Japanese Legal System Related to DSM

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SIP: NEXT-GENERATION TECHNOLOGY FOR OCEAN RESOURCES EXPLORATION UNDER CABINET OFFICE
INTERNATIONAL SYMPOSIUM THE FUTURE OF SEABED RESOURCES AND ITS SUSTAINABLE DEVELOPMENT
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1) Ministry of the Environment
Act on Prevention of Marine Pollution and Maritime Disaster (1970, No. 136)
Environmental Impact Assessment Law (1997, No. 81)
Law Concerning the Promotion of Business Activities with Environment (2004, No. 77)

2) Ministry of Land, Infrastructure, Transport and Tourism: MLIT
Act on Exclusive Economic Zone and Continental Shelf (1996, No. 74)
Act on Establishment of Safety Zone Pertaining to Structures at Sea, etc. (2007, No. 34)

3) Fisheries Agency
Act on the Exercise of the Sovereign Right for Fishery, etc. in the Exclusive Economic Zone (1996, No. 76)

4) Agency for Cultural Affairs
Act on Protection of Cultural Properties (1950, No. 214)
The Relationship of between Rules on Deep Seabed and National Legal System

BBNJ

Environmental Rules Drawn up by ISA


【Ministry of the Environment】
- Waste Management and Public Cleansing Act
- Basic Environment Act
- Environmental Impact Assessment Law
- Law Concerning the Promotion of Business Activities with Environment
- Basic Act on Biodiversity
- The National Biodiversity Strategy of Japan (2012-2020年)
- Marine Biodiversity Conservation Strategy of Japan

【METI Ministry of Economy, Trade and Industry】
- Mining Act
- Mine Safety Act
- Act on Interim Measures for Deep Seabed Mining

【MLIT】
- Act on Exclusive Economic Zone and Continental Shelf
- Act on Establishment of Safety Zone Pertaining to Structures at Sea, etc.
- Act on Prevention of Marine Pollution and Maritime Disaster (co-jurisdiction of MLIT and Ministry of the Environment)

【Agency for Cultural Affairs】
- Act on Protection of Cultural Properties

Liberal Democratic Party
- The Special Committee on the Exploitation of Outer Space and Ocean
- The Legal Draft Outline on the Protection of National Interest concerning EEZ and Continental Shelf (draft)
Fishing rights

UNCLOS 303, Sec 2

Act on the Exercise of the Sovereign Right for Fishery, etc. in the Exclusive Economic Zone

“Mining Act” “Act on Exclusive Economic Zone and Continental Shelf” “Act on Establishment of Safety Zone Pertaining to Structures at Sea, etc.” and so on.

UNCLOS, Part 11, Arts. 209, 215
Implementing Agreement of Part 11
Act on Interim Measures for Deep Seabed Mining
【DORD’s Mining】

Marine Space Conceptual diagram

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国連海洋法条約(UNCLOS) (1982年採択)
- 国家管轄権内区域: 領海、排他的経済水域、大陸棚等
- 国家管轄権外区域: 公海、深海底
- 海洋環境を保護・保全する一般的義務を定める

1990年代以降
- 公海の生物多様性を保全する必要性
- 深海の生物資源（海洋遺伝資源）の商業開発の可能性
→「BBNJの保全及び持続可能な利用」に関する問題として議論

UNCLOS
- 深海底及びその資源（鉱物資源）は「人類の共同の財産」。
- 海洋環境保護の一般的規定あり。

出典（写真・図）: 環境省, DORD, JAMSTECウェブサイト
Seabed of EEZ and Continental Shelf beyond 200 Nautical Miles

UNCLOS56, sec 1 “the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil”

= the subject of EEZ

UNCLOS56, sec 3 “The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.”

EEZ is 200 nautical miles for every coastal state.

The breadth of Continental Shelf beyond 200 nautical miles would be finally determined coastal states on the basis of international procedures (art. 76, sec 8) → under the international obligation
Continental Shelf beyond 200 Nautical Miles

Upper water column areas of this continental shelves are **High Seas**, however, sovereign rights only to sedentary species and non-living resources (mineral resources) on the seafloor would be permitted.

→EEZ regulates highly comprehensively areas relating to resources within 200 nautical miles. On continental Shelf beyond 200 Nautical Miles, there are many cases subject to international regulations including RFMOs, etc especially to living resources in upper marine areas. In addition, the distributive obligation of mineral resources such as UNCLOS art. 82 would be required there.

If Mining Act equally applies to the limit of the continental shelf, its application would be also needed to consider other legal requirements different from EEZ.
Basic Act on Ocean Policy, Art. 17

The State shall take necessary measures on conservation and management of living aquatic resources, conservation and improvement of the growing environment for aquatic plants and animals, increase of the fishing ground productivity, promotion of the development and use of petroleum, inflammable natural gas, other mineral resource including manganese ores, cobalt ores existing on and under the sea floor, establishment of the system for the above mentioned missions and execution of others, in order to promote the positive development and use of the oceans, considering conservation of the marine environment and to allow for the sustainable development and use of the ocean resources in the future.
Basic Plan on Ocean Policy

In Part 1-3 (1), The development of marine energy and mineral resources should be deemed to have moved to the phase of intensified research and development for commercialization while continuing surveys and studies, (1) technological development and broad-based scientific surveys and resource exploration for identifying the resource potential of marine zones surrounding Japan should be successively implemented and (2) intensive technological development for production should be implemented. **Deliberations on environmental impact assessment methods for the development should also be continued and promoted.**
Basic Plan on Ocean Policy

In Part 2-3 (2), Promotion of effective use of EEZ and continental shelves; Make efforts to ensure sustainable use of fishery resources, promote development of marine energy and resources, and facilitate use of marine renewable energy, among other initiatives, to facilitate effective use of the vast EEZ and continental shelves and the promotion and creation of marine industries, in accordance with the characteristics of marine zones.
As for the Development of marine energy and mineral resources, since their activities are implemented on the Seabed, the pollutants could be discharged in any forms, or submarine topography could be changed and impact on other creatures inhibiting there.......Environmental considerations would be indispensable in exploiting marine energy and mineral resources, methods etc. for necessary technique or EIA shall be fully reviewed. In addition, an examination would be proceeded to consider risk supposing their commercialization in the future. As for the task of marine environmental preservation, because a sense of forecasting international tendency is also certainly important, environmental guidelines etc. in International Seabed Authority should be adequately referred, and making such international rules would be positively committed.
Towards the drawing up the 3rd Basic Plan on Ocean Policy

In the drawing up the next Revised Plan for the Development of Marine Energy and Mineral Resources, especially as for methane hydrate and submarine hydrothermal deposits, Implementation of technical development towards the commercial project guiding by a private section in the late 2018s is being articulated.

→ positive Japan’s intention of Business promotion

This draft contains drawing up the concrete roadmap and the clarification of priority of the exploitation of deep seabed mineral resources including examination of development of environmental Impact Monitoring System.
The Main 3 Points about Mining Act


1) New condition: technical capacity or social credit in application

2) from first-to-file system to the specified areas system that review and select an adequate implementing body

3) There are disorderly exploration activities or frequent operations by foreign vessels in our sea areas because the old law did not contain the regulation of exploration of resources.

→ An introduction of License system to exploration of resources.
Mine Safety Act (1949, May 16th, No. 70) amendment in July 2011

(purpose) Art. 1, This law’s purpose is to prevent the harm to mine workers and the mine pollution, and to secure the reasonable exploitation of mineral resources.

Art. 3, “security” in this law means the matters concerning mining industry as follows.

1 The prevention of the harm to persons in mines
2 The Protection of mineral resources
3 The preservation of mine facilities
4 The Prevention of mine pollution

Art. 26, The government shall take into consideration the situation of the new Mining Act in 5 years after the enforcement of the law, if necessary, it review provisions of the new act and take necessary measures on the basis of the review.
Mining Act applies to the limit of Continental Shelf

At present, Mining Act has no attention to UNCLOS art. 82.

（Prof. of TOKYO UNIVERSITY, NAKATANI Kazuhiro）

Art. 82 articulates economic return to international community of fruits of the exploitation of mineral resources though is not as much as deep sea bed. In this sense, International legal rules in respect of mineral resources in the Continental shelf beyond 200 nautical miles have a hybrid character of both continental rule and deep sea bed one.
Article 82 (Payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles)

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.

4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.
Art. 206 (Assessment of potential effects of activities)

States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.
Art. 208 (Pollution from seabed activities subject to national jurisdiction)

1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
Art. 214 (Enforcement with respect to pollution from seabed activities)

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
Ministry of the Environment

- Basic Environment Act (1993, No. 91, Final revised 2014, No.46)
- Environmental Impact Assessment (1997, No. 81, 1999 enforcement, Final revised 2013, No. 60)
- Law Concerning the Promotion of Business Activities with Environment (2004, No. 77)
- Basic Act on Biodiversity (2008, No. 58)
- The National Biodiversity Strategy of Japan (2012-2020)
- Marine Biodiversity Conservation Strategy of Japan (2011)
Ministry of Land, Infrastructure, Transport and Tourism: MLIT

- Act on Exclusive Economic Zone and Continental Shelf (1996, No. 74)
- Act on Establishment of Safety Zone Pertaining to Structures at Sea, etc. (2007, No. 34)
Agency for Cultural Affairs

In case of finding out underwater artefacts in the process of mining seabed, Act on Protection of Cultural Properties (1950, No. 214, Final revised 2014, No. 69) Could be applied. This Law, at present, would be applied to its territorial sea (12 nautical miles).

Act on Interim Measures for Deep Seabed Mining
(1982, No. 64, Final revised 2014, No. 69)

Art. 1, This law provides necessary interim measures as to the adjustment of operating activities of deep seabed mining, in order to contribute to the promotion of welfare of the public through the reasonable exploitation of deep seabed mineral resources in response to the rapid international tendency and other remarkable change etc., of international circumstances in respect of deep seabed mining industry for the recent new ocean order.

Art. 1, Sec. 2, Any provisions shall not place deep seabed under national sovereignty or its jurisdiction, or shall be without prejudice to the other state’s interest exercising freedom of high seas.

Like Mining Act, this law has no provisions on impact to marine ecosystem.
The obligation that States shall secure the contractors sponsored by their states comply with contractual conditions or duties provided in UNCLOS and its relevant instruments.

States have “due diligence” obligations, however, it means the “due diligence” implemented by their own and administrative measures.
The direct obligations that sponsoring states comply other than States secure a certain activities by contractors they sponsor

① An obligation that sponsoring states support ISA (UNCLOS art. 153, sec 4)

② An obligation that the States apply the precautionary approach reflected in Rio Declaration principle 15 and manganese and sulfide minerals mining codes (Implementation in response to their ability, para. 125)

③ An obligation that the State apply “the best practice for the environment” provided in sulfide minerals mining code

The chamber stated that implementing EIA is also general obligation, and UNCLOS art. 206 is an obligation for every country.
The Approval of “Environmental Management Plan” in 2012, July 26\textsuperscript{th}.

2007 Proposals by scientific community to set up a network of protected areas for the protection of the structure of biodiversity and the utilization of ecosystem

2008年 Legal and Technical Committee

The protected area of Clarion-Clipperton Zone (deep seabed)

→ Areas of Particular Environmental Interest, APEI

This was originally different from the movement of establishing protected areas in High Seas.

Not yet unapproved in 2011, July
The Guiding Principle of Environmental Management Plan

The plan articulates that it comply with “the obligation, responsibility, regulations and procedures” established by ISA.

1）Common Heritage of Mankind
2）Precautionary Approach
3）Protection and Preservation of Marine Environment（including Underwater Cultural Heritage）
4）The Impact Assessment before the Activities
5）The Conservation of Biodiversity and Sustainable Use
6）Transparency
Environmental Management Plan and BBNJ

- **2012, July**  The responsibility of ISA was placed to argument in UN (since 2004) as for the conservation of biodiversity Beyond National jurisdiction and its utilization.

- **2015, June**  In the general assembly of UN, a resolution on BBNJ was adapted on the recommendation of a working group.

- The meeting was held twice in 2016, and will be held twice in 2017.

- Measures of Area-based Management Tools etc. (Marine Protected Areas etc.)

- EIA (UNCLOS art. 206) etc.
Mining Act was revised in the following year of the second Mining Code (hydrothermal deposits). → relatively early response

However, Taking into consideration rapidly development of environmental rules on the deep seabed since 2012, this revision seems that, first of all, Japan would like to secure the interest of mineral resources in EEZ than to comply with international obligations of the exploration and exploitation of mineral resources on the sea floor.

Taking into consideration UNCLOS art. 82, art. 206, advisory opinion of Seabed Disputes Chamber (2011, feb.), three mining codes, Environment Management Plan (2012), the guidance of legal and Technical Committee (2013) and the movement of BBNJ, the revised Mining Act is not enough to fulfil the tendency mentioned above.
Others

Liberal Democratic Party

The Special Committee on the Exploitation of Outer Space and Ocean

The Legal Draft Outline on the Protection of National Interest concerning EEZ and Continental Shelf (draft)
Working Group for the Promotion of Legislation concerning EEZ (Liberal Democratic Party)

2015, August The establishment of Working Group for the Promotion of Legislation concerning EEZ (chairman, YAMAMOTO Ichita, Member of the House of Councilors)

Original Draft because there were not unified rules to fisheries compensation arising from the exploitation of marine resources etc., this draft articulates the procedures or rules for fisheries compensation accompanied by the exploitation of marine resources.

In the entry of private businesses to the exploitation of marine resources, since they were often obliged to separately negotiate individual fisheries cooperative association in some areas and step on the complex procedure. That is why the draft was drawn up. In addition, it articulates the support of the exploitation of hydrothermal deposits around offshore Okinawa, Izena Kaiketsu.

However, in the Legal Draft Outline on the Protection of National Interest concerning EEZ and Continental Shelf (draft) as of 2016, April 28th, the content mentioned above can not be seen.
This Study was implemented as part of “SIP: Next-generation Technology for Ocean Resources Exploration” under Cabinet Office. It should be noted this presentation is my own opinion.
Thank you for your attention.