

HISTORICAL AND LEGAL BACKGROUND OF IRZ AND PRZ

**THE DESIGN OF “IMPACT REFERENCE ZONES” AND “PRESERVATION
WORKSHOP ON**

REFERENCE ZONES” IN DSM CONTRACT AREAS

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Genesis of the Concepts: Impact Reference Zones' and 'Preservation Reference Zones'

The concepts 'Impact Reference Zones' and 'Preservation Reference Zones' may be creations of activities associated with deep sea bed mining, but the nature of the concept may be traced as far back as Principle 21 of the Stockholm Declaration. The principle states

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction **or control** do not cause damage to the environment of other States **or of areas beyond the limits of national jurisdiction.** (emphasis added)*

The Law of the Sea Convention

Part X11 of the Convention is appropriately titled ‘Protection of the Marine Environment’. In this section of the convention text, the treatment of the topic is both general and specific.

Article 145 of Part X11 of the convention provides that states parties shall ensure that necessary measures shall be taken in accordance with the Convention and with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities

The Law of the Sea Convention

The protection and conservation of the natural resources **of the Area** and the prevention of damage to the flora and fauna of the marine environment.

The Convention duly recognises the need to protect and conserve the natural resources of the Area and to prevent damage to flora and fauna.

Article 192 provides a general obligation for states to protect and preserve the marine environment. This obligation applies to all maritime zones.

The Law of the Sea Convention

Article 153 sub paragraphs (4) and (5) vests the Authority with power to exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3....

The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract.

Article 157: Principles of the Authority

Organize and control activities in the Area, particularly with a view to administering the resources of the Area.

The Authority shall have such incidental powers, consistent with this Convention, **as are implicit in and necessary** for the exercise of those powers and functions with respect to activities in the Area.

Article 162: Roles of the Council

The Functions of the Council are quite extensive and include:

- Approve plans of work on the recommendation of the LTC
- Exercise control over activities in the Area

Article 165: The Legal and Technical Commission

The Legal and Technical Commission exercises wide and almost untrammelled discretion with respect to recommending activities for the conduct of activities relating to resources on the Deep Sea Bed in The Area. The functions of the Commission include:

Making recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

Formulating and submitting to the Council the rules, regulations and procedures considering all relevant factors including assessments of the environmental implications of activities in the Area;

Article 165: The Legal and Technical Commission

Keeping such rules, regulations and procedures under review and recommending to the Council from time to time such amendments as the LTC may consider necessary

Making recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, ensure that existing regulations are adequate and are complied with

The Law of the Sea Convention

Article 204 in addressing the monitoring of the risks or effects of pollution requires that States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to **observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.**

Sub paragraph (2) mandates that **In particular**, States shall keep under surveillance the effects of any activities **which they permit or in which they engage** in order to determine whether these activities are likely to pollute the marine environment.

The Law of the Sea Convention

Article 209 in addressing pollution of activities in the Area stipulates that

International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.

The Precautionary Principle

By virtue of the precautionary principle, preventive measures are to be taken when there are reasonable grounds for concern that human activities may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship. A lack of full scientific evidence must not postpone action to protect the marine environment. The principle anticipates that delaying action would in the longer term prove more costly to society and nature and would compromise the needs of future generations.

The creation of Impact reference Zones and Preservation Zones create a framework for the application of this principle. Impact reference Zones are particularly vulnerable to the concept as these zones provide a 'safe haven' for the evaluation of critical scientific data pertaining to the potential impact and actual impact of mining activities in the Area.

OSPAR Commission; Precautionary Principle;
<https://www.ospar.org/about/principles/precautionary-principle>;
<https://www.ospar.org/about/principles/precautionary-principle>

The Precautionary and the Draft Regulations/Part IV Draft Regulation 17: Draft regulations ISBA/23/LTC/CRP.3*; The Draft Regulations on Exploitation of Mineral Resources in the Area.

The Authority, sponsoring States and Contractors shall plan, implement and modify measures necessary for activities in the Area by applying the following principles:

In the assessment and management of risks to the Marine Environment **the precautionary approach**, as reflected in principle 15 of the Rio Declaration, shall be applied, and the Best Available Scientific Evidence shall be taken into account;

Prevention

Preservation Reference Zones are areas not impacted by mining. It is scientific good sense that the information gleaned by the designation of Impact Reference Zones will determine how Preservation Reference Zones are addressed and applied.

World Charter for Nature

Paragraph 3 of general principles provide;

All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.

Paragraph 11 (c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;

It is submitted that IRZs and PRZs these special zones accord with these general principles.

Convention on Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, **in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.**

Good Industry Practice

ISBA/23/LTC/CRP.3*; The Draft Regulations on Exploitation of Mineral Resources in the Area; Draft Regulation 23 regarding ongoing obligations of Contractors towards the Marine Environment sub paragraphs (4) and (7) provide respectively:

4. A Contractor shall consider, investigate, assess and communicate the Environmental Effects of its activities on the Marine Environment, and shall manage all such effects in accordance with the Environmental Management and Monitoring Plan, and with due regard to Good Industry Practice.
7. A Contractor shall maintain the currency and adequacy of the Environmental Plans during the term of the exploitation contract in accordance with Good Industry Practice.

Conclusion

The concepts of Impact Reference Zones and Preservation Reference Zones are, despite the absence of the specific nomenclature in the Law of the Sea Convention, well grounded in international law and In transboundary regimes governing the protection of the marine environment.