

The mandate of Working Group B was to submit recommendations for equitable distribution of payments and contributions under Article 82 paragraph 4 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)

H.E. Ambassador Eden Charles, Deputy Permanent Representative of Trinidad and Tobago to the United Nations, New York, served as Facilitator, and Mr. Kenneth Wong, Counsellor (Commercial), Embassy of Canada, Beijing, was the Rapporteur.

82(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.

The Group started with a textual analysis of key terms in Article 82(4), from which suggestions for consideration can be inferred.

1. The Group submitted that the term “*through*” must not be interpreted to mean “*to*” the Authority because it views the Authority as a conduit for transmissions of payments and contributions to States Parties in accordance with 82(1). In this regard, the role of the Authority is only instrumental. The final destination of the payments and contributions is the States Parties.

In seeking to interpret “*through the Authority*”, the Group observed that the following should be taken into consideration:

- a) The need for the Authority to establish a mechanism for collecting payments and contributions and then distributing them in a timely and efficient manner to States Parties.
- b) The establishment of this mechanism may entail additional costs for the Authority. Consequently this could be done through possibly:
 - i. the regular budget of the Authority or,
 - ii. the Authority retaining an agreed percentage of the amounts collected to cover the associated costs.
- c) Possible role for the Finance Committee – Perhaps there is a possible role for the Finance Committee to recommend what would be a reasonable percentage for the Authority to retain to cover administrative costs. It was also argued that the Convention does not contemplate such a function for the Finance Committee and as a result, the Council of the Authority would have to mandate the Finance Committee to assume this task.
- d) It was also felt that the Authority should redistribute the payments and contributions in a timely and efficient manner.
- e) The Group also advanced that there would be no need for the Authority to establish a fund for the purposes of investing the payments and contributions received from States Parties because this would be inconsistent with the objective of timely and efficient distribution.

2. Beneficiaries under 82(4)

For the purpose of 82(4), the Group submits that in order to determine what constitutes States Parties, the definition in Article 1(2)(1) should be used:

"States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

- a) In this regard, the Group distinguished between the provisions of Article 140 which governs activities in The Area which are for the benefit of mankind as a whole from those of Article 82 which covers the resources of the Outer Continental Shelf (OCS).
- b) Notwithstanding the mention of other entities under Articles 160(2)(f)(1) and 162(2)(o)(1) the beneficiaries of the payments and contributions of the Extended Continental Shelf could only be States Parties as this is specifically determined under Article 82(2)
- c) Accordingly, Articles 160 and 162 which refer to the functions of the Assembly and the Council respectively, mention both the equitable sharing of financial and other economic benefits derived from activities in The Area (defined in Article 140) as well as the equitable sharing of payments and contributions made pursuant to Article 82, however without changing the specific definitions of beneficiaries under Articles 82 and 140 respectively.

3. Regarding "Equitable Sharing Criteria",

- a) In seeking to determine what constitutes equitable sharing criteria under 82(4), it was argued that the Authority would need to develop and maintain a set of criteria to be used to calculate amounts to be distributed to all States Parties. It should be recalled that under article 162(2)(o)(i), the Council is charged with the responsibility to recommend to the Assembly rules, regulations and procedures on the equitable sharing of the payments and contributions made pursuant to Article 82.
- b) In determining equitable sharing criteria, the Authority is bound to take into account *"the interests and needs of developing States, particularly the least developed and the land-locked among them."*
- c) It was agreed that, based on the wording of 82(4) that the 8 States Parties that are both Land-Locked States (LLS) and Least Developed Countries (LDC) would have the highest priority and the highest ranking. The 37 State Parties that are either LLS or LDC would be next, and then other similar categories may be considered, such as Small Island Developing States (SIDs) and Geographically Disadvantaged States. This would be followed by other developing States Parties, followed by the remainder of the States Parties.
- d) To assist in ranking and in determining quantitative scores for the States Parties, the Assembly may consider using the following:
 - i. the UN's [scale of assessed contributions](#) adjusted to take into consideration the number of States Parties to the Convention
 - ii. the UNDP's Human Development Index

- iii. Other indices or lists that may be found relevant for this purpose
 - e) Regarding “*interests and needs*”, there was some discussion as to whether the use of the Assessed Contributions list and Human Development Index as a proxy for quantifying “*needs*” was sufficient. No effective way to more fully account for “*interests and needs*” could be enunciated however.
- 4. A literal interpretation of 82(4) provides that the payments and contributions should go directly to the States Parties. Article 82(4) however also indicates that “interests and needs of developing states” must be taken into account. For this purpose it was suggested that in keeping with the object and purpose of the Convention, it may be possible to distribute the payments and contributions through established programs and funds to help developing states meet their targets under, for example, the Millennium Development Goals.
- 5. In order to discharge the responsibility to distribute and properly account for “*equitable sharing criteria*”, the Authority would need to develop and maintain a list with quantitative values to be used to calculate amounts to be distributed to States Parties. This list should be updated as new data becomes available, e.g. ECOSOC evaluates the LDC list every 3 years, and UNDP’s Human Development Index is issued annually.