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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

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Report of the Secretary-General

I. Introduction

1. At its remote meeting on 24 May 2022 and its formal in-person meeting from 13-15 July 2022, the Finance Committee continued discussions on the equitable sharing of financial and other economic benefits derived from activities in the Area. The Committee considered the Secretary-General's report on the outcomes of discussions from the last meetings of the Council and Assembly on the report of the Committee ([ISBA/27/FC/2](#)).
2. During the twenty-seventh session of the International Seabed Authority at its meeting from 18 July-5 August 2022, the Council and the Assembly considered the report of the Finance Committee ([ISBA/27/A/8-ISBA/27/C/36](#)).
3. The Council and Assembly requested the Committee to develop a detailed proposal for the establishment of a seabed sustainability fund as an alternative or adjunct to the direct distribution of monetary benefits derived from activities in the Area, for consideration by the Assembly during the twenty-eighth session of the Assembly. In this regard, the Committee decided that these matters should be included in the work programme for the Committee for the remainder of 2022 and 2023 and requested the secretariat to proceed to prepare draft proposals for the establishment of a seabed sustainability fund, as well as a study on options for the

distribution of funds received pursuant to article 82, paragraph 4 of the Convention, to support its work.¹

4. In response to this request, the present report provides a draft proposal for the establishment of a seabed sustainability fund, as well as key guiding questions to support the discussion of the Committee at its meeting during the twenty-eighth session of the Authority. It builds on the results of the ISA [Technical Study No. 31](#) published in May 2022 on equitable sharing of financial and other economic benefits from deep-seabed mining, which was conducted under the supervision of the Committee, as well as the discussions to date in the Committee, Council and Assembly.

II. Draft proposal for the establishment of a seabed sustainability fund

A. Rationale

5. Global commons are defined as international, supranational, and global resource domains in which common-pool resources are found. Global commons include the earth's shared natural resources, such as the high seas and the Area, the atmosphere, outer space, and the Antarctic.

6. The world is facing the age of the ocean. The ocean contributes \$1.5 trillion annually in value-added to the overall economy, and this number could reach \$3 trillion by 2030. The Food and Agriculture Organization (FAO) of the United Nations estimates that approximately 58.5 million people are employed worldwide in primary fish production alone – of which approximately 21 per cent are women. Approximately 80 per cent of world trade is transported by maritime shipping. The ocean will play a key role in ongoing transitions the world is experiencing, such as the need to speed up the change to renewable energy to achieve the goals set under the Paris Agreement. The conservation and sustainable use of the ocean and its living and non-living resources is arguably even more relevant than when the Convention was adopted.

7. The legal regime established by the Convention must be fully implemented and articulated in conjunction with other international agendas. It must be underpinned with enough resources and provide opportunities for all States parties to participate and benefit.

8. Under the Convention, the Authority is entrusted with the development and implementation of a global legal framework as trustee of a global common, the Area and its resources. The Authority is uniquely mandated to organize and control activities in the Area, particularly with a view to administering the resources of the Area for the benefit of all humanity. In so doing, the Authority has the duty to ensure the protection of the marine environment from potential harmful effects arising from activities in the Area. To this end, in addition to regulating activities in the Area through the precautionary approach informed by best available science, the Authority is required to promote and encourage the conduct of marine scientific research in the Area and to facilitate the transfer of technology and scientific knowledge to developing States relating to activities in the Area so that all States Parties benefit.

9. The global ocean policy landscape is becoming increasingly complex with new instruments and development agendas emerging across different sectors. In 2022, for example, the World Trade Organization's Agreement on Fisheries

¹ A report on options for distribution under Article 82(4) is available under symbol ISBA/28/FC/3.

Subsidies was adopted to prohibit harmful fisheries subsidies, and at the United Nations Environmental Assembly a resolution to forge an international legally binding agreement to address plastic pollution was endorsed. In 2023, the text of an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction instrument (BBNJ) was finalized. The new agreement recognizes and complements the mandate and work of the Authority under the Convention and the 1994 Agreement.

10. Implementation of various multilateral environmental agreements on climate change, food security (e.g., fisheries), pollution, and biodiversity, among others, can only be successfully achieved through effective ocean governance. For instance, Parties to the UN Framework Convention on Climate Change recognized the need to strengthen the understanding of the ocean in addressing climate change, which led to the creation of the Ocean and Climate Change Dialogue in 2022. In the same year, the UN Environment Assembly has acknowledged the specific impact of marine plastics and international cooperation, coordination, and complementarity among international conventions, including the Convention. Reflecting the growing interests and demands for a multilateral coherent approach to managing the ocean, these new elements provide new opportunities for leveraging global actions for an effective ocean governance.

11. While many initiatives related to sustainable ocean management are being undertaken and supported by various organizations, they often require more coherence and coordination at the institutional level for effective cross-sectoral collaboration and efficient use of resources.

12. Improved coherence among global ocean agendas and coordination among relevant mandates of competent international organizations could provide more opportunities to create synergies between mandate and actions including results of scientific research, ensure the results address the gaps and needs identified in international frameworks and agendas, and take advantage of economies of scale. This would further develop countries' capacity to participate and contribute to the achievement of various global objectives, enabling all to benefit from the protection and sustainable use of the ocean and its resources.

13. Such coordination of efforts, especially financial efforts, would be more effective and cost-efficient if built upon an existing institutional framework anchored in the Convention that offers a well-established governance and legal framework developed by diverse stakeholders through a multilateral approach.

14. The Authority has accumulated almost 30 years of experience in developing a multilateral framework for regulating activities in areas beyond national jurisdiction, promoting scientific research and capacity development, and developing standards and guidelines for sustainable management of the Area with a view to share equitably all financial and other economic benefits. Its initiatives, data, tools, and best practices offer essential building blocks for ensuring a coherent approach to the conservation and sustainable use of areas beyond national jurisdiction, while preventing duplication of efforts.

15. Stability and predictability of financial resources, together with a clear financial agenda, are important in defining the incentives and priorities for scientific research and capacity development. Currently, funding for conservation and sustainable use of the ocean, particularly in areas beyond national jurisdiction, is insufficient and fragmented.

16. The Seabed Sustainability Fund could contribute to addressing the challenges and further enabling opportunities described above and provide both

quantity and quality financing for the conservation and sustainable use of the ocean. By aiming to seek a balance between the environmental protection and development of the global public goods, the fund would be more in line with the precautionary approach than the simple financial distribution of the net financial benefits from activities in the Area.

B. Scope

17. The Seabed Sustainability Fund would be dedicated to the conservation and sustainable use of the ocean, particularly areas beyond national jurisdiction, for the benefit of humankind. The Fund would be constituted from the payments made in respect of activities in the Area. It may be considered as an alternative or adjunct to the direct distribution of monetary benefits derived from activities in the Area. Its main objective would be to provide financial resources to developing member States of the Authority for their participation and contribution in developing and implementing relevant instruments under the Convention. More specifically, and as previously proposed by the Committee, the Fund could also support the establishment and consolidation of regional and subregional marine scientific and technological centres, as provided in articles 276 and 277 of the Convention.

18. Initiatives supported by the Seabed Sustainability Fund would be required to align themselves with the Strategic Plan and other programmatic documents adopted by members of the Authority. The initiatives would leverage the Authority's existing partnerships, technical work, programmes, and data. The Authority could build on the outcomes in cross-cutting areas, such as capacity development and generation and sharing of knowledge, for further development and sustainability of the benefits derived from the supported initiatives.

19. The Action Plan on Marine Scientific Research in support of the UN Decade of Ocean Science for Sustainable Development (ISBA/26/A/4) and the Capacity Development Strategy (ISBA/27/A/5) of the Authority provide consistent and integrated frameworks for not only members and stakeholders of the Authority, but also other stakeholders of areas beyond national jurisdiction to contribute to advancing the scientific basis and capacity of developing States for sustainable ocean governance. Many initiatives under these frameworks, such as the Sustainable Seabed Knowledge Initiative (SSKI), have led to the development of new biodiversity assessment tools, training of experts in developing States, and sharing of environmental data collected from the deep seabed to which access is often limited by scientific and financial capacities. These initiatives have also contributed to critical initiatives of the Authority, such as the development of regional environmental management plans.

20. In response to the growing global demands and requests from the Council on increasing deep-sea scientific knowledge and capacity, the Fund can provide an effective avenue of resources to scale up activities for benefits at a broader scale across different sectors in areas beyond national jurisdiction that contribute to the successful implementation of the Convention.

21. Initially, the Fund would focus on scientific research and capacity development. In terms of scientific research, it could support global actions for sustainable management of areas beyond national jurisdiction such as scaling up the network and capacity on ocean data and science, area-based management tools, and supporting national and regional-level investments in advancing scientific research and marine data, including centres in the different regions. The Fund would also support developing and strengthening the institutional capacity of developing countries, for example through formulation of national legislations, ocean literacy, technology hubs, generation and utilization of scientific information

and data, as well as reallocation of capital in the form of grants, technology, infrastructure, and expertise, among others. All proposals would be reviewed based on the policies and criteria governing the determination of incremental costs defined by the fund.

22. The fund would be defined to ensure that it complements rather than substitutes other existing funds. However, it would distinguish itself from other sources of funding because it would be: i) anchored in the multilateral ocean governance system; ii) independent of particular donors' policies and priorities; iii) dedicated to the sustainable management of areas beyond national jurisdiction; iv) providing a more predictable layer of financing, not based on pledges; and v) allowing for a different set of financial instruments to support the action, such as grants and guarantees.

C. Financial management

23. The Convention (Part XI, Articles 171 to 173) and the Financial Regulations of the Authority already provide for the management of payments deriving from activities in the Area (referred to in Article 171 as 'funds received by the Authority pursuant to Annex III, article 13, in connection with activities in the Area'). All such payments form part of the 'funds of the Authority', along with assessed contributions of members and other sources of income enumerated in article 171. All funds of the Authority are managed and administered in accordance with the Financial Regulations and no additional regulation would be required to allocate part of those funds to the Fund.

24. The funds of the Authority must be allocated strictly in accordance with Article 173 and the Financial Regulations. The first call on the funds of the Authority shall be the administrative expenses of the Authority. Thereafter, any remaining funds are to be allocated for equitable sharing in accordance with Article 140 (i.e., distribution or to the seabed sustainability fund) and to the compensation fund to be established under Article 151(10) of UNCLOS.²

25. This implies that, in the initial phase of exploitation activities, when revenue to the Authority is likely to be relatively low, and from a small number of contractors, the revenue will be used to gradually displace assessed contributions of members as means of funding the administrative budget of the Authority. It is not possible to allocate any of the funds of the Authority to the seabed sustainability fund or to the economic assistance fund until such time as the revenue from activities in the Area exceeds the amount of the administrative budget. In a separate report prepared for the Finance Committee (ISBA/28/FC/2), the administrative budget is projected to reach \$35 million by 2030.

26. Only once the revenue from activities in the Area exceeds the amount needed to fund the administrative budget would the Authority need to determine how much of the revenue in excess of that needed to support the administrative budget should be allocated for distribution or to the Seabed Sustainability Fund, and to the compensation fund to be established under Article 151(10). This implies that, even if commercial exploitation were to begin as early as 2025, the Authority would have several years to consider the allocation of revenue.

27. It may be noted further that different organs of the Authority would be involved in making such decisions, as already mandated by the Convention. The decision as to the amount of available revenue to be allocated to the economic assistance fund is to be taken by the Council, on the recommendation of the Finance Committee. Decisions relating to the structure and use of the economic assistance

² See Article 173(2) as read with the 1994 Agreement, annex, Section 7, paragraph 2.

fund are to be taken by the Assembly on the recommendation of the Council, based on advice from the Economic Planning Commission. Decisions as to equitable distribution, including the decision as to how much of available revenue to allocate for distribution or to allocate to a seabed sustainability fund are taken by the Assembly on the recommendation of the Council, taking into account (in both cases) the recommendation of the Finance Committee.

D. Governance

28. It is suggested that, for at least the initial phase of its operations, the Seabed Sustainability Fund would be established as a tool under the Authority's existing governance structure rather than a new entity itself. It would nonetheless require the Authority to scale up and develop a set of operational rules. There are two main reasons for this. First, such an approach is based on the evolutionary approach to the establishment and functioning of the organs and subsidiary bodies of the Authority as reflected in the 1994 Agreement. Second, considering that the Fund is unlikely to come into operation before 2030 and that the amount of the fund remains uncertain, such an approach represents the most cost-effective way of developing the Fund.

29. Building on the existing structures and procedures, four functional bodies would be part of the governance of the Seabed Sustainability Fund during the initial phase of its operations. First, the Finance Committee would serve as the management board responsible for overseeing the general policy, endorsing major decisions, and arbitrating in case of conflicts. The Committee would report annually on the progress to the Council and Assembly. Second, the Legal and Technical Commission would serve as the scientific advisory board to the management board responsible for identifying scientific issues and providing expert input to the implementation, monitoring, and evaluation of the fund. Third, a performance audit board would be established engaging external experts on an ad-hoc basis to conduct performance review and directly report to the Assembly. Lastly, the Secretariat would serve as an executive office responsible for practical administration of the Fund, supporting the work of the management and scientific advisory boards and facilitating operationalization of the fund on a daily basis and in line with the programmatic objectives identified in relevant strategic frameworks.

30. In due course, the fund could be expected to evolve in its institutional set-up and type of financial products offered, level of participation in its governance structure, and adoption of new performance-based approaches to adapt to higher availability of resources or change the type of initiative its supports once additional capacities on areas beyond national jurisdiction are consolidated in developing countries. The pace of evolution would depend upon the pace of activities in the Area, projections as to the amount of revenue flowing into the Fund and the resulting complexity of the administration of the Fund.

III. Guiding questions

31. To assist the discussion, the Committee is invited to consider the following non-exhaustive list of guiding questions:

- a. Should the focus of the Seabed Sustainability Fund be the ocean or should it also help addressing the challenges faced by other global commons?
- b. Should the scope of the Seabed Sustainability Fund be limited to the conservation and sustainable use of the Area, or should it also covers

- the high-seas and when request by States Parties parts under national jurisdiction?
- c. Should the Seabed Sustainability Fund consider proposals submitted by third parties beyond ISA members?
 - d. Should be the initial priority of the Fund to build national capacity on ocean issues in members of the Authority?
 - e. What would be the key elements of an adequate definition of incremental costs for the fund that ensures the additionality of its investments and avoids a crowding-out effect of public investments?
 - f. Does the Committee agree with an evolutionary approach to the operation of the Fund, making best use of existing organs and bodies such as the Finance Committee and the Legal and Technical Commission?
 - g. Are there any areas of further study the Committee would request the Secretariat to undertake?