



STATEMENT BY AMBASSADOR HELMUT TUERK
(President of the Assembly- ISBA21)
CHAIRPERSON OF THE ARTICLE 154 REVIEW COMMITTEE
Wednesday 20 July, 2016

Agenda Item 9: Consideration of the interim report of the review committee established pursuant to the decision of the Assembly ([ISBA/21/A/9/Rev.1](#)) to oversee the periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea.

Introduction

Mr. President,
Mr. Secretary-General,
Distinguished delegates.

1. It gives me great pleasure, in my capacity as the Chairperson of the Review Committee established by the Assembly of the International Seabed Authority to oversee the overall conduct of the review of the International Regime of the Area, pursuant to Article 154 of the Convention, to present this oral report to the Assembly. I thank all my colleagues, the members and observers of the Review Committee for their efforts in contributing to this important review initiative as well as the Secretary-General and the Secretariat for their most valuable and indispensable support.

2. This presentation, together with the:

- (1) Interim Report by Seascope Consultants Ltd, dated 15 May 2016, currently marked as Conference Room Paper 3(1) or document ISBA/22/A/CRP.3(1);
- (2) Comments of the Review Committee in document ISBA/22/A/CRP.3(2);
- (3) Comments of the Legal and Technical Commission in document ISBA/22/A/CRP.3(3);
- (4) Comments by the Finance Committee in document ISBA/22/A/CRP.3(4); and
- (5) the Comments by the Secretariat in document ISBA/22/A/CRP.5)

is the total package being presented as containing the information solicited by the Assembly at this juncture of the review process. In line with the Authority's new Paper Smart Policy, copies of all the Conference Room Papers whose symbols I have just described are available for viewing at the website of the Authority.

Assembly Decision

Mr. President, distinguish delegates,

3. Let me recall that in its decision, dated 24 July 2015 (ISBA/21/A/9 Rev.1), the Assembly of the Authority decided to undertake, pursuant to article 154 of the Convention, a general and systematic review of the manner in which the international regime of the Area has operated in practice. The Assembly also decided that such a review be carried out under the oversight of a Review Committee comprising the President and the Bureau of the Assembly, the President of the Council, with the President of 21st session of the Assembly remaining a member of the Committee until the completion of the review, and that the Chairs of the regional groups may also participate as observers in the Review Committee. The Assembly further decided that the review be conducted by consultants appointed by the Review Committee, based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the Authority.

4. The Assembly further decided that an **interim report**, including comments by the Secretariat, the Legal and Technical Commission and the Finance Committee of the International Seabed Authority, be submitted for consideration by the Assembly at its twenty-second session in 2016; with the **final report**, including any draft recommendations designed to improve the operation of the regime, to be presented by the Review Committee to the Assembly at its twenty-third session in July 2017. The Assembly also requested the Secretary-General to provide the necessary and appropriate administrative and logistical support to the Review Committee and to circulate copies of the final report to all member States of the Authority at least three months in advance of the twenty-third session.

Composition of the Review Committee

Mr. President

5. The members and observers of the ISA's Article 154 Review Committee as decided by the Assembly of the International Seabed Authority at its 21st session were as follows:

Members

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|-------|------------------------------------|---|----------------------------------|
| (i) | Amb. Helmut Tuerk (Austria) | - | President of the Assembly |
| (ii) | Amb. Peter Thomson (Fiji) | - | President of the Council |
| (iii) | Amb. Tommo Monthe (Cameroon) | - | African Group (Bureau Member) |
| (iv) | Amb. Lim Jong Seon (ROK) | - | Asia Pacific (Bureau Member) |
| (v) | Amb. Vladimir M. Polenov (Russia) | - | Eastern European (Bureau Member) |
| (vi) | Amb. Eduardo J.B. Menchaca (Chile) | - | GRULAC (Bureau Member) |

Observers¹

- | | | | |
|-------|--|---|----------------------------------|
| (i) | H.C. Mathu Theda Joyini (South Africa) | - | Chair of the African Group |
| (ii) | Amb. Mahe Tupouniua (Tonga) | - | Coordinator of the ISA A/P Group |
| (iii) | Amb. Ariel Fernandez (Argentina) | - | Chair of GRULAC |
| (iv) | Amb. Jiménez Abascal (Spain) | - | Chair of WEOG |

6. In addition to the responsibility of presenting to the Assembly an **Interim Report** at this session and a **Final Report** at the next, the Review Committee, was also mandated for setting the scope of the Review, and the selection and appointment of a consultancy firm to conduct the Review.

Process of Selection of Consultant

Mr. President,

7. In paragraph 3 of Decision [ISBA/21/A/9/Rev.1](#), the Assembly decided that the review shall be conducted by consultants appointed by the Review Committee, based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the Authority. Let me briefly outline the selection criteria and process regarding the consultancy firm appointed to conduct the review.

8. On 14 September, 2015 the Secretariat issued a “**Request for Expression of Interest**” (EOI) seeking qualified consultants or firms to conduct, pursuant to Article 154 of the Convention, a general and systematic review of the manner in which the international regime of the Area has operated in practice. The following Documentation accompanied the EOI:

- (i) Notice (Flyer) of EOI (Form ISA.154.R.1);
- (ii) Consultants/Firms Profile Form (Form ISA.154.R.2);
- (ii) General Information Paper (Form ISA.154.R.3);

9. By the closing date of the EOI on 2 October 2015, a total of ten (10) expressions of interest was received from the following Applicants in the order of their receipt:

- (1) Seascope Consultant Limited – United Kingdom;
- (2) Nelson Mandela Metropolitan University – South Africa;
- (3) MRAG Limited – United Kingdom;
- (4) Marine Spaces Ltd – United Kingdom;
- (5) eCOAST BVBA – Belgium;
- (6) DNVL GL –Norway;
- (7) Deep-Sea Mining Alliance e.V – Germany;
- (8) Law of the Sea Research Group – Argentina;
- (9) Dr. Silvina Sandra Gonzalez Napolitano – Argentina; and

¹ The Russian Federation was the Chair of the Eastern European Group and a member of the Review Committee

10. Based on the analysis of the submitted EOI Forms, the Secretariat assessed that it was in the interest of the transparency of the tender process that all applicants be invited to submit their tender for the conduct of the Review. The rules of procedure of the tender process required that only the particulars of the five (5) most successful applicants be submitted to the Review Committee for assessment.

11. On 12 October 2015, the Secretary-General issued the “**Letters of Invitation for Tender**” to all 10 qualified Consultants indicating **12 November 2015 @ 1700hrsEst** as closing date for submissions of tenders. By that date, a total of **six (6) responses** were received by the Secretariat as follows:

Srl.	Name of Applicant	Date of Receipt	Time of Receipt
1.	Seascope Consultant Limited	Tue 9 November 2015	@12:09am
2.	DNV-GL	Wed 11 Nov 2015	@9:46am
3.	NMMU	Thu 12 Nov 2015	@9:39am
4.	Deep-sea Mining Alliance	Thu 12 Nov 2015	@11:48am
5.	eCoast BVBA	Thu 12 Nov 2015	@1:33pm
6.	LOS Research Group	Thu 12 Nov 2015	@4:16pm

Assessment by the Authority’s Contract Review Committee

12. The Contract Review Committee (CRC) of the Authority, in accordance with its mandate and in line with the procurement procedures of the Authority, in four (4) meetings, evaluated and assessed, first the Technical Proposals of all applications received and then the Financial Proposals. The findings and recommendations of the CRC are contained in its Report submitted to the Secretary-General.

13. On 25 November 2015, the Secretary-General, in a letter addressed to me, in my capacity as Chairman of the Review Committee, stated the following:

“In accordance with the procurement procedures, the Authority undertook a procurement exercise consisting of a sealed bid tender based on an invitation to tender issued to pre-qualified consultants. Expressions of interest were invited on 14 September 2015 through an announcement on the Authority’s website and a circular to all member States. Ten consultants expressed interest and were subsequently invited to submit tenders. Six complete tenders were received. The tenders were evaluated by the Contracts Review Committee of the Authority according to the pre-announced technical and financial criteria, consistent with those laid down in the procurement procedures of the United Nations. Following a full evaluation, the consultants were ranked as follows:

(i) 1st – Seascope Consultants Limited;

- (ii) 2nd – DNV – GL;
- (iii) 3rd – eCoast e. V;
- (iv) 4th – Nelson Mandela Metropolitan University;
- (v) 5th DeepSea Mining Alliance.

A copy of the full report of the Contracts Review Committee is attached. On the basis of its evaluation, the Committee recommended that, in line with Paragraph 6.8 of the Financial Rules of the International Seabed Authority (ISBA/ST/SGB/2008/02), the contract for the conduct of the Article 154 Review be awarded to **Seascope Consultants Limited** being “*the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents*”. I see no reason to depart from this recommendation.

Should the Review Committee agree with the evaluation and recommendations of the Contracts Review Committee, we shall take the necessary steps to conclude a contractual arrangement with the winning consultants so that the work of the review may commence in a timely manner. In this regard, I note your intention to convene the inception meeting for the review in early January 2016. The Secretariat stands ready to offer the Review Committee and the Consultant the necessary logistics support required for the conduct of the Review.

14. On 30 November 2015, I circulated the aforementioned CRC Report together with a background information paper on the Tender Process, including the terms of reference of the Review to the members of the Review Committee. In my letter, I stated *inter alia* that the Secretary-General and the members of the CRC are to be commended for the outstanding work accomplished within a very limited timeframe. I also stated that I fully concur with the Secretary-General that there is no reason to depart from the recommendation of the CRC and requested the committee members to indicate their views on the recommendation, expressing the hope that there would be general agreement regarding Seascope’s appointment. No objection was raised by any member of the Review Committee.

First Meeting of the Review Committee

Mr. President, Distinguished delegates,

15. On 12 and 13 January 2016 respectively, a series of meetings was held at the Headquarters of the Authority between the members and observers of the Review Committee and members of the consultancy team from Seascope Consultants Ltd. In line with established procurement procedures of the Authority, based on the assessments of qualified consultants prepared by the Secretary-General, the Review Committee, on 12 January issued, through the Chairperson of the Review Committee, the Letter of Appointment of Seascope Consultants Ltd as the appointed consultants to carry out the Article 154 Review. A contract regarding an amount of \$181,191.00 USD was entered into between the Authority and Seascope’s Ltd for a two phased job description commencing 12 January, 2016 ending 31 July, 2017.

The Conduct of the Review

Mr. President, Distinguished delegates,

16. The manner of the conduct of the review, the methodology employed, details of the observations and comments received, of the conclusions drawn and recommendations made, are all contained in the Interim Report submitted by Seascope Consultants Ltd. in a 103 page Report. The Interim Report was circulated to the members and observers of the Authority by the Secretary-General on 30 May, 2016. This Report has since been available electronically on the Authority's website. It would be truly remiss of me not to acknowledge and express the Committee's appreciation for the enormous task undertaken by Seascope especially in view of a very tight timeframe.

17. Prior to submitting the Interim Report, Seascope Consultants spent two days, 10 and 11 May, at the Headquarters of the Authority discussing a preliminary draft report with the Secretary-General and members of the Secretariat with the aim of ensuring verification of factual information contained in the report. On 15 May, 2016, Seascope then submitted the Interim Report to the Secretary-General.

Second Meeting of the Review Committee

Mr. President, Distinguished delegates,

18. The second meeting of the Review Committee took place on 24 and 25 May 2016 also at the Headquarters of the Authority. The purpose of the meeting was for the Review Committee to discuss and formulate its comments on the Interim Report which have already been brought to your attention. In its deliberations, the Committee felt obliged to seek clarification from the Consultants on a number of issues. In my letter on 25 May to Seascope I conveyed that the Review 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 was an obvious regional imbalance with respect to these responses. Furthermore, the Committee noted that in a number of instances, statements and conclusions contained in the Report are based on views either of a single or of very few respondents so that often not clear how widespread a support a specific finding actually enjoys. The system applied by the authors to underpin the various recommendations contained in the Report does not seem to be the same with respect to every issues. Sometimes percentages of respondents expressing certain views are indicated, while in other cases there was only a reference to one or more opinion stated. The Committee also requested further information regarding the procedures employed by the IMO and other international organization relating to the participation of observers in debates.

19. On 26 May, 2016 the Review Committee transmitted the Interim Report together with its own comments to the Secretary-General with a request that the documents be made available to member States and observers of the Authority, the Secretariat, and to the Chairpersons of the LTC and the Finance Committee for their comments as required by the Assembly. On the same day, a copy of the Interim

Report and the Comments of the Review Committee was transmitted to the Chairperson of the Legal and Technical Committee and of the Finance Committee.

20. In a letter, dated 27 May, 2016, Seascope responded to the Committee's question as follows:

Concerning the quantity of responses, as we explain in the methodology, the questionnaire was sent out by the Secretary-General to a large constituency as agreed in our Inception Meeting (385 invitations) and as stated we then made 144 interview requests. We made a concerted effort using our regional experts to follow-up requests and secure responses.

Our analysis sought to triangulate evidence from the questionnaire, interviews and, where appropriate, deliberations within the Authority (e.g. reports to the Council and the Assembly). Percentages stated relate solely to the questionnaire. These percentages are then qualified by more detailed opinion from questionnaire comments and/or interview responses. Often the analysis is more complicated than a simple yes, no or don't know response and, where appropriate, we have highlighted an individual comment. The headline conclusions consistently represent a substantive view taking into account the whole evidence base.

In other international organisations, including the International Maritime Organization, our experience is that the protocol for Observers is set out in respective Rules of Procedure. As appropriate these generally allow Observers to participate in debates through submission of documents prior to meetings which are introduced to the meeting, by making interventions following those of the States Parties if meeting time allows, and by making proposals subject to support by one or more of the States Parties. In this way Observers contribute actively to the work of most intergovernmental organisations and have a role in shaping policy development. Observers in IMO and other international organisations also contribute to ad hoc working groups. Generally selection of Observers is strictly determined based upon capability of the Observer organization and pertinence to the objectives of the intergovernmental organization and subject to review. Rules relate to discussion of restricted documents (i.e. Observers may be excluded from sections of meetings) and a code of conduct is generally imposed requiring respect for the character of meetings and restricting document circulation.

As members of the consultancy team are present at this meeting, I am certain that they would be ready to answer any additional questions that might be asked formally or informally by members of the Assembly.

Review Committee Comment

Mr. President, distinguished delegates,

21. The Committee, in its meetings, the January and May sessions, accommodated the virtual participation of members that were unable to come to Kingston through video conference. The Chairman of the Council for the 21st session and the representative of the Russian Federation were able to participate through this medium.

22. The comments of the Review Committee on the Article 154 Interim Report are contained in document ISBA/22/A/CRP.3(2). These comments represent the views of the Committee which agreed

that the reflections contained in the Interim Report and the conclusions drawn, provide a good basis not only for the further work of the Committee, but in particular also for the deliberations of the States Parties, the ultimate decision-makers. The description of the history and structure of the Authority is concise and gives a very good overview, covering all important aspects. The methodology employed by the authors of the Report corresponds to the outline already indicated by them at the meeting of the Review Committee in January 2016.

Mr. President, Distinguished delegates,

23. 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 addressed a certain number of issues dealt with in the Report which in its view merit particular consideration by the Assembly, without wishing to prejudge any observations that might be submitted by the Secretariat, the Legal and Technical Commission and the Finance Committee. Let me now outline the essential considerations of the Review Committee:

24. In relation to **the regime for exploration for and exploitation of deep-sea minerals in the Area**, the Review Committee concurs with the conclusion of the Interim Report 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 a 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.

25. The question of control of seabed activities by sponsoring States needs to be revisited. The Review Committee thus agrees with the recommendation that a study on the adequacy of sponsoring States legislations 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).

26. It is obvious that the legal rights and responsibilities established by the Authority have been set for seabed exploration but are now urgently needed for exploitation. 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.

27. The Review Committee agrees with the assessment that 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 Convention should be considered. The setting up of such mechanism or inspectorate would seem necessary with the view to the implementation and enforcement of the terms and conditions of the exploitation contracts.

28. 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.

29. The Review Committee would find a study of relevant issues relating to the operation of the Enterprise highly useful, which could include an analysis of operation of the reserved area system. As commercial seabed mining is coming closer, 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.

30. 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 an 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.

31. In relation to **representation and attendance at the Authority's Annual Sessions**, the 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 remedy this situation. Further, in view of the criticism that the rules governing participation of observers in debates are unclear, the procedures used by the International Maritime Organization (IMO) – or other international organizations - could be considered in order to see whether they might also be adopted by the Authority.

32. On the **performance of the Assembly**, criticism has been voiced that the Assembly has made very little substantial contributions 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. Moreover, the Committee agrees with the opinion 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 an important step in enhancing the Assembly's role. 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. The Assembly should continue to meet annually for one week, biennial meetings would, however, weaken its role and be contrary to article 159(2) of the Convention. In order to make the sessions of the Assembly more attractive, 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.

33. In relation to the **performance of the Council**, in view of its increased workload in the future, the Review Committee is of the opinion that the Council should consider meeting twice a year, its second meeting to be held immediately preceding 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 the timetable for them to be carried out. The Committee also recognizes that regular policy guidance provided to the LTC by the Council is highly important.

34. On the **performance of the Secretariat**, the Review Committee is of the view that 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 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.

35. In relation to the **performance of subsidiary organs**, the Review Committee recognizes that the role and workload of the LTC require a more in-depth scrutiny as it is undoubtedly overburdened by its manifold tasks. The Commission may need additional expertise in several fields. The establishment of subcommittees should also be considered in order to expedite its work. Furthermore, concerns regarding the lack of transparency of the work of the LTC need to be addressed.

36. On the **Finance Committee** 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.

Mr. President,
Distinguished delegates,

37. As regards the **“future-proofing the Authority”**, 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 environmental protection measures. The suggestion to establish a separate regulatory body or inspectorate would seem to merit consideration at the earliest possible time.

LTC, Finance Committee and Secretariat Comments

Mr. President,
Distinguished Delegates,

38. The comments of the Legal and Technical Commission and of the Finance Committee are available to Member States, I will thus not comment on them. It suffices to say that it is my role to present them to the Assembly together with the Interim Report. As far as views have been expressed by these

organs that may not correspond to the comments by the Review Committee, it is up to the Assembly to provide further guidance.

Way Forward

39. Let me now suggest how to further proceed with the review process. I wish to inform you that on the basis of the respective decision of the Assembly at its 21st session, the Review Committee on 19 July held its first meeting in its new composition. At this meeting, the Committee considered the question of the submission of the Final Report to the Assembly at its 23rd session in July 2017. It discussed the text of a draft decision of the Assembly will be presented later today. At the present stage, let me just point out that it will be suggested to provide a further opportunity for States Parties and Observers to submit written observations on the Interim Report and the comments thereto.

Mr. President,
Distinguished Delegates,

40. Let me thank you for your patience in listening to this rather lengthy report but I considered it important to give you a detailed account regarding this very specific agenda item with which we are dealing for the first time in the history of the International Seabed Authority. The Review Committee is now looking forward to hearing the observations from Members and Observers on the review process and the Interim Report. The Committee considers your comments as indispensable for proceeding with its work on the Final Report on the Article 154 Review to be presented next year. Let me assure you that we will try to do our very best to enable the Assembly to adopt this report by consensus.

Thank you very much for your kind attention.