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Ministerio de Minería

Gobierno de Chile

## ISA's workshop in Warsaw

# Seabed mining: Shared value and financing of the Seabed Authority

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# Shared value and Financing of the Seabed Authority

## Principles

1. Area → Common mankind heritage
2. Respect for applicable laws in the Area; peace, security, cooperation and understanding
3. Loyal economic practices
4. All mankind benefits, emphasis on interests of developing States



## Shared value and Financing of the Seabed Authority

5. Sustainable exploitation. Protect ecosystems, specially fragile ones
6. Protection of mining developing States
7. Equal treatment
8. Compensation to the international community for the loss of common heritage caused by resources exploitation. Alternatives of royalty (Chilean case). Comparative law.
9. ISA financing sources

## International community right over submarine natural resources in the Area (1/2)

Articles 136, 137 and 138 of the UNCLOS:

*“The Area and its resources are the common heritage of mankind, and no State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources. The ISA shall act on behalf of mankind over all rights in those resources.”*

Comment: as such, the economic value that is obtained from the seabed wealth, must be shared by those who invest to obtain it, to the International Community, to whom this wealth belongs.



## International community right over submarine natural resources in the Area (2/2)

*“The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding.”*

Comment: The exploitation of minerals in international waters should be carried out in harmony with other economic activities in the Area, and taking into account zones and species under protection. Likewise, it will have special consideration for International Marine Safety.

## The right to explode of the concessionaire

Article 151, number 8: *“Rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration for and exploitation of minerals from the Area. In the settlement of disputes arising under this provision, States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements”*

## Shared value

### Article 140 of the UNCLOS:

*“Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States”*

Comment: The interest of the developing States must be respected, regarding the preferential distribution of the economic benefits collected by the ISA.

The ISA should foresee a equitable distribution of the economic benefits obtained from the activities in the Area. This should be done through some appropriate mechanism, in a non-discriminatory way, quickly defining the distribution criteria among different States.

## The right to a sustainable exploitation

Article 145 and 194 of the UNCLOS: *“Necessary measures shall be taken to ensure effective protection for the marine environment from harmful effects.*

*States shall take, individually or jointly as appropriate, all measures that are necessary to prevent, reduce and control pollution of the marine environment from any source.*

*ISA shall adopt appropriate rules, regulations and procedures for:*

*the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities.*

*the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.”*

## The protection principle to those economies that exploit in-land minerals (1/2)

### Article 150 of the UNCLOS: Policies relating to activities in the Area

Literal (h): *“Activities in the Area shall ensure the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area”*

Comment: States that base their development mainly on land mining must be respected, so that in front of an eventual new supply of minerals obtained from international waters, they do not harm prices of land-based minerals.

## The protection principle to those economies that exploit in-land minerals (2/2)

Article 151, number 10: *“the Assembly shall establish a system of compensation or take other measures of economic adjustment assistance including cooperation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area.”*

Comment: Regardless of eventual compensations, as the main assistance measure to be taken, it is necessary to establish a limit on the production obtained from international waters, so the new offer does not reduce process of minerals in world markets. For this purpose, special considerations will be given to the future supply and demand of each mineral that may be produced in international waters, so as not to generate oversupply in regard to the future demand.

## The Equal Treatment principle

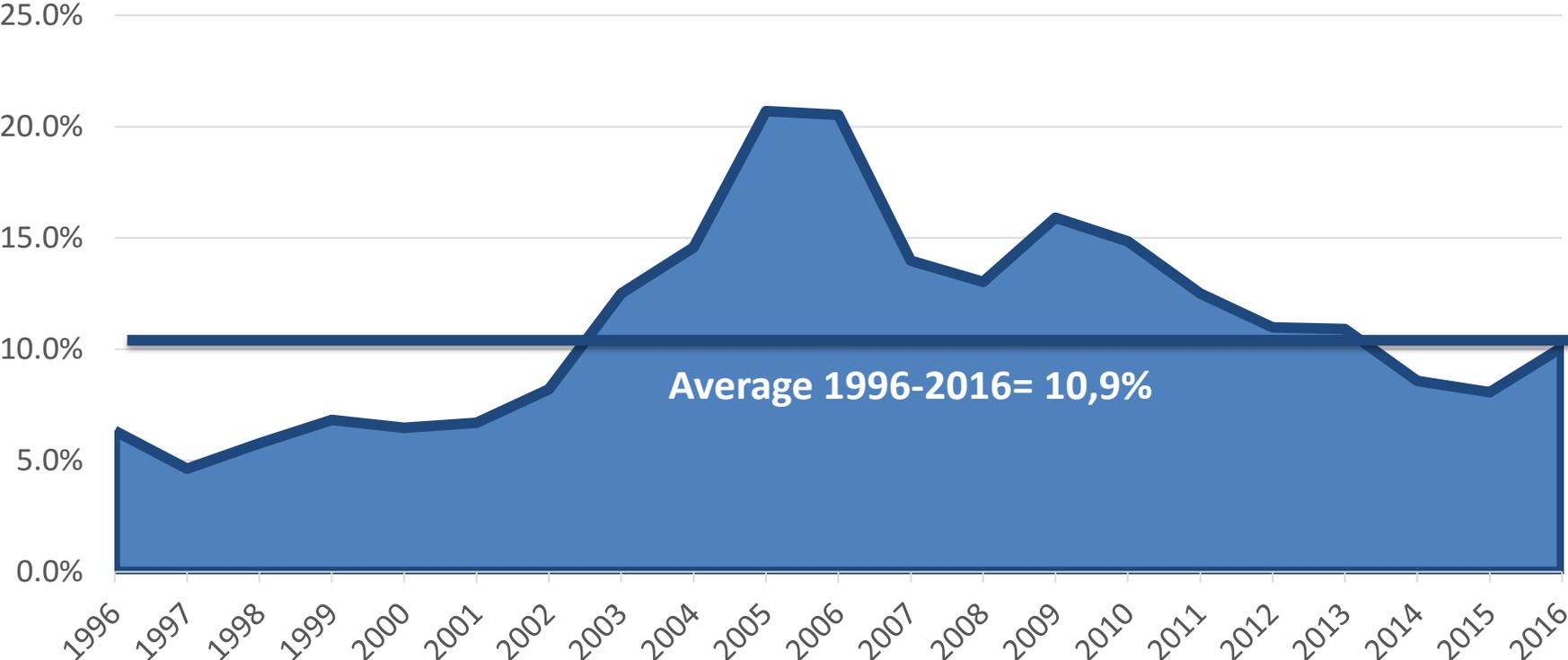
### Article 152:

*“The ISA shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.*

*Nevertheless, special consideration for developing States, including particular consideration for the land-locked and geographically disadvantaged among them, shall be permitted.”*

Comment: The developing states are those that mainly produce on-land minerals, and, in general, they export them with a low degree of added value. These states are far from having the capabilities to participate in seabed mining. Besides, mining sector faces growing environmental demands that increase production costs, along with local communities demands asking to respect their local environment and to share value with them. Having equal treatment with these states, demands that environmental mining standards on international waters should be similar to the in-land mining ones. This is, of high standard, with mechanisms of prevention, mitigation and repair of damage, along with the need of shared value.

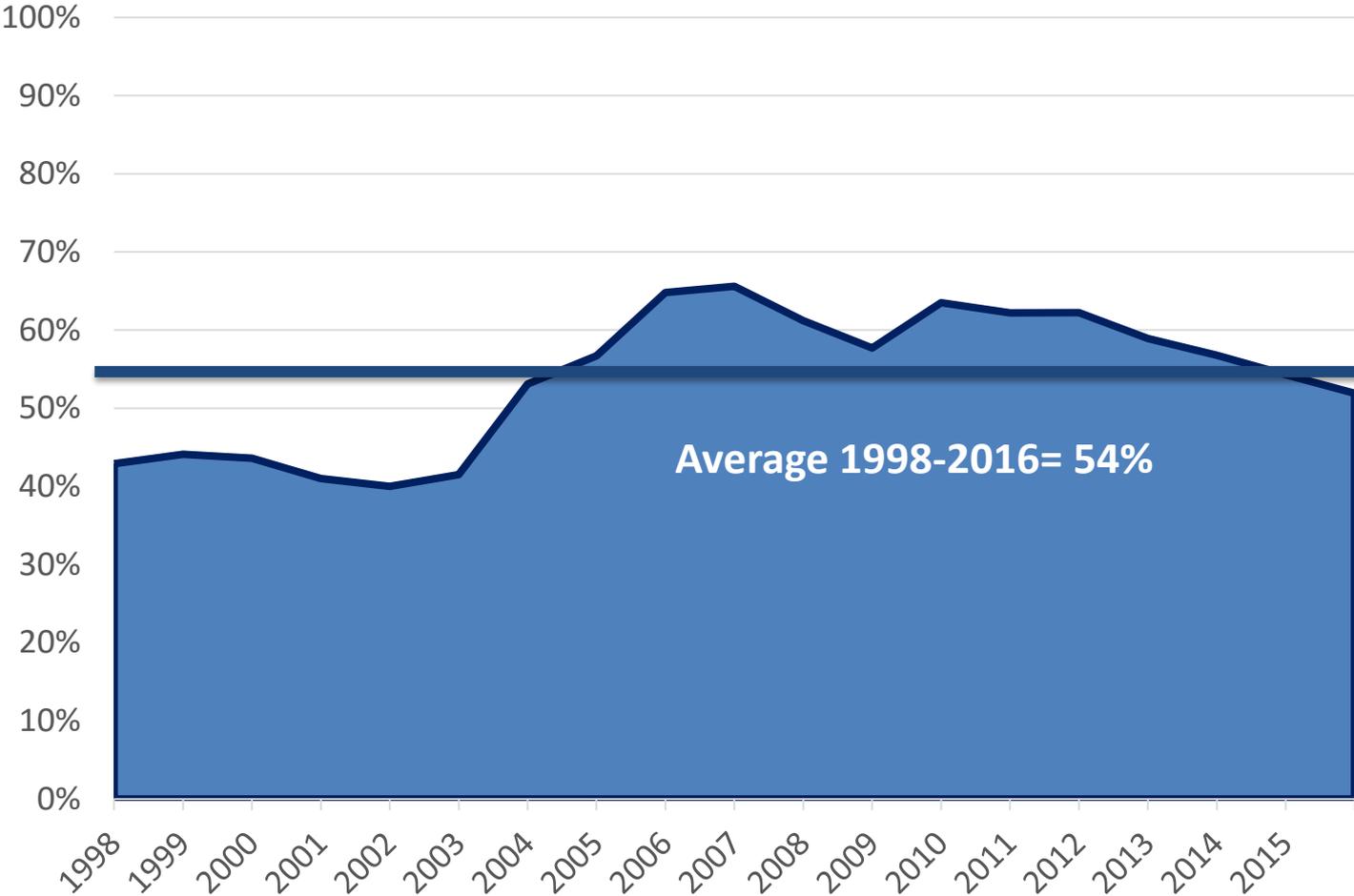
# Chile's share of mining in total GDP (Series spliced)



Source: Central Bank of Chile



# Chile's mining exports



Source: Central Bank of Chile

# Royalty and their distribution to the International Community

## Annex III, article 13:

- *“A contractor shall pay an annual fixed fee from the date of entry into force of the contract.”*
- *“From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater”.*

Comment: In order to compensate the International Community for the marine asset deterioration when the mining resources owned by the community are extracted, the regulation will impose a Royalty to the contractors, determined by a percentage in increasing progressive scale, by sections, on sales, depending on the market value of the extracted product. Such scale will be proposed by the Commission to the Council and Assembly. In order to constitute a compensation to the Community for their natural asset deterioration, the Royalty will be entirely distributed among the nations in the correspondent percentages.

## Financing of the Seabed Authority (ISA) (1/3)

Article 171: *“The funds of the Authority shall include:*

- a) Assessed contributions made by members of the ISA*
- b) Funds received by the ISA in connection with activities in the Area*
- c) Funds transferred from the Enterprise.*
- d) Funds borrowed pursuant to article 174*
- e) Voluntary contributions made by members or other entities*
- f) Payments to a compensation fund whose sources are to be recommended by the Economic Planning Commission”*

## Financing of the Seabed Authority (ISA) (2/3)

Comment: The ISA is currently financed by the states parties, because of their interest in obtaining future economic benefits from their marine mineral wealth, while the final regulation and institutional framework is not yet established.

However, this financing must be progressively being transferred to the contractors, following the same principle of taxpayers, who pay their taxes to their states to finance the functioning of the state institutions. This helps the civil society to be in order, and allow the lucrative activities in an environment of social and legal certainties.

Proposal: To apply an income tax only to the operating companies, in compliance with the tax principle that establishes that income taxes must be paid in the country of the territory (marine, in this case) in which the activity that generate income are carried out.

To facilitate the determination of the amount of the tax, its control and collection, the Regulation will establish a presumed income of right, which does not admit contrary evidence, equivalent to 8 to 12% (depending on the mineral) of the extracted product gross sale value.

## Financing of the Seabed Authority (ISA) (3/3)

Comment: This tax must be collected by the authority that is responsible for collecting taxes in the country (or countries) of the port (or ports) of landing of the extracted product.

The primary control should be carried out by the respective Customs upon reception of the valued product. The local authority will be the responsible for collecting the corresponding amounts and remitting them to the ISA.

The ISA will allocate the corresponding amount to the financing of its activities. If an annual surplus occurs, it must be allocated to the formation of a reserve fund until 50% of the ISA's Budget for the same year is completed. The balances that may exist will be distributed among the nations in the same form and proportions in which the royalty is distributed.



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