



WORKSHOP ON MARINE MINERAL RESOURCES OF AFRICA'S CONTINENTAL SHELF AND ADJACENT INTERNATIONAL SEABED AREA

PROSPECTS FOR SUSTAINABLE DEVELOPMENT OF THE AFRICAN MARITIME DOMAIN IN SUPPORT OF AFRICA'S BLUE ECONOMY

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CONCEPT NOTES

Introduction

The workshop on **Marine Mineral Resources of Africa's Continental Shelf and Adjacent International Seabed Area – Prospects for Sustainable Development of Africa's Maritime Domain in support of Africa's Blue Economy** is organized by the International Seabed Authority (ISA) and the Republic of Uganda in partnership with the African Mineral Development Centre (AMDC) and GRID-Arendal (Norway) and with the support of the African Union Commission (AUC), United Nations Economic Commission for Africa (UNECA) and the PEW Charitable Trust.

The workshop will bring together experts from the international legal and scientific community with national and regional government officials, scientists, researchers and academics. It will discuss issues associated with the United Nations Convention on the Law of the Sea (UNCLOS) and the work of the ISA on marine mineral resources development and the protection and preservation of the marine environment from activities in the international seabed Area ('The Area').

The workshop will discuss and propose mechanisms for improving regional cooperation and participation of African countries in the deep seabed regime. In particular, it will address special interests of landlocked African countries. These issues will be addressed in the framework of the United Nations Sustainable Development Goals (SDGs). In

particular, SDG 14, which refers to “conservation and sustainable use of the oceans, seas, and marine resources for sustainable development.”

Specifically, the workshop is planned to motivate African States to:

- (a) build relevant technical capacity in relation to activities in the deep seabed,
- (b) increase participation in decisions that affect the Area,
- (c) take part of the activities in the Area,
- (d) define and enable sustainable activities on Africa’s continental shelf and
- (e) contribute to the sustainable development of Africa’s Blue Economy.

The workshop intends also to be a contribution for the discussions and achievements of Africa’s Blue Economy in the context of the African Decade of Seas and Oceans (2015–2025), which was launched by the African Union on July 25th, 2015.

The International Seabed Authority (ISA) and activities in the international seabed Area (The Area)

The United Nations Convention on the Law of the Sea (UNCLOS) states that the seabed and subsoil located beyond the limits of national jurisdiction, known as the “Area”, and its mineral resources, are the common heritage of mankind. It also establishes the ISA as an autonomous international organization within the United Nations system through which States Parties to UNCLOS organize and control activities in the Area, particularly with a view to management of its mineral resources.

All States Parties to UNCLOS are automatically members of the ISA. Under UNCLOS, the ISA has the responsibility to process applications, monitor activities, and adopt rules and regulations for the conduct of exploration and mining activities in the Area.

To date the ISA has issued regulations governing prospecting and exploration for three different mineral resources: polymetallic nodules (2000, updated 2013), polymetallic sulphides (2010) and cobalt-rich crusts (2012). Currently, the ISA is working on draft regulations for the exploitation of these mineral resources.

With improving technology there is a growing interest in the Area and presently there are twenty contractors, both state-owned and private enterprises, including several Pacific Small Island Developing States (SIDS), which have engaged with activities in the Area by obtaining exploration contracts from the ISA. No contractors come from the African region.

The increased issuing of contracts by the ISA, including to a number of SIDS from the Pacific region, provides a motivation for African States to explore avenues for their enhanced participation in the international seabed regime.

Africa's Blue Economy

Africa is a huge continent bordered by the Indian and Atlantic Oceans, as well as by the Mediterranean and Red Sea. Described as a big 'Island Continent', Africa has 38 out of its 54 States as coastal States. Maritime zones under Africa's jurisdiction include about 13 million square kilometres of Territorial Seas (TS) and Exclusive Economic Zones (EEZ) and more than 6.5 million square kilometres of extended Continental Shelf. This is about 20 million square kilometres of maritime areas, which can contribute to sustainable development of the African continent.

The vast natural resources, both living and non-living, contained in the waters within and around the African Continent, has led to a growing interest in the African Blue Economy. This is reflected in the African Union (AU) 2050 Africa's Integrated Maritime (AIM) Strategy (January 2014), and in the publication by the United Nations Economic Commission for Africa (UNECA) of "Africa's Blue Economy: A Policy Handbook" (March 2016).

The African Union (AU) plays a crucial role in developing and implementing the Blue Economy policy and strategy in the African region. Over the past decade, the African Union Commission (AUC) has built an enlarged Africa-wide consensus regarding the critical role that the Blue Economy could play in fostering structural transformation in Africa during the next decade. The AIM Strategy describes the Blue Economy as the "new frontier of African Renaissance." In addition, the Blue Economy is at the center of the AU's Agenda 2063, at which it was unanimously declared to be "Africa's future" and recognized as a catalyst for socioeconomic transformation. In July 2015, the African Union launched the African Day (25 July) and Decade of Seas and Oceans (2015–2025) to rally action on the Blue Economy.

In addition, the African Blue Economy is interlinked in a variety of ways with the majority of the Sustainable Development Goals (SDGs) adopted by the United Nations. In particular, SDG 14 refers to "Conserve and sustainably use the oceans, seas, and marine resources for sustainable development." The SDG 1 forecast that aquatic and marine resources play a crucial role in supporting an array of economic sectors that provide livelihoods and employment opportunities to end poverty.

The African continent presently sits at a crossroads of opportunity to re-evaluate its development pathway within the context of the Blue Economy, taking into account socioeconomic, political, and environmental considerations. Africa needs to define its own understanding of prosperity and progress, while promoting innovative thinking and practices that will enhance human and ecological well-being.

The Africa's Maritime Domain

The AIM Strategy proposes the concept of "Africa's Maritime Domain (AMD)" without prejudice to maritime zones as established by UNCLOS. The AMD refers to all areas and

resources of, on, under, relating to, adjacent to, or bordering on an African sea, ocean, or African lakes, intra-coastal and inland navigable waterways, including all African maritime-related activities, infrastructure, cargo, vessels and other means of conveyance. It also includes the air above the African seas, oceans, lakes, intra-coastal and inland navigable waterways and to the oceans electromagnetic spectrum as well.

One of the challenges for the concretization of the AMD is the establishment of the African outer limits of the continental shelf, which are the border with the Area.

UNCLOS provides that the coastal State shall have rights and jurisdiction over an economic exclusive zone (EEZ), which shall not extend beyond 200 nautical miles from its land territory and internal waters (the Baseline as defined in UNCLOS). The UNCLOS provides also that the coastal State shall delineate the outer limits of its continental shelf, where the shelf extends beyond 200 nautical miles.

To confirm its entitlement to a continental shelf beyond 200 nautical miles, the coastal State must make a submission to the Commission for the Limits of the Continental Shelf (CLCS). Based on the submissions, the CLCS shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. This recommendation would be regarded as ‘final and binding’.

The UNCLOS also provides that a coastal States shall deposit with the Secretary-General of the United Nations (and with the Secretary-General of the ISA) charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf.

In 2008, the African Union Assembly at its tenth ordinary session, engaged with the issue of the extended continental shelf of African coastal states and adopted a decision that was stated to be made with the consciousness of: “the major geopolitical and strategic stakes linked to the African continental shelf and of its abundant mineral and biological resources, which constitute an important source of foreign currency earnings for the economic development of the continent”.

The task therefore before African coastal states with extended continental shelf is to first secure their extended continental shelf in line with UNCLOS. Presently, most African coastal states succeeded to make full submissions to the CLCS. Those few who could not complete full submissions due to the complexities and technicalities involved in the preparation of submissions, succeeded in submitting the required preliminary information by the May 2009 deadline.

Submissions and preliminary information showed that Africa potentially could incorporate more than 6.5 million squares kilometer of outer continental shelf, which may contain natural resources that could generate wealth for African and potentially provide necessary funds to promote development in such states.

In essence there is a need for the establishment of an African strategy and a coordination

framework to assist African coastal states to:

1. progress the appropriate submissions to the CLCS;
2. advise and assist them in a manner that meets the peculiar needs of Africa;
3. evaluate the potential benefits from resources of the extended continental shelf of Africa, and
4. comply with obligations imposed by UNCLOS with respect to these national and international seabed spaces.

The African current situation in relation to exploration activities in the Area

Recently, the Deputy to the Secretary-General of the ISA at the sensitization seminar held in South Africa (2015) expressed concerns over the lack of participation by African states in the deep seabed regime. This is even more so since UNCLOS, after declaring the Area and its resources as the Common Heritage of Mankind, goes on to explicitly encourage the participation of developing states in deep seabed activities by stating:

*The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part (Part XI of the UNCLOS), having due regard to their special interests and needs, **and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.***

However, Africa is the only regional group which has so far not engaged with activities in the Area by obtaining exploration contracts from the ISA.

The drivers behind the requests for mineral exploration sites in the Area include: (a) the strategic importance of participating in the international seabed regime; (b) the economic and strategic value of the exploration sites granted by the ISA; (c) the need for the identification of new strategic reserves; (d) the expansion and protection of the national mining sector; and (e) the need for development of scientific knowledge and mastering new technologies.

A well-thought out strategy towards promoting Africa's engagement with the international seabed regime would ensure that, at some point, African states and their nationals, both natural and juridical, would have the opportunity to engage in deep seabed exploration activities in this part of the sea. Also, it would facilitate the development of appropriate institutions that would enable Africa to actively participate in this vital regime of the sea.

Although deep seabed exploration and mining is a capital intensive industry, which may be burdensome to single African states to embark upon on their own, this may be overcome by African states pooling resources together, under the auspices of the AU, in order to engage in deep seabed activities in the Area.

It is pertinent here to mention that the idea of an African institution to engage in deep seabed mining was actually proposed as far back as 1988, during the third regional minerals conference held at Kampala, Uganda, where the idea of forming an African deep seabed mining corporation was put forward. While it is appreciated that this did not come to fruition in 1988 when the possibility of deep seabed exploitation was remote, there is currently no strategy for the establishment of such an institution, especially with the imminence of deep seabed exploitation and since states, corporations and other entities in other regional groups in the world are already engaging with what promises to be a major source of mineral wealth for the future.

The participants of the third regional mineral conference in Kampala, Uganda agreed that Africa should have a strategy to put in place some type of African deep seabed Mining Corporation that would participate in the exploitation of this part of the sea. On the other hand, a more short-term strategy option to engage in deep seabed activities, pending the establishment of such African corporation, could be the approach adopted by several Pacific Small Island Developing States (P-SIDS), such as the Republic of Nauru and the Kingdom of Tonga, where local companies sponsored by their respective government, obtained a contract for exploration in the part of the Area reserved by the ISA for developing countries. This could be an option available to African states, with the possibility of such states acquiring some equity interest in such subsidiary corporations and also encouraging their nationals to do so, if they wish.

Furthermore, there could be significant economic benefits, which could accrue to African states that sponsor deep seabed mining exploitation in the Area. Potentially this could benefit such states in the following ways: **by contributing to its government revenues through taxes and/or royalties, by creating jobs and training opportunities, as well as strengthening the domestic private sector, encouraging foreign investment, the funding of public service improvements, contributing to infrastructure development and supporting other economic sectors.**

One of the key issues that African States would have to engage with in regard to deep seabed mining is the impact such mining activities in the Area would have on the marine environment. For instance recently the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS) in its advisory opinion on Responsibilities and Obligations of States sponsoring persons and entities with respect to activities in the sea, pointed out that state laws and regulations governing seabed mining should be 'no less effective than international rules, regulations and procedures' such as the UNCLOS and the ISA Mining Codes.

The UNCLOS and the ISA Mining Codes foresee that states, both developed and developing, have a direct obligation to ensure that seabed mining activities are carried out in accordance with the precautionary approach, while employing best environmental practice and conducting effective prior environmental impact assessment. Therefore, all African states would need to adopt appropriate national legislative framework that would ensure that any entity located within their territory complies with best environmental

practice and actually conducts appropriate environmental impact assessment and generally complies with all relevant international obligations.

In addition to environmental protection, such legislation would have to deal with other pertinent issues, such as foreign investment and fiscal management of deep seabed mining, as well as seek to regulate possible tensions between deep seabed mining activities and other competing activities, for e.g. fisheries, maritime transport, conservation of marine species, research, laying down of submarine telecommunications cables etc., which may impact the domestic economy.

Despite the various ongoing activities in preparation for eventual commercial exploitation of Area, as well as the sensitization seminar on the work of the ISA, and the Secretary-General of the ISA's presentation to the Commission of the African Union, African States did not yet produce a clear strategy reflecting some kind of African position with regard to deep seabed mining activities.

Recent study on this matter¹ suggests that there is need for an African coordinating body, perhaps in liaison with the African Union office of the legal counsel, **to develop model deep seabed legislation and seek to encourage interested African states to get their legislature to enact appropriate legislation on this.** The study also suggests that although there are potentially several bodies that could take up this role if their mandate is expanded, the recently launched African Minerals Development Centre (AMDC), established to strategically coordinate the implementation of the African Mining Vision (AMV), provided with a specific expanded mandate with regard to deep seabed mining, could be an appropriate coordinating institution.

Objectives and expected outcomes from the workshop:

The workshop on **Marine Mineral Resources of Africa's Continental Shelf and Adjacent International Seabed Areas – Prospects and Considerations for Sustainable development of Africa's Maritime Domain in support of Africa's Blue Economy** is proposed to raise awareness among African States about the importance of the sustainable development of activities on the Africa's continental shelf and adjacent international seabed area (the Area) carried out by African nationals, as well as to discuss strategies that could help African States and nationals to build capacity, engage in deep seabed activities in the Area and promote sustainable use of the maritime areas around Africa. This should take also into consideration the special interest of landlocked countries.

The workshop will accommodate five different sessions reflecting key issues and topics.

¹ Edwin Egede, 2016. Institutional Gaps in the 2050 Africa's Integrated Maritime (AIM) Strategy. vol. 1 *Iilwandle Zethu: Journal of Ocean Law and Governance in Africa*, pp. 1-22.

The first session will consider the importance of the International Seabed Authority (ISA) and other entities created by the United Nations Convention on the Law of the Sea (UNCLOS), as well as the significance of the laws of the sea and related rules, regulations and procedures on the sustainable development of the African continent. This session is expected to raise awareness among African States, including the LLGDS, about the importance of the Law of the Sea for the African continent and, in particular, for the sustainable development of activities in the African continental shelf and adjacent international seabed areas. It is also expected to issue recommendations on how to strengthen the African legal framework in a way that it will better support the sustainable development of Africa's Maritime Domain and Africa's Blue Economy.

The second session will consider the State of Art of marine mineral activities in the world oceans and the prospects for development of responsible prospecting, exploration and exploitation activities on the African continental shelf and adjacent international seabed area. This session is expected to raise awareness among African States, including the landlocked countries, about the political-strategic and socioeconomic importance of the African continental shelf and adjacent international seabed areas, as well as help identify potential areas for scientific and technical cooperation.

The third session will discuss about the importance of the geological, mineral and environmental information to support decision-making, investment and governance of the African continental shelf and adjacent international seabed areas. It is expected that this session will produce guidelines on how to strengthen the Africa-based production, management and dissemination of geospatial information and how to create spatial data infrastructures (SDIs).

The fourth session will discuss strategies for the establishment of African Centres of Excellence on seabed mapping and spatial planning. This session is expected to issue recommendations for the establishment of African Centres of Excellence, to provide African States with increased access to marine geoscientific information and high quality marine research, education and training. The Centres will also advise industry, government and other relevant stakeholders on complex scientific and policy issues critical to Africa's rights and responsibilities in the oceans, as well as related industries and infrastructure.

The fifth session will discuss possible Private and Public Partnerships (PPPs), as well as the prospects and requirements for application for plan of work for exploration in the Area by African companies and governmental agencies, including those from landlocked countries. This session will issue recommendations on how best to promote prospecting and exploration activities in the African continental shelf and adjacent oceanic areas by African initiatives.

Ultimately, the workshop is an opportunity to demonstrate how the deep seabed could contribute to a sustainable African Blue Economy narrative that better reflects the kinds of development goals, partnerships, and forms of social reciprocity that African societies need as they move further into the 21st century.

PROPOSED PROGRAMME OF WORK

Welcome, introductory remarks and Agenda Overview and rationale for the workshop

Session 1- Law of the Sea regime and its importance for the sustainable development of the African continent

Objectives:

Consider the politic-strategic and socio-economic importance of the International Seabed Authority and other entities created by the United Nations Convention on the Law of the Sea, as well as the significance of the law of the sea and related rules, regulations and procedures, for the sustainable development of the African continent.

Proposed presentations/discussions:

- 1- The Law of the Sea Regime: maritime spaces, entities, etc
- 2- The ISA Mining Code and its importance for the African continent
- 3- Issues related to the delimitation of the African outer continental shelf
- 4- African Integrated Maritime (AIM) Strategy and other related African legal regimes
- 5- Africa's Blue Economy Principles in relation to the Sustainable Development Goals
- 6- Opportunities for improvement of the AIM Strategy and other related African legal regimes to support the sustainable development and coordination of activities in the Africa's Maritime Domain and Africa's Blue Economy
- 7- Final discussion, session wrap up and recommendations

Expected outcomes:

- 1- Raise awareness among African States about the importance of the Law of the Sea for the African continent and in particular for the sustainable development of activities in the African continental shelf and adjacent international seabed areas.
- 2- Recommendations on how to strengthen the African legal framework in a way that it will better support the sustainable development of Africa's Maritime Domain and Africa's Blue Economy, in particular, regarding the establishment of the African outer continental shelf and the development of activities in the Area.

Session 2- Prospecting, exploration and exploitation activities in national continental shelves and international seabed area

Objectives

Consider the State of Art of marine mineral activities in the world oceans and the prospect for sustainable development of activities in the African continental shelf and adjacent international seabed area.

Proposed presentations/discussions:

- 1- Prospecting and exploration in the CS
- 2- Prospecting and exploration in the Area
- 3- Integrating environmental considerations
- 4- Exploration technique, methodologies, costs and other requirements.
- 5- Potential areas for cooperation and development in Africa's continental shelf and adjacent oceanic areas
- 6- Final discussion, session wrap up and recommendations

Expected outcomes

Raised awareness among African States about the potential for prospecting, exploration and exploitation activities in African continental shelf and in the adjacent international seabed area.

Session 3- Production, Management and Dissemination of geological, mineral and environmental information

Objectives

Discuss the importance and how to strengthen the Africa-based production, management and dissemination of geological, mineral and environmental information to support decision-making, investment and governance of the African continental shelf and adjacent international seabed areas.

Proposed presentations/discussions:

- 1- Geological, mineral and environmental knowledge as a tool for decision-making, investment and governance of marine mineral activities: Best Practice
- 2- Data and information of the Atlantic and Indian Ocean organized in Geographic Information System (GIS): The Atlas of the African Blue Economy
- 3- Prospects for an integrated African marine Spatial Data Infrastructures (SDIs)
- 4- Prospects for strengthening the production, management and dissemination of geological, mineral and environmental information of the African Maritime Domain
- 5- Final discussion, session wrap up and recommendations

Expected outcomes

Recommendations on how to strengthen the Africa production, management and dissemination of geological and mineral information and how to create spatial data infrastructures (SDIs) to support decision-making, investment and governance of African based seabed activities.

Session 4- African Centers of Excellence on seabed mapping and spatial planning

Objectives

Discuss strategies for the establishment of African Centres of Excellence on seabed mapping and spatial planning.

Proposed presentations/discussions:

- 1- Best practice around the world
- 2- Potential African Centers of Excellence for the Atlantic and Indian Oceans
- 3- Cooperation mechanisms for the establishment of centers of excellence
- 4- Final discussion, session wrap up and recommendations

Expected outcomes

Recommendations for the establishment of African Centres of Excellence, to provide African States with increased access to marine geoscientific information and high quality marine research, education and training and advice to industry and government on complex scientific and policy issues critical to Africa's rights and responsibilities in the oceans, as well as related industries and infrastructure.

Session 5- Prospects for Public and Private Partnership for preparation of application for plan of work for exploration in the Area by African nationals

Objectives

Discuss possible Private and Public Partnerships (PPP)s for the development of African marine activities, as well as the prospects and requirements for the preparation of application for plan of work for exploration in the Area by African companies and governmental agencies.

Proposed presentations/discussions:

- 1- Requirements for application for plan of work for exploration in the Area
- 2- Successful histories of PPP and other partnership for the development of activities in the Area
- 3- Presentation by potential sponsors for African-based activities in the Area
 - a. Government agencies
 - b. Private industry
 - c. Others
- 4- Presentation by potential African applicants for plan of work for exploration
 - a. Government agencies
 - b. Private industry
 - c. Others
- 5- Final discussion, session wrap up and recommendations

Expected outcomes

- 1- Identification of potential PPP to allow application for plan of work for exploration in the Area by African companies and governmental agencies.
- 2- Recommendations on how to promote responsible prospecting, exploration and exploitation activities in the African continental shelf and adjacent oceanic areas by African initiatives.

Wrap up and synthesis of recommendations

Closing remarks