well as within particularly the foreign ministry". He also explained that "the part that we can play is to ensure that we set very high standards or the environmental issues that are involved in requirements, which could then hopefully discourage companies from pursuing it, because it'll be very costly". Therefore, the refusal was based on concerns about the environmental impacts of deep seabed mining and Tuvalu's ability to control activities in the Area. International maritime law does not set the consequences for termination of sponsorship, except that "the termination of sponsorship takes effect six months after the date of receipt of the notification (made by the State) by the Secretary General" and that in such event the contractor receives another sponsor during these six months. Thus, neither the 1982 Convention nor the ISA rules seem to qualify the authority of a State to terminate its sponsorship if it deems it necessary or desirable. On the other hand, national deep seabed mining legislations place important limits on the state's regulatory powers. That is especially the case for Tuvalu's Seabed Minerals Act 2014, a law which protects the stability of the legal relationship between the state and the sponsored entity. Indeed, section 97 restricts the state's right to suspend and revoke a sponsorship certificate to certain specific situations. According to its terms: "The Authority may vary, suspend or revoke any Sponsorship Certificate— where the variation or revocation is in the reasonable opinion of the Authority necessary to: (i) prevent serious risk to—(a) the safety, health or welfare of any persons; or (b) the Marine Environment; or (ii) avoid a conflict with any obligation of Tuvalu arising out of any international agreement or instrument in force for Tuvalu..."⁹. Consequently, the Seabed Minerals Act of 2014 allows termination of sponsorship when necessary to protect the public interest.

The analysis of international documents and international judicial practice on the issues of international liability of countries for damage caused during the development of offshore fields allows us to conclude that such responsibility is the obligation of countries to prevent the occurrence of negative aftereffects for the environment, which has the character of due diligence. In addition, the responsibility of States is expressed in the obligation to provide appropriate compensation in the event of a negative impact on the marine environment. The problem of international legal liability for pollution in the Area is due to the lack of a unified approach in international practice to the liability regime for the development of offshore fields. States that undertake obligations under a guarantee for the development of deposits in the waters are obliged to bear responsibility. However, today's realities show that the potential beneficiaries of offshore production are practically not responsible for any consequences.

The International Tribunal for the Law of the Sea (an independent judicial body established by the UNCLOS to adjudicate disputes arising out of the interpretation and application of the Convention) issued an advisory opinion on the issue of "Responsibilities and obligations of States sponsoring persons

⁸ Application for approval of a plan of work for exploration for polymetallic nodules by Circular Metals Tuvalu Ltd., Legal and Technical Commission session, part I, Kingston, 14–18 March 2022. URL: https://www.isa.org.jm/wp-content/uploads/2022/06/ISBA_27_LTC_2-2201416E.pdf

⁹ Tuvalu's Seabed Minerals Act 2014 URL: <https://faolex.fao.org/docs/pdf/tuv140149.pdf>



and entities with respect to activities in the Area", in which the Chamber determined that "Reasonableness and non-arbitrariness must remain the hallmarks of any action taken by the sponsoring State". The Tribunal confirmed that the exercise of State power is limited by the criteria of reasonableness, proportionality and necessity. In *Duzgit Integrity (Malta v. Sao Tome and Principe)*, the Tribunal argued that "The exercise of enforcement powers by a (coastal) State in situations where the State derives these powers from provisions of the Convention is also governed by certain rules and principles of general international law, in particular the principle of reasonableness. This principle encompasses the principles of necessity and proportionality"¹⁰.

In 2012, after several attempts to come to an agreement on the establishment of preventive State responsibility for activities in maritime territories, measures were taken within the framework of IMO to create a regime of accountability. The reason for the beginning of the development of an effective liability mechanism was the accident in 2009 on the Montara oil platform, located in Australia. Indonesia suffered significant damage in coastal areas, but the country did not receive the desired compensation, since the amount of liability was organic under Australian domestic law. In connection with these events, Indonesia has asked IMO to establish the necessary requirements for holding companies and States accountable at the international level¹¹. The IMO Committee decided to develop guidelines, but only for those countries interested in concluding regional agreements on environmental safety, emphasizing that only such agreements can become an effective mechanism for bringing offenders to justice.

An example of a regional agreement is the Framework Convention for the Protection of the Marine Environment of the Caspian Sea 2003 and 2018, signed by the official representatives of the five littoral Caspian states: Azerbaijan, Iran, Kazakhstan, Russian Federation and Turkmenistan in Tehran (Iran). According to the conventions, all Caspian littoral states bear equal responsibility for the conservation and sustainable use of shared aquatic biological resources in the Caspian Sea. The participating states are guided by the "polluter pays principle", which means that the entity responsible for pollution of the marine ecosystem should bear the costs of measures to prevent, control, and reduce pollution in the marine environment. The "polluter pays principle" is a fundamental principle of international environmental law and a financial tool for regulating international economic relations. Strict compliance with the requirements of the Convention will help to implement the provisions of the new Convention regarding the responsibility of parties allowing pollution to cause damage to the ecological systems of the Caspian.

The liability of states for marine pollution is determined in accordance with the International Convention on Civil Liability for Oil Pollution Damage of 1969 and its additional protocols, as well as the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage of 1971 and its supplementary protocols. Analysis of these international legal instruments suggests that the calculation of liability should take into account the following factors:

1. the cost of cleaning up pollution;
2. The cost of restoring or replacing property (such as boats, piers, or nets contaminated by mining activities);
3. subsequent economic damage caused by property damage;
4. net economic damage (which was suffered, for example, by travel companies, fishermen and other persons who receive their livelihood solely in the presence of a "clean" environment).

¹⁰ The *Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)*, PCA Case No. 2014-07. URL: <https://jsumundi.com/en/document/decision/en-the-duzgit-integrity-arbitration-malta-v-sao-tome-and-principe-award-on-reparation-wednesday-18th-december-2019>

¹¹ Spies R. B., Mukhtasor M., Burns K. A. The montara oil spill: a 2009 well blowout in the Timor Sea //Archives of Environmental Contamination and Toxicology. – 2017. – T. 73.



CONCLUSION

Based on the above discussion, the following conclusions can be drawn regarding the analysis of success determinants in the international legal methods for prevention of marine pollution from deep-sea mining:

1. The development and adoption of the exploitation regulations for minerals of the Area is a key priority for the sustainable development of each country. Issues of marine environment protection are urgent problems of the modern world, which are closely related to the sustainable development of all mankind. The international legal mechanism for preventing pollution of the marine environment during the extraction of mineral materials is currently fragmented and requires significant changes in order to create a more effective environmental safety policy. It is necessary to establish a solid foundation for the development of marine resources before full-scale mining begins.
2. Rules, regulations and procedures for exploitation must reflect best international standards and practices, as well as internationally agreed principles of sustainable development.
3. The mineral raw materials contained in deep-sea areas have the prospect of replacing all natural resources located on land and meeting the needs of mankind for many centuries. However, in order to make more efficient use of the resources of the ocean depths, it is necessary to implement a set of measures to improve the mechanism for preventing marine pollution during mining. For this purpose, it seems obvious to optimize international maritime law.
4. The implementation of mining in the territory of marine spaces is impossible without the occurrence of socially dangerous consequences for the environment. Pollution itself seems to be a side effect of mining, since any anthropogenic activity has an impact on the environment as a whole and, unfortunately, in most cases it is negative. The industrial development of offshore fields cannot take place without having a detrimental effect on the marine ecosystem. However, humanity has the ability to create a mechanism for preventing marine pollution that would minimize the risks posed by the marine extraction of raw materials for the entire environment.
5. The interaction between national and international bodies competent in dealing with issues of marine pollution during mining has a general tendency to expand cooperation in the field of marine environment protection, and the associated need for further development and improvement of forms of international legal regulation at all levels. To achieve this goal, a comprehensive mechanism is needed that creates the most mutually beneficial conditions for cooperation between the named participants in international legal relations. In addition, it is necessary to simplify the ways of mutual assistance between countries in order to establish a more accessible system that will allow us to quickly and efficiently solve problems to prevent serious harm to the marine ecosystem.
6. The ISA need to adopt a policy and regulatory framework for environmental management that achieves the effective protection of the marine environment, under circumstances of considerable scientific, technical and commercial uncertainty.
7. Marine scientific research plays a significant role in the responsible management of the oceans and their resources. Nevertheless, the level of technological progress in many countries, especially developing and least developed countries, does not allow for effective management of the activities of operating companies in offshore fields. In order to provide assistance to such States, the world community need to implement appropriate programs for the benefit of developing and technologically less developed States with a view to strengthening their research capabilities, training their personnel in the techniques and applications of research in the Area.
8. The ISA need to adapt, enhance and increase its structural and functional capacities at a rate that keeps pace with progress in deep sea mining, covers all necessary disciplines and ensures appropriate levels of flexibility are built into the system.

ACKNOWLEDGEMENT

Many thanks to the professors of Russian Presidential Academy of National Economy and Public Administration for their valuable insights, suggestions and also for giving the opportunity to do this research that has to do strengthening the quality of implementation of international maritime law.



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