Major deficiencies remain in Beeby 6 regarding liability and responsibility. Some delegations appear to be concerned only about Article 10, but it is necessary to examine several other articles in order to have the entire picture. These include definitions which are missing or inadequate, the failure of Article 2 to state as a firm obligation the avoidance of harm to the environment, and the failure of Article 4 to cover soil, ice and aquatic environments.

As a general matter, the draft Convention is silent on the question of to whom any operator or state is liable. In ECO's view, all liability should be to the Commission, as the representative of the collective interests of the interna' "1 community.

Beeby 6 continues to maintain the fiction that there could be natural disasters which could not be foreseen, which then would give rise to a defense. ECO submits that no defenses are appropriate in the Antarctic, and on that basis opposes there being the sort of review contemplated in paragraph 6(a) of Article 10.

Because Beeby 6 attempts to distinguish between damage to the environment, damage to other uses of the Antarctic and damage to persons or property, the present text is difficult to understand. In addition, the rules for prospecting are different than those for exploration and development, which adds further confusion.

Article 10(2)(b), concerning reimbursement for cleanup and other remedial action, includes a confusing final clause about "payment in the event that remedial action is not possible." This ignores the likelihood that, while some remedial action may be possible, there will still be damage to the environment for which compensation must be paid.

BACKPEDALING

ECO is distressed to learn that some delegations are formally backing away from the concept of strict and unlimited liability for damage to the environment. How will the limits be set?

The catastrophic oil spill off the coast of France involving the Amoco Cadiz demonstrates that environmental damage easily can exceed the limits agreed to in pertinent international agreements, such as the liability and cleanup conventions administered by the International Maritime Organization. ECO submits that Beeby 6 must therefore adhere to strict and unlimited liability for damage to the environment.
RESIDUAL STATE LIABILITY

In the current draft, the Sponsoring State becomes liable only in the limited case where it does not carry out its obligations under the Convention. However, there is no mechanism provided for determining the facts about the alleged failure, the concomitant question of the state’s liability, or its extent. Who will raise these matters, and in what forum? ECO understands that some delegations are adamantly opposed to any state liability? Isn’t this absurd given the key role that those same delegations want for the Sponsoring State?

A REGIONAL FUND

Another issue on the minds of many delegations is how to provide for emergency situations and for those cases where fault and liability are not clear or are impossible to determine. ECO does not oppose the creation of a Fund to cover situations where the operator goes bankrupt or the damage is of undetermined origin. However, there is no provision for financial recovery from operators and Sponsoring States. There is a potentially enormous gap in coverage for impacts judged acceptable during the licensing process which turn out to have significant, non-negligible impacts. That gap needs to be carefully addressed by delegates when considering what a Fund should cover.

COMPLIANCE LINKAGE

Obviously, the question of liability is woven inextricably into the issue of compliance with the principles and rules of the minerals regime. The more certain the liability obligations and the fewer opportunities to argue against the imposition of liability, the more likely that responsibilities will be taken seriously. On the other hand, the more the risk is spread among various governments, the less incentive there is for Sponsoring states and operators to comply scrupulously with the rules of the regime.

DEFINITION OF DAMAGE

Another major problem with the existing text is the definition of damage to the environment, and how it relates to the approval of activities. When the liability provisions are read in conjunction with the definition of damage to the environment, it raises the very serious question of whether significant damage to the environment that was judged acceptable during the licensing process will be covered by the liability provisions. An operator could argue that it is exempt from liability since it complied with all requirements of the Management Scheme and did not violate other provisions of the Convention.

PENALTIES

Another significant gap in Beeby 6 is the failure to impose penalties if an operator fails to report a discharge or other event causing a risk of environmental damage, fails to correct a violation, or provides false information regarding permit and licensing information.

ECO urges delegates to review carefully the new ASOC Information Paper regarding liability, which provides solutions to these problems.

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