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Annual report of the Secretary-General

Training programmes for developing countries

Submitted by the African Group

I. Training mandate of the International Seabed Authority

1. Under the United Nations Convention on the Law of the Sea of 1982, training is envisioned as a key non-monetary benefit resulting from the implementation of its part XI and as a means to introduce a degree of equity within the regime of the International Seabed Authority for developing States, by sharing knowledge and building capacity.¹

2. The following obligations are established under the Convention:

(a) The Authority shall:

(i) Develop marine scientific research programmes to benefit developing countries with a view to strengthening their research capabilities, providing training and fostering the employment of qualified personnel (art. 143);

(ii) Promote and encourage the advancement of national technology and scientific knowledge in developing countries through training (art. 144);

(iii) Take measures to ensure a variety of both capacity-building and technology transfer mechanisms for developing States (art. 274);

(b) States shall cooperate actively with the Authority to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and marine technology with regard to activities in the Area (art. 273);

(c) Contractors with the Authority shall draw up practical programmes for the training of personnel of the Authority and developing States, including the

* ISBA/25/A/L.1/Rev.1.

¹ Myron N. Nordquist, *United Nations Convention on the Law of the Sea, 1982: a commentary*, vol. 1, (Center for Oceans Law and Policy, University of Virginia School of Law, 1985), pp. 425–426 and 432.



participation of such personnel in all activities in the Area that are covered by the contract (annex III, art. 15).

3. The Authority's regulations for exploration reflect the wording of article 15 of annex III to the Convention, in that they state that the scope and financing of each contractor's training programme is subject to negotiation between the contractor, the Authority and the sponsoring State or States.^{2,3}

4. In 2013, following concerns that contractors' training obligations were not being complied with consistently or significantly, the Legal and Technical Commission issued recommendations for the guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration (ISBA/19/LTC/14). The African Group wishes to reiterate the importance of that document, while noting that it would be useful to receive clarification as to whether the Authority may require contractors to comply with the recommendations, and for compliance with the recommendations by contractors to be reported to the Council.

5. For the purposes of the present document, the African Group notes in particular that, in the aforementioned recommendations, it is stated that:

(a) Each contractor's training plan should provide for the training of at least 30 trainees (that is, at least 10 for each five-year period of the 15-year contract), and contractors should make an ex gratia contribution to the Authority specifically earmarked for training purposes when circumstances dictate that training programmes cannot be implemented (para. 16 (A));

(b) If training is to be needs-based, then a proactive process is necessary (para. 17), and the Secretary-General should draw up and maintain a longer-term programme based on needs and priorities of countries for planning purposes, for use by the Commission in its discussions with contractors (para. 16 (C)).

6. Training also features strongly in the Authority's new strategic plan (ISBA/24/A/10), adopted by the Assembly in July 2018, which includes the following objectives:

(a) Strategic direction 5.1: ensure that all capacity-building programmes and measures and their delivery are meaningful, tangible, efficient, effective and targeted at the needs of developing States, as identified by developing States;

(b) Strategic direction 5.4: build on the achievements of contractor training programmes and assess their long-term impact on capacity-building;

(c) Strategic direction 6.3: in cooperation with States parties, initiate and promote measures providing opportunities to personnel from developing States for training in marine science and technology and for their full participation in activities in the Area.

7. In paragraph 19 of the strategic plan, it is stated that the challenge for the Authority is to ensure that capacity-building measures are developed and implemented effectively and that they reflect the needs of developing States, identified through transparent processes in which developing States are full participants.

8. This point of view has been frequently reiterated by other organs of the Authority, including by the Assembly. In his statement on the work of the Assembly

² No African State is a contractor or a sponsoring State, and therefore no African State has been involved in the design of contractor training programmes or in agreements relating to them, although personnel from African States are target beneficiaries of such programmes.

³ Section 8 of the standard clauses for exploration contracts in annex IV to the regulations on nodules, sulphides and crusts.

at its twenty-fourth session (ISBA/24/A/12), the President of the Assembly thus reported that some delegations had highlighted the importance of training opportunities for individuals from developing countries as one of the immediate non-monetary benefits resulting from the implementation of part XI of the Convention and of the related 1994 Agreement. In addition, it had been suggested that the training programmes be targeted to address the needs of developing countries, while ensuring gender parity. The Authority had been encouraged to continue to hold technical workshops and information seminars, run its training and internship programmes and organize other capacity-building activities.

9. Outside the Authority's governing instruments, the African Group also notes that, in 2018, the Authority made a number of voluntary commitments during the United Nations Conference to Support the Implementation of Sustainable Development Goal 14, including a commitment on enhancing the role of women in marine scientific research through capacity-building⁴ and another on supporting Africa's Blue Economy,⁵ under which the Authority committed to holding five capacity-building workshops across Africa.

II. Training achievements of the Authority to date

10. The African Group understands that, to date, the three main ways in which the Authority has implemented its training obligations under the Convention are through contractor-funded training, as noted above, the Endowment Fund for Marine Scientific Research in the Area⁶ and secretariat internships.⁷

11. The present document is not intended to be an exhaustive review of the training programmes, but to highlight the following details regarding the scope of the three mechanisms:

(a) Contractor training: the details of contractor training programmes are negotiated among the Authority, the contractor and the sponsoring State and cannot be influenced by other stakeholders, such as developing countries whose nationals may wish to benefit from the training. Once negotiated, copies of training programmes are not made available for third parties to view. In the five-year period from 2013 to 2017, 11 contractors provided 69 training places (ISBA/24/A/2, para. 106). This amount does not appear to meet the minimum requirement of 10 trainees during each five-year period of the contract set by the Commission in its recommendations (see para. 5 (a) above), since there were 14 contracts at the beginning of 2013 and 27 contracts by 2017.⁸ The African Group is not aware of whether *ex gratia* payments were made to cover the shortfall, whether it was determined that a longer-term training opportunity for a single trainee would be accepted in place of a higher number of shorter-term opportunities or whether this

⁴ See <https://oceanconference.un.org/commitments/?id=15467>.

⁵ See <https://oceanconference.un.org/commitments/?id=16374>.

⁶ Established in 2006, the Endowment Fund for Marine Scientific Research in the Area is aimed at promoting and encouraging the conduct of marine scientific research in the Area for the benefit of humankind as a whole, in particular by supporting the participation of personnel from developing countries in training, technical assistance and scientific cooperation programmes (see ISBA/12/A/11).

⁷ On the Authority's website, the internship programme is described as having two aims: (a) to provide a framework through which students and young government officials from diverse academic backgrounds gain exposure to the work and functions of the Authority to enhance their educational experience and gain experience in the work of the Authority; and (b) to enable the Authority to benefit from the assistance of qualified students and young government officials specialized in various skills within the scope of activities of the Authority.

⁸ See www.isa.org/jm/deep-seabed-minerals-contractors.

represents cases of non-compliance with the contract or the Commission's recommendations. It appears that the majority of the opportunities were at-sea training courses, although one contractor (UK Seabed Resources Ltd.) supported two students in PhD programmes, another contractor (Global Sea Mineral Resources NV) supported a student in a master's programme and a few contractors supported laboratory-based internships. Of the trainees supported by contractors, 33 per cent are described as being from least developed countries, small island developing States or landlocked developing countries, and 31 per cent are described as women;⁹

(b) Endowment Fund for Marine Scientific Research in the Area: on 30 April 2018, the capital of the Endowment Fund stood at \$3,478,315, a total of \$550,076 having been disbursed for funding grants to 126 beneficiaries (see ISBA/24/A/2). The secretariat, in a presentation given in September 2018, reported that 21 per cent of the trainees supported by contractors were from least developed countries, small island developing States or landlocked developing countries, and that 38 per cent were women.¹⁰ Disaggregated data that were published for the Endowment Fund grants up to 2016¹¹ showed, inter alia, the following interesting trends:

- (i) The majority of grantees received funding to attend training courses on law, not on science or technology;
- (ii) Only about 20 per cent of total beneficiaries were nationals of African countries;
- (iii) Nationals of developed countries appear to have benefited from the Fund;

(c) Internship programme: the Authority's internship programme appears to be relatively new and developing. There are no published data of which the African Group is aware regarding the number of persons trained through the scheme, although in a presentation given in September 2018,¹² the secretariat identified the countries of nationality of five former interns (namely, the Cook Islands, Fiji, Jamaica, Papua New Guinea and Tonga), 78 per cent of whom were women, and stated that no least developed countries or landlocked developing countries had benefited from the programme.

12. The African Group is not aware of any survey or other wide-reaching mechanism by which the Authority has canvassed the views of developing countries on the specific capacity and developmental needs that they face and that the Authority's training programme could endeavour to address.

III. Impact of training by the Authority for developing States

13. The African Group has reviewed previous commentaries relevant to the Authority's training programme,¹³ noting the following features of the regime that may reduce the opportunities for sustainable benefit to developing countries from the Authority's training:

⁹ See www.isa.org.jm/files/documents/EN/BBNJ/2018/Stats/capblppt.pdf.

¹⁰ See www.isa.org.jm/files/documents/EN/BBNJ/2018/Stats/capblppt.pdf.

¹¹ See www.isa.org.jm/files/documents/EN/efund/2016/EFSum-by-year-7Mar16.pdf.

¹² See www.isa.org.jm/files/documents/EN/BBNJ/2018/Stats/capblppt.pdf.

¹³ For example, reports arising from the periodic review of the international regime of the Area pursuant to article 154 of the Convention; Simpson, A., *Review of Training and Capacity Building Obligations of Exploration Contractors with the ISA (2014)*; Egede, A., *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind* (Springer, 2011).

(a) There has been limited engagement on the part of developing countries in the identification of the needs that the Authority's training should be designed to meet;

(b) Successful candidates for training opportunities have been selected predominantly on the basis of their merit, rather than the needs of the relevant Government or region;

(c) High-level academic entry requirements have been highlighted by developing member States as a possible bar to entry;

(d) Trainees should be either staff of the Authority, meaning the secretariat acting in lieu of the Enterprise,¹⁴ or from developing States. The United Nations does not provide a commonly agreed definition of developing States, therefore, unless the Authority provides a specific definition, it leaves open the possibility for different interpretations;

(e) The regulations for exploration and contractual terms appear to be focused on an initial five-year training programme for contractors (ISBA/19/LTC/14, para. 14) and it is not obvious what steps are taken subsequently to agree on a continued training programme with the individual contractors for the remaining 10 years of the contract term. The African Group is of the view that negotiating an obligation with a contractor after a contract is granted is unlikely to yield optimal results for the Authority;

(f) The content of the contractors' training programmes is not published, and it is not clear whether all the Authority's existing contracts for exploration contain an approved training programme for the entirety of the contract. There is limited reporting on whether the contractors' training programmes comply with the Commission's recommendations or are being satisfactorily implemented;

(g) The lack of availability of reports of previous trainees makes it difficult to assess the value of the training and any benefits that might have accrued to developing States members of the Authority. It is unclear whether feedback from trainees is being used to improve the operation of the training programme. There are also no obvious criteria against which to measure the extent to which the overall implementation of the training mandate is progressing towards the attainment of the higher-level goals for developing countries under part XI of the Convention, such as those provided for in articles 143, 144 and 274;

(h) The training programme thus far has offered limited training in some areas that the African Group believes are of primary importance to developing States, such as the preparation and evaluation of environmental impact assessments and the development, implementation and evaluation of environmental monitoring programmes;

(i) The members of the Legal and Technical Commission, who review the training programme, are not selected on account of their insights as training experts. Contractors, which carry out a large proportion of the Authority's training programmes, are mineral exploration companies, not professional training providers, and it is reasonable to assume that they are unlikely to consider training to be a key priority for their time and financial investment;

¹⁴ The African Group wishes to reiterate its firm view that the operationalization of the Enterprise should now be prioritized. Staffing the Enterprise is an opportunity to draw meaningfully upon the reports of the Authority's previous trainees from developing countries.

(j) Concerns have been raised about the safety of trainees at sea, in terms of both physical safety and safety from sexual harassment or assault;¹⁵

(k) While the internship programme is well-intentioned, it is limited by funding constraints. Interns are unpaid and the Authority is not able to provide accommodation or assistance with, for example, travel, visas, medical insurance and liability insurance. Interns have to make their own arrangements, which may act as a barrier to nationals of developing countries who have no external funding sources, and may have health and safety implications.

14. Taking all of those factors together, the African Group is of the opinion that opportunities may be missed to maximize for developing countries the reach and sustainability of the training courses currently delivered under the auspices of the Authority. A new approach may be required for the Authority to comply with the provisions of the Convention and meet the goals of its own strategic plan with regard to the provision of training to developing country nationals that specifically meets the needs of developing countries and is designed with the participation of developing countries.

IV. Recommendations

15. The African Group wishes to invite the Authority to consider the following recommended actions:

(a) Information-gathering exercises to ensure the proper and updated understanding of the capacity and developmental needs of developing countries that the training programme could address;

(b) Improved tracking of trainees and reporting to the Council on overall training impacts, against both:

(i) Output targets, such as the number of trainees, number of training days, amount of expenditure in training, geographical distribution, gender parity and age representation;

(ii) Outcome targets, such as the number of developing countries reporting increased participation in marine scientific research or activities in the Area and the number of developing countries reporting enhanced national marine technology status, scientific knowledge or national capacity;

(c) Clarification for the Council of the extent to which the recommendations of the Commission for the guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration are binding on, and being complied with by, contractors;

(d) Mechanisms for enabling the influence of developing States on training programmes, including consultation on contractors' training commitments, and settling the scope of such training programmes before the grant of a contract is approved;

(e) A minimum financial commitment on training, delivered either directly or through the Authority, from every contract for each contract;

¹⁵ For example, the matter was raised by speakers at the side event held in July 2018 on the theme "Enhancing the role of women in deep-sea marine scientific research through focused capacity-building initiatives to achieve the goals and targets of the 2030 Agenda for Sustainable Development", co-hosted by the Authority and Canada.

(f) Reports to the Council on the annual training plans, commitments and completed activities of the secretariat and contractors and a published statement from contractors on how much each has spent annually on training, specifying the proportion spent on nationals from developing countries;

(g) The introduction of trainee safety and well-being policies and procedures and minimum training standards, including gender parity principles, for adoption by contractors;

(h) Use of train-the-trainer courses;

(i) Use of open online training courses;

(j) Training courses run by the Authority, which should enable the coverage of more people from diverse backgrounds and of a wider range of disciplines than are currently offered through the contractors' training programmes, the internships and the Endowment Fund. Such courses should be made available to government officials, without taking them out of their countries or postings for extended periods of time.

16. In the light of strategic direction 5.1 and the above, the African Group, having consulted its member Governments and held informal discussions with other stakeholders, has identified a need for a capacity-building programme on environmental impact assessments. The African Group therefore wishes to make a specific proposal for such a training programme to be organized by the Authority for the benefit of government officials of developing countries. The Group recommends that the training programme have a particular objective to assist participants in understanding the requisite processes, content and management tools involved from a regulatory perspective in requiring, designing, reviewing and making decisions on environmental impact assessments and reports, and the resulting monitoring activities and management plans.

17. The African Group requests that the following elements be covered:

- Overview of the deep ocean environment
- Purpose and overview of environmental impact assessments
- Data collection, sampling and mapping
- Data management, analysis and sharing
- Linkages between environmental impact assessments and other area-based management tools
- Risk evaluation or assessment
- Impact mitigation
- Stakeholder engagement
- Environmental management planning
- Review and evaluation of environmental impact assessments
- Environmental permitting
- Environmental monitoring
- Compliance and enforcement
- Remediation and closure

18. The African Group has identified the need for such a training programme on the basis of its own experiences both within national jurisdictions and in the context of the Authority. The African Group notes that two environmental impact assessment

reports for activities in the Area have recently been received by the Authority.¹⁶ The African Group also notes that member States are currently engaged in drafting and agreeing on regulations for exploitation, including provisions on the conduct of environmental impact assessments, the evaluation of environmental impact assessment reports and the monitoring of environmental impacts, including transboundary harm, and management processes. In future, once an application for exploitation is received, members of the Authority will be required to review and approve or reject environmental plans. The African Group believes that a training event focused on those areas would greatly enhance the ability of the Governments of member States to engage in the relevant regulatory discussions at the Authority.

19. The African Group is willing to work with the secretariat and the Authority's other organs, members and stakeholders to develop a programme for such a training course.

¹⁶ See www.isa.org.jm/environmental-impact-assessments.