

The Way International Seabed Authority Accepts the Involvement of Non State Actors in Governing the Area

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In next year, 2019, a quarter of century will pass since International Seabed Authority (ISA) was established. The main mission of the ISA is to develop mineral resources in the Area and therefore to foster economic development. Although the ISA was expected to initiate developing resources just after the UNCLOS entered into force, it has been manifest that it takes some time for starting to exploit resources because of technical reasons. However, even before starting actual exploitation, the ISA, so far, has provided many rules for future exploitation activity. In addition, given the importance to protect marine environment, several environmental regulations are introduced, and for these introductions, the contribution of Non State Actors seems essential.

Although States remain main actor for international law, the role of Non State Actors has recently had attention. Especially, in the context of international rule making, the role of NGOs and private sectors enters the spotlight. However, most of studies for NGOs' contribution focus on international environmental and human rights law, and so do studies for private sector on international economic law. As for international law of the sea, it does not have enough attention from the perspective of Non State Actors. Therefore, this paper examines the role of Non State Actors in the context of law of the sea. In so doing, it must be noted that the involvement of Non State Actors to rule making is sometimes criticized for a lack of legitimacy or accountability. Therefore, when accepting the involvement of Non State Actors for its activity to govern the Area, the ISA must be prudent.

Against this backgrounds, this paper analyzes recent rule makings by the ISA, especially, making of rules regarding protection of marine environment. There mainly are two types of relationship between the ISA rule making and Non States Actors. First, Non State Actors are involved in rule making. Actually, though the ISA has a wide discretion to make environmental regulations in the Area, it has taken the view of NGOs into account. For example, when making *the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area* (IABA/19/LTC/8) in 2013, the Legal and Technical Commission of the ISA convened several workshops to exchange with views from Non State Actors as well as other stakeholders. In the same way, currently, the ISA is drafting *Regulations on Exploitation for Mineral Resources in the Area (Environmental Matter)*. For this purposes, the ISA has

accepted public comment not only from States but also from Non State Actors.

Second, Non State Actors can establish private standards which could be incorporated into the ISA regulations. So far, the ISA has not referred any private standards. However, other international organizations, such as the International Maritime Organization (IMO), refer many private standards in their treaties. For example, in the International Convention for the Safety of Life at Sea (SOLAS), many standards provided by International Organization for Standardization (ISO), the largest private standards in the world, are used. Considering that currently, the ISO is developing its Standards for marine environment impact assessment in its Working Group 4, Subcommittee 13, Technical Committee 8, these standards would be utilized in the ISA's regulations.

In this way, in the process of rule makings by the ISA, Non State Actors have contributed and will contribute. Given the advantages which Non State Actors have, including scientific knowledge, this contribution should be widely promoted. On the other hand, unlike inter-governmental organizations such as ISA, some Non State Actors tend to pursue their own purposes. For example, it is inevitable for most private companies to pursue a profit, for surviving. Similarly, environmental NGOs put an emphasis on the protection of environment. Therefore, as the organization which governs the Area, common heritage of mankind, the ISA is expected to make a decision for mankind as a whole, after reviewing the views from NGO which protests the protection of marine environment as well as private sector which seeks to develop resources in the Area more strongly. What the ISA is expected to do is taking a balance between these two voices and realizing the sustainable development of the Area, namely, exploitation of mineral resources without making negative impact on marine environment.

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