In this issue *ECO* analyses the latest minerals negotiating text, Beeby 6, and provides an updated flow-chart of the key decision making points in prospecting, exploration and development.

In *ECO*'s opinion Beeby 6 remains seriously deficient in ways which will put environmental protection at risk.

**BREAK POINTS**

There is a definite break point between prospecting and exploration, reflecting changes in scale, technology, economic commitment and the potential for environmental damage. However there is no similar break point between exploration and development despite potentially dramatic changes.

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**Operator**

Prospecting

- Notification of prospecting activities, 9 months in advance 35(6)
- Notification of changes, & cessation; annual reports etc. 35(7)

via Sponsoring State

Prospecting occurs

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**COMMISSION**

- Adopts general measures for data release/confidentiality and reviews. 35(12)
- Receives notifications & reports (member may seek further clarification 36(1)) Circulates to all Parties.35(8)
- Is the activity consistent with Convention? 36(2,3,4)
  - No
  - Yes
    - Takes appropriate action which may include measures applicable to all operators. 36(5,6)
BEEBY 6 - LICENCE TO MINE ANTARCTICA

Operator \rightarrow Sponsoring State

Is the area open for mining for that resource? No \rightarrow Yes \rightarrow Sponsoring State requests opening of an area for mining for a particular resource. 37 \rightarrow via SECRETARIAT \rightarrow All Parties and Commission observers attending the meeting 37(3) \rightarrow \rightarrow Conversion 38(bis)

ADVISORY COMMITTEE advises on environmental impact on request. 48(bis)(2), 26(2b)

REGULATORY COMMITTEE can impose sanctions (modify, suspend, cancel or penalise). 48(bis)

Development activities under an approved Management Scheme. Regulatory Committee monitors 49; & can inspect, 13(bis); Commission can inspect, 13(bis).

Development permit must be issued. 51(5)

REGULATORY COMMITTEE

Are there significant changes to envisaged activities or new knowledge to consider? [There is no genuine decision break between exploration & development - this could be a disaster. In hard-rock mining especially the stages differ greatly.] 51(4)

Yes Management Scheme approved. 51(5)

Limited opportunity for changes to Management Scheme. 51(4c)

No

No input by Commission

Cannot be declined

Disputes first referred to REGULATORY COMMITTEE, then to Arbitral Tribunal if necessary. Grounds for these disputes limited to abuse of power or violation of Convention. 47

Sponsors only get parts of application. 26(2,4)

Provides advice only. 26(3,4)

APPLICATION

No

Is the information sufficient and adequate? Yes 51(2) Not examined.

APPLICATION

Seeks further information from Sponsoring State.

APPLICATION

51(3)

via 26(2b)

Disputes first referred to REGULATORY COMMITTEE, then to Arbitral Tribunal if necessary. Grounds for these disputes limited to abuse of power or violation of Convention. 47

Major decision points

Decision-making inst

Bodies without any de
Area opened for exploration & development for that resource. COMMISSION identifies protected areas & sets general guidelines/conditions.

COMMISSION establishes a REGULATORY COMMITTEE for area. The 10 members include Sponsoring & relevant claimant(s), the USA & USSR, miners & developing nations. [Competition for political & economic concessions at expense of environmental protection.]

REGULATORY COMMITTEE Prepares area guidelines for exploration & development.

Application examined. via SECRETARIAT

Is information adequate & sufficient? 43(2)

Yes

No Seeks further information from Sponsoring State.

Do proposed activities conform with the Convention? 43(5)

Yes

No Management Scheme drafted by Sponsoring State, relevant claimant(s) & one other. 44,45 [Members bargain for profits, royalties, who gets technology, whose laws apply etc. Environmental protection at risk.]

Management Scheme approved? 46

Yes

No

REGULATORY COMMITTEE can impose sanctions (modify, suspend, cancel or penalize). 48(bis)

Disputes referred to REGULATORY COMMITTEE first, then to Arbitral Tribunal if necessary. Grounds for these disputes limited to abuse of power or violation of Convention. 47

EXPLORATION

Reviews 38(1)

[ ] Yes [ ] No

Request declined 39(2)

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Disputes referred to REGULATORY COMMITTEE first, then to Arbitral Tribunal if necessary. Grounds for these disputes limited to abuse of power or violation of Convention. 47

ADVISORY COMMITTEE Provides advice only. Only gets parts of application. Gives advice on some aspects of the Management Scheme [but does not see or review the final Scheme].

Application declined

ExploEation under an approved Management Scheme. [Different Schemes can have different laws & environmental controls depending on outcome in Regulatory Committee.] Regulatory Committee monitors 49; & can inspect; Commission can inspect. 13(bis)

Development permit application.

KEY

- Appeals
- Advice only. Has no decision-making role.
- Numbers refer to Articles & paragraphs in the text of Beeby 6.
- Editorial comment.
- Implicit obligation but procedures ambiguous.
differences between them, particularly in hardrock mining.

Once an exploration permit is issued, development will follow if the operator wants to proceed. A development permit cannot be turned down by the Regulatory Committee - the Management Scheme may only be modified. There is provision in the text for the Regulatory Committee to suspend, modify or cancel exploration or development activities if they have caused or are about to cause unacceptable environmental damage. However, this is not equivalent to a decision making break point between exploration and development.

It also raises questions of how potential damage will be predicted, and if the process can in reality move fast enough to prevent the damage. The Antarctic environment does not recover from damage with the relative ease of other environments. There must be the possibility to decline a development permit application on environmental grounds.

POWER AND OVERSIGHT

Exploration and development is almost entirely under the control of the Regulatory Committees. The Regulatory Committee makes all important exploration and development decisions but is not fully accountable to the Commission. There are few checks and balances except when there is an alleged violation of the Convention or an abuse of power, and then only through the disputes procedure. Neither the Advisory Committee nor the Commission can review the definitive Management Schemes at either exploration or development stages.

There are no intergovernmental or nongovernmental observers on Regulatory Committees. Many key documents produced or considered by the Regulatory Committees are not required to be circulated to other bodies. Operations in different areas will be regulated by different laws, rules and practices, based on "bargains" made in the various Regulatory Committees.

INFORMATION

Confidentiality of data provisions could limit access by the Advisory Committee and the Commission to vital information about geological hazards and other environmental problems.

LIABILITY

Liability limits and defences will enable operators to avoid paying for damage resulting from their activities. There is at present insufficient residual state responsibility to encourage Sponsoring States to supervise their operators properly.

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PRODUCTION TEAM

Jim Barnes
Colin Benson
Joy Culy
Vicki Getz
Lena Hagelin
Chris Home
Mike Innes
Irmis Mussack
Susan-Jane Owen
Mark Roach
Cornelius van Dorp
Cath Wallace
Barry Weeber
Roger Wilson

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ECO welcomes contributions. For SUS25, we will send you all Antarctic ECOs for a year. Contact ASOC, 218 D St SE, Washington DC 20003, USA.