



**Periodic Review of the
International Seabed Authority
Pursuant to UNCLOS Article 154**

INTERIM REPORT

Comments by the Review Committee

I. General Remarks

1. The Review Committee wishes to thank the authors of the Interim Report for their comprehensive presentation as well as for the timely production of the Report. The reflections contained in this Report and the conclusions drawn, provide a good basis for the forthcoming deliberations of the States Parties. The various tables and statistics in the Report can contribute to an in-depth assessment of the issues to be dealt with in the course of the Review Process as well as the final decisions to be taken by the Assembly of the International Seabed Authority (the Authority). The description of the history and structure of the Authority in the Report is concise, giving a good overview which covers the most important aspects of this international organisation.

2. The methodology employed by the authors is based on the outline indicated by them at the meeting of the Review Committee in January 2016. The Committee would have hoped for a higher number of responses to the review questionnaire and to the requests for interviews by individuals. In particular, there is an obvious regional imbalance with respect to these responses. Furthermore, the Review Committee noted that in a number of instances, statements and conclusions contained in the Report are based on the views either of a single or of very few respondents so that it is often not clear how widespread a support a specific finding actually enjoys. The Committee therefore requested the authors of the Report for additional clarifications with respect to a number of issues addressed by them.

3. The main concern of the Review Committee in respect of the Interim Report was to transmit this text with its comments to the States Parties as soon as possible in order to provide ample opportunity for its thorough examination before the 22nd Session of the Authority in July 2016. The Committee, in the following paragraphs, will address a certain number of issues dealt with in the Report which in its view merit particular consideration by the Assembly, without wishing to prejudice any observations that may be submitted by the Secretariat, the Legal and Technical Commission and the Finance Committee.

II. The regime for exploration for and exploitation of deep-sea minerals in the Area

4. The Review Committee concurs with the conclusion that to date, “the Authority has made significant efforts to organise and control activities in the Area“, particularly with a view to administering its resources. Nevertheless, there seems to be general recognition that more strategic planning is needed by the Authority in order to be able to adequately cope with future tasks and that a vision for the future should be developed.

5. The question of control of seabed activities by sponsoring States needs to be examined. The Review Committee thus agrees with the recommendation of the Report that a study on the adequacy of sponsoring States legislation to control entities with whom they enter into contracts for exploration, should be commissioned, drawing on the Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS).

6. The Review Committee concurs with the view that the legal rights and responsibilities established by the Authority have been set for seabed exploration but are now urgently needed for exploitation. As suggested in the Report, future contracts should be prescriptive with standard terms and conditions and detailed plans of work that set clear objectives, which can be monitored and enforced. In the opinion of the Committee, the establishment of appropriate mechanisms for directing and supervising a staff of inspectors to inspect activities in the Area, in accordance with Article 162 (2)(z) of the United Nations Convention on the Law of the Sea (the Convention), should be considered. The setting up of such a mechanism or inspectorate would seem necessary with a view to the implementation and enforcement of the terms and conditions of the exploitation contracts.

7. As commercial seabed mining approaches, progress should also be made regarding the protection and preservation of the marine environment. The Committee agrees that in this respect, clear and enforceable rules and standards need to be developed which include mechanisms for assessment and enforcement. In particular, the sharing and accessing of environmental data collected by contractors requires improvement since this issue is raising concerns about the compliance of contractors with their contractual obligations.

8. Also in light of the task of the Authority to administer the Area as a trustee of humankind, the question of transparency regarding the monitoring of the performance of the Contractors needs to be re-examined. This should include a review of the confidentiality provisions relating to data and information supplied to the Authority.

9. A definition of “developing State“ for the purposes of applying the provisions of the Convention to such States would certainly be helpful. In the opinion of the Review Committee, it seems doubtful whether the Article 154 Review Process would be the right forum for attempting to elaborate such a definition. Advice on this question might, however, be sought from the United Nations.

10. The Review Committee would find the suggested study of relevant issues relating to the operation of the Enterprise, which could include an analysis of operation of the reserved area system, highly useful. As recommended in the Report, a consultation process on how the Secretariat should perform the functions of the Enterprise going forward should be encouraged with all Member States, including appointment of a Director-General. Furthermore, the question of setting up the Economic Planning Commission as a subsidiary organ will need to be considered. That Commission should in any case become operational sufficiently ahead of the advent of commercial seabed mining.

11. In the context of further engaging with the scientific community and relevant deep-sea science projects and initiatives, the Review Committee is of the view that the suggested increase in the levels of expertise in both the Legal and Technical Commission (LTC) and the Secretariat, required to incorporate applicable standards for the protection and preservation of the marine environment, merits particular consideration.

III. Representation and attendance at the Authority’s Annual Sessions

12. Insufficient attendance at the meetings of the Assembly has given rise to concern for many years. In particular, if decisions of the Assembly should be taken notwithstanding a lack of quorum, this might lead to a situation where such decisions could be challenged. Ways and means must therefore be explored to try remedy this situation (see comments at IV below).

13. In view of the criticism that the rules governing participation of observers in debates are unclear, the suggestion could be considered that the procedures used by the International Maritime Organisation (IMO) - or other international organisations - might also be adopted by the Authority.

IV. Performance of the Assembly

14. As pointed out in the Report, there is criticism that the Assembly has made very little substantial contribution to considering wider problems of the Authority or making recommendations. The Review Committee therefore is of the opinion that the establishment of additional committees

dealing with specific aspects, such as environment, might be useful in order to generate higher interest in the work of the Assembly.

15. The Review Committee agrees with the opinion expressed in the Report that the Assembly is underutilized, which contributes to poor attendance and lack of interest by States Parties. Re-electing the President of the Assembly for one or more further terms could be considered as a step in enhancing the role of that supreme organ of the Authority. In addition, the holding of only a few meetings of the Assembly spread out over a two-week period is a major disincentive for many States Parties to nominate delegates for attendance. In the view of the Committee, the Assembly should continue to meet annually for one week, while biennial meetings, as also suggested in the Report, would weaken its role and be contrary to article 159(2) of the Convention which provides for the holding of regular annual sessions. In order to make the sessions of the Assembly more attractive and following the practice of other international organisations, its meetings should, however, not coincide with those of the Council. The Council should regularly meet immediately prior to the commencement of the annual session of the Assembly.

V. Performance of the Council

16. As the workload of the Council increases in the future, it should consider meeting twice a year, its second meeting to precede the annual session of the Assembly. The Review Committee agrees with the recommendation that the Council should consider producing a record of decisions taken at each session with a timetable for them to be carried out. The Committee also recognises that regular policy guidance provided to the LTC by the Council is highly important.

VI. Performance of the Secretariat

17. The structure of the Secretariat may well need to be reassessed and adjusted as the regime for deep-sea mining develops. In the opinion of the Review Committee, the Secretariat is doing an excellent job, particularly in view of the very limited number of staff and general financial constraints, notwithstanding the significant increase of the number of contractors in recent years. Nevertheless, in the future additional skills seem to be necessary in various fields and a certain increase in staff may therefore be necessary. If there should currently be any lack of communication within the staff, this question would need to be addressed.

The Committee further wishes to stress that the passing of judgment on who is assuming an "outward facing" role on behalf of the Authority is beyond the mandate underlying this Report.

VII. Performance of subsidiary organs**Legal and Technical Commission**

18. The Review Committee recognises that the role and workload of the LTC require a more in-depth scrutiny as the Commission is undoubtedly overburdened by its manifold tasks. The LTC may also need additional expertise in several fields. The establishment of subcommittees within the LTC should be considered in order to expedite its work. Furthermore, concerns regarding the lack of transparency of the work of the LTC will need to be addressed. In the view of the Review Committee transparency should be the general rule and confidentiality the exception. A third annual meeting of the LTC would seem desirable, but may not be realistic in view of other responsibilities of its members as well as financial implications. Members of the LTC should refrain from acting as delegates from their respective country in the Council in respect of matters that are within the competence of that Commission.

Finance Committee

19. The Review Committee shares the concern with respect to the timing of meetings of the Finance Committee (FC) in relation to meetings of other organs of the Authority during the annual sessions. The FC should be in a position to consider issues with financial implications arising during the meetings of the respective organs. It would also seem desirable that members of the FC do not act as delegates from their respective country in other organs of the Authority in respect of matters that are within the competence of that Committee.

VIII. Forward look: future-proofing the Authority

20. The Review Committee considers, as suggested in the Interim Report, that the elaboration of a long-term master plan based on a clear strategic overview of the tasks of the Authority should be driven by the Assembly. Such a plan should also set out how the Authority will deal with environmental protection measures.

21. The Review Committee is of the view that the suggestion to establish a mechanism or inspectorate seems to merit consideration at the earliest possible time. The questions of establishing the Economic Planning Commission and the Enterprise should also be considered in a near future.

Kingston, Jamaica

25 May, 2016