



## Finance Committee

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**Development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement**

### **Development of rules, regulations and procedures on the equitable sharing of payments or contributions pursuant to article 82, paragraph 4, of the United Nations Convention on the Law of the Sea**

#### **Report of the Secretary-General**

#### **I. Purpose of the document**

1. At its last meeting, in July 2023, the Finance Committee continued its discussions on the equitable sharing of financial and other benefits derived from activities in the Area, taking into account the outcomes of discussions on the same matter in the Council and Assembly.<sup>1</sup> With respect to the question of rules, regulations and procedures for the distribution of funds received pursuant to article 82 (4) of the United Nations Convention on the Law of the Sea (the Convention), the Committee took note of the request of the Assembly that this be included in the work programme of the Committee and requested the Secretariat to prepare a study on options for such distribution.

2. The purpose of the present report is to summarize the work already undertaken by the Committee in relation to article 82(4) of the Convention between 2018 and 2022 and to propose some guiding questions that could assist the Committee in further discussing the identification of options for distribution and further work, pending the outcomes of the study.

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\* ISBA/28/FC/L.1/Rev.1

<sup>1</sup> ISBA/27/A/8-ISBA/27/C/36, Part VIII.

## II. Introduction

3. Article 82 the Convention provides for a system of revenue sharing between coastal States and the international community. It establishes that payments or contribution in kind are to be made by coastal States in respect of exploitation of the non-living resources of the continental shelf beyond 200 nautical miles. Apart from that, the Convention provides little guidance as to how article 82 might be interpreted in practice.

4. Article 82(4) assigns the Authority the responsibility for distributing to States parties to the Convention, on the basis of ‘equitable sharing criteria’, payments and contributions made by coastal States in respect of the exploitation of non-living resources on the continental shelf beyond 200 nautical miles. Article 82(4) shall be read together with article 162(2)(o)(i) of the Convention which attributes the Council the power to recommend to the Assembly rules, regulations and procedures on the equitable sharing of the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status. In turn, the Assembly has the power to consider and approve, upon recommendation of the Council, such rules. If it does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly. The Agreement for the implementing of Part XI of the Convention (1994 Agreement) provides that decisions of the Assembly and the Council on the issue of the rules, regulations and procedures on the equitable sharing of financial benefits are to take into account recommendations of the Committee.

## III. Status of the work undertaken by the Finance Committee

5. The work of the Authority towards the implementation of article 82(4) of the Convention started in 2009<sup>2</sup> and included the convening of a [seminar](#) and a [workshop](#) to explore important related legal and technical issues. Between 2019 and 2022, several reports were issued by the Secretary-General and the Committee in relation to the question of equitable distribution of financial and other economic benefits, including distribution of payments and contributions under article 82(4).<sup>3</sup> During this period, the Committee considered questions relating to article 140 of the Convention (equitable distribution of benefits from activities in the Area) and article 82(4) in parallel. The Committee noted, however, that despite the similarities between the two provisions, several important differences could be observed, which were noted in the relevant reports of the Committee.

6. Firstly, it seems reasonable to assume that although the objectives of both article 82(4) and article 140 are inspired by distributive justice, the remedial rationale is not the same. In the case of article 82(4) the remedial effect is geographic and socio-economic hence the highlighting of the needs and interests of landlocked States, which have no entitlement to the continental shelf. In Technical Studies n. 4<sup>4</sup> and 12<sup>5</sup> of the Authority it was suggested that a general ranking could be developed to give priority to least developed landlocked countries, other developing States Parties, and

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<sup>2</sup> See ISBA/25/A10-ISBA/25/C/31.

<sup>3</sup> See ISBA/26/A/24-ISBA/26/C/39.

<sup>4</sup> See ISA Technical Study 4: Issues associated with the implementation of Article 82 of the United Nations Convention on the Law of the Sea, 2009.

<sup>5</sup> See ISA Technical Study 12: Implementation of article 82 of the United Nations Convention on the Law of the Sea, 2012.

other States Parties. This general concept was subsequently further developed into a formula for preferential distribution.

7. Secondly, article 82(4) is unambiguous in referring to States parties as the beneficiaries of payments and contributions. Contrary to article 140, and with a view to prevent the phenomenon of free riders, only States that have ratified the Convention are entitled to receive the benefits accruing from the exploitation of the resources of the continental shelf beyond 200 nautical miles.

8. Thirdly, in relation to the payments or contributions to be made pursuant to article 82(4), the role of the Authority is fundamentally different from that under article 140. In the case of article 82, the function of the Authority is to serve as a conduit for the transmission of payments and in-kind contributions to States parties in accordance with article 82(1). The recipients of the payments and contributions are the States parties, and the role of the Authority is purely instrumental. This implies that such funds may not be used to support the regular budget of the Authority, the economic assistance fund to be established under article 151(10) or any other fund. The Committee however noted that this does not preclude a reasonable administrative overhead charge to be deducted for managing such funds.<sup>6</sup>

9. Acknowledging such differences, the Committee nevertheless noted that any of the alternative distribution formulae developed in relation to article 140 could also be applied to distributions under article 82(4), with an appropriate weighting to ensure a preferential distribution to identified categories of beneficiaries (least developed and developing landlocked countries).<sup>7</sup> A web-based model was also developed to enable the visualization and comparison of the impact of each of the alternative distribution formulae on any member of the Authority under different scenarios.<sup>8</sup> For convenience, a summary of the preferred distribution formula is set out in the annex to the present document.

10. Having considered the various aspects of the matter, the Committee submitted a report to the twenty-sixth session, in July 2021, in which it set out its main conclusions and recommendations and provided a series of guiding questions for consideration by the Council and the Assembly.<sup>9</sup> The Council and the Assembly welcomed the report but only few delegations expressed detailed positions on its content. In relation to article 82(4), one delegation suggested that, as an alternative to direct distribution, the Authority could establish a fund, administered by the Secretary-General, with the task of distributing the payments received from coastal States. The monies paid into the fund could be used for specific projects in developing countries, such as infrastructure projects for improving the access of developing landlocked countries to and from the sea. Decisions regarding the distribution and use of payments under article 82 (4), could be made by the Secretary-General upon consultation with the contributing and recipient States. The Secretary-General would have to report on the payments received and their distribution and use in the context of his or her annual report to the Assembly, thus allowing Member States to express their views on the matter and, if so desired, make suggestions for the future. It may be noted that this proposal is analogous to the proposed Seabed Sustainability Fund under consideration as an alternative or supplemental approach to the equitable sharing of financial benefits from activities in the Area. The Council and Assembly have already invited the Committee to

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<sup>6</sup> See ISBA/26/A/24-ISBA/26/C/39.

<sup>7</sup> See ISA Technical Study N.31: Equitable sharing of financial and other economic benefits from deep seabed mining, 2021, pp. 63-79.

<sup>8</sup> See <https://equitablesharing.isa.org.jm/>.

<sup>9</sup> See ISBA/26/A/24-ISBA/26/C/39.

develop a detailed proposal for such a fund,<sup>10</sup> the proposed objectives of which include investment in knowledge and competence, including basic and applied research, capacity-building and the fostering of other public goods related to the seabed.

#### IV. Way forward

11. The Committee is invited to consider the question of distribution of payments and contributions under article 82(4), taking as a starting point the work already done between 2019 and 2022. The Committee is particularly invited to consider the following guiding questions:

(a) Does the Committee agree that the preferred distribution formula previously developed by the Committee (geometric mean formula) provides a suitable prima facie basis for equitable distribution under Article 82(4)?

(b) Does the Committee agree on the proposed beneficiaries for preferential distribution as shown in the annex? Should there be any prioritization within the identified categories?

(c) Does the Committee agree with the finding in Technical Study 31 that the appropriate social distribution weight is  $\eta=1.1$ , based on the UN General Assembly revealed preference?

(d) Does the Committee have any views as to whether distributions under article 82(4) should be made immediately when transmitted by the coastal State or accumulated in an investment fund until they reach a predetermined level to maximize benefits to developing States parties?

(e) Does the Committee have any views as to the appropriate administrative overhead to be recovered by the secretariat for the administration of payments and contributions under article 82(4), considering that 13% is the customary overhead charged for the administration of trust funds?

(f) Does the Committee have any views as to the recovery of the additional costs in which the Authority would incur in case a coastal States opted to make contributions in kind?

(g) Does the Committee consider that the establishment of a fund could be an alternative to direct distribution under Article 82(4)? Would channelling the Article 82(4) receipts through the Seabed Sustainability Fund be considered as an option? Would it be appropriate to use the fund to finance capacity development and marine scientific research activities as per the [Capacity Development Strategy](#) and the [Action Plan in support of the United Nations Decade of Ocean Science for Sustainable Development](#) of the Authority?

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<sup>10</sup> See ISBA/27/A/8-ISBA/27/C/36, para. 18.

## Annex

1. In its analysis of the sharing of benefits deriving from activities in the Area, the Finance Committee developed three formulae. These are elaborated in a series of reports prepared for the Committee and reiterated in [ISA Technical Study No. 31](#).

2. Initially, the Finance Committee developed a proposed formula based on readily accepted and accessible measures of States parties' income and populations, adjusted by a social distribution weight to achieve a progressive allocation. To attempt to resolve the distributive problems associated with the original formula (a wide dispersion between States parties in the amount received), and in response to discussions within the Finance Committee in 2019, two additional formulae were developed, namely a formula with a floor and ceiling (minimum and maximum allocated shares), and a geometric mean functional form. It was found that the latter creates a more compact distribution among States parties of allocated shares, which includes less extreme minimum and maximum values and therefore may be considered the most 'equitable' formula. This formula is written:

$$S_i = \frac{\left[ \frac{GNI}{GNI_i} \right]^{\eta=1} \cdot P_i^{\frac{1}{2}}}{\sum_{i=1}^N \left[ \frac{GNI}{GNI_i} \right]^{\eta=1} \cdot P_i^{\frac{1}{2}}} = S_i = \frac{\left[ \frac{GNI}{GNI_i} \right]^{\eta=1} \cdot P_i^{\frac{1}{2}}}{\sum_{i=1}^N \left[ \frac{GNI}{GNI_i} \right]^{\eta=1} \cdot P_i^{\frac{1}{2}}}$$

3. The Committee identified that there are 47 States parties which may be considered least developed, developing landlocked, or both least developed and landlocked, as shown in the table below. Technical Study 31 (pages 82-83) concluded that an appropriate social distribution weight to be used to give preference to least developed and developing landlocked States could be  $\eta=1.1$ . The report further found that increasing the value of  $\eta$  to 1.4 progressively increased the allocation to landlocked developing States (albeit at the expense of other categories of States) but any further gains would be minimal beyond  $\eta = 1.5$ . The Committee did not reach any decision as to whether a distinction should be made between States parties which are both landlocked and least developed.

Table 1: Least developed and landlocked developing States members of ISA

<b>Least developed</b>	<b>Developing landlocked and least developed</b>	<b>Developing landlocked</b>
Angola	Burkina Faso	Armenia
Bangladesh	Chad	Azerbaijan
Benin	Lao PDR	Bolivia
Comoros	Lesotho	Botswana
DR Congo	Malawi	Mongolia
Djibouti	Mali	Paraguay
Gambia	Nepal	Eswatini
Guinea	Niger	The Former Republic of Yugoslavia
Guinea-Bissau	Uganda	Macedonia
Haiti	Zambia	Zimbabwe
Kiribati		
Madagascar		
Mauritania		
Mozambique		
Myanmar		
Sao Tome & Principe		
Senegal		
Sierra Leone		
Solomon Islands		
Somalia		
Sudan		
Timor Leste		
Togo		
Tuvalu		
United Republic of Tanzania		
Vanuatu		
Yemen		