



# Assembly Council

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Item 12 of the provisional agenda of the Assembly\*

### **Report of the interim Director-General of the Enterprise**

Agenda item 12 of the Council

### **Report of the Interim Director-General of the Enterprise**

## **Report on activities related to the Enterprise**

**Submitted by the interim Director-General of the Enterprise**

### **I. Introduction**

1. The present report is to inform the Council and the Assembly of the activities undertaken and progress made by the interim Director-General of the Enterprise in performing the functions of the Enterprise as specified in Section 2 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (the “1994 Agreement”). The present report should be read in conjunction with the reports of the Special Representative of the Secretary-General of the Authority for the Enterprise previously submitted to the Council<sup>1</sup> and with the Authority’s Technical Study on Issues relating to the Operationalization of the Enterprise.<sup>2</sup>

2. In accordance with Article 170 of the United Nations Convention on the Law of the Sea (“the Convention”) and the 1994 Agreement, the Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, as well as the transporting, processing, and marketing of minerals recovered from the Area. The Enterprise shall act in accordance with the general policies of the Assembly and shall be subject to the directives and control of the Council. It also has the objective of performing the crucial role of facilitating the participation of developing States in activities in the Area. It is to enjoy autonomy in the conduct of its operations when it becomes independent of the Secretariat.

3. By virtue of Section 2 of the Annex to the 1994 Agreement, the Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The independent functioning of the Enterprise may be

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\* ISBA/29/A/L.1.

<sup>1</sup> ISBA/25/C/26, ISBA/26/C/15, ISBA/26/C/46, ISBA/27/C/14 (ISBA/27/C/14/Corr.1), ISBA/27/C/34 and ISBA/28/C/2.

<sup>2</sup> Technical Report 1/2019 – A Study Related to Issues on the Operationalization of the Enterprise.

triggered by either of two events, namely, receipt by the Council of an application for a joint-venture operation with the Enterprise or approval of a plan of work for exploitation for an entity other than the Enterprise.

4. However, several further conditions would also need to be satisfied for the Enterprise to operate as an independent entity. First, upon the occurrence of either of the aforementioned trigger events, the Council is under a legal obligation to take up the issue of the independent functioning of the Enterprise. Second, if the trigger event is an application for a joint-venture operation with the Enterprise, the Council must consider whether said operations with the Enterprise accord with “sound commercial principles”. It is noted that neither the Convention nor the 1994 Agreement has defined what is meant by the term “sound commercial principles.” Third, if the Council is satisfied that joint-venture operations with the Enterprise accord with sound commercial principles, it has the obligation to issue a directive for such independent functioning.

## **II. Appointment of the interim Director-General**

5. The Council will recall that in its decision [ISBA/28/C/10](#) of 31 March 2023, the Council adopted a recommendation made by the Legal and Technical Commission to establish the position of interim Director-General of the Enterprise. Subsequently, in July 2023, the Assembly approved a supplementary budget for the financial period 2023-2024 ([ISBA/28/A/15](#)) to allow for the implementation of the decision of the Council.

6. Following an international recruitment process conducted in accordance with the practices and standards of the United Nations, Mr. Eden Charles (Trinidad and Tobago) was appointed as interim Director-General. He took up his post from 20 January 2024, at the headquarters of the Authority. Office space and facilities, together with necessary administrative support, were provided by the Authority.

7. The functions of the interim Director-General are based on the functions set out in Section 2 of the Annex to the 1994 Agreement, namely:

- a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
- b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;
- c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;
- d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- e) Evaluation of information and data relating to areas reserved for the Authority;
- f) Assessment of approaches to joint-venture operations;
- g) Collection of information on the availability of trained manpower;
- h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

8. In addition, as agreed by the Council, the interim Director-General represents the interests of the Enterprise with regard to the development of the regulatory regime for activities in the Area.

### III. Activities of the interim Director-General

9. This section of the report describes the activities undertaken by the interim Director-General since assuming office.

#### A. Participation in discussions on the draft regulations for exploitation of marine minerals in the Area

10. The interim Director-General attended the first part of the twenty-ninth session of the Council and participated in discussions on the draft regulations for exploitation of marine minerals in the Area. The purpose of such participation was to provide the Council with the views of the Enterprise on topics relevant to its interests as well as making comments and offering textual suggestions in relation to the draft regulations.

11. Some of the topics on which the interim Director-General intervened were those under draft Regulations 13, 14, 19, 20, 21, 23, 27, 29, 33, 53, 59, 60, 63, 66, 71, 73, 75, 79 *inter alia*; in addition to proposals made by delegations concerning the possibility of streamlining the draft regulations and on the possible inclusion of a provision introducing a certificate of origin for resources of the Area as proposed by the Legal and Technical Commission.<sup>3</sup> The Council is invited to recall that, following the adoption of the 1994 Agreement, the Enterprise is in most cases subject to the same obligations as contractors.<sup>4</sup>

#### B. Study of managerial policy options and the availability of trained manpower

12. It should be noted that based on the evolutionary approach to the operationalisation of the Enterprise, an important part of the functions of the interim Director-General is to take the necessary steps to prepare for the independent operation of the Enterprise. As the appointment of both a permanent Director-General<sup>5</sup> and a Governing Board<sup>6</sup> is envisaged in the Convention, in particular in Articles 4 to 7 of Annex IV, a proper managerial structure should be in place by the time of the full independence of the Enterprise from the Secretariat, in particular a framework of managerial rules for the Enterprise in case either of the above-mentioned triggers takes place.

13. The deep sea mining industry is a developing field. Technology is constantly evolving, along with market conditions and environmental considerations. By proactively studying policy options, it can be assured that the Enterprise will have the managerial structure best suited for these changing circumstances.

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<sup>3</sup> ISBA/29/C/7, based in turn on the proposal made by Belgium and included in document ISBA/27/C/13.

<sup>4</sup> See, for instance, Section 2, paragraph 4 of the Annex to the 1994 Agreement, according to which “*the obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise*”.

<sup>5</sup> As regards the permanent Director-General, the Convention states that the Assembly shall, upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise, but without specifying any particular qualification for that position either.

<sup>6</sup> As for the election of the Governing Board, the Convention provides that due regard is to be paid to the principle of equitable geographical representation in electing its members. It also states that, in electing members to the Board, regard should be paid to the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields. Further to that, the Enterprise is to develop rules of procedure for the Governing Board covering areas such as meetings, decision-making and voting, the election of a chair, the participation of the Director-General in meetings, the appointment of a secretary to the Governing Board and committees of the Board dealing with matters such as investment assessment, governance, operations, audits and ethics.

14. Studying policy options up front also helps ensure the Enterprise operates with clear guidelines that balance commercial viability with environmental protection and equitable benefit sharing. Additionally, a well-defined managerial policy framework fosters transparency and builds trust with stakeholders. Knowing the Enterprise will be managed effectively according to pre-determined policies would attract qualified personnel and potential partners.

**C. Monitoring and review of trends in deep seabed mining activities**

15. The interim Director-General has begun and will continue to monitor and review trends and developments relating to deep seabed mining activities and conduct analysis of world metal market conditions and metal prices, trends and prospects, by studying and examining reports on the demand for critical minerals, from relevant sources including the International Energy Agency, World Bank, International Renewable Energy Agency, International Copper Study Group, International Nickel Study Group, among others, and where possible follow the meetings of these bodies, with a view to:

- a) Tracking key trends and developments in deep sea mining activities worldwide, including exploration, technology advancements, and environmental considerations.
- b) Analysing global metal market conditions and metal prices, including trends, forecasts, and potential impacts on the feasibility of deep sea mining.
- c) Generating reports summarizing findings and insights, with clear visualizations and data analysis.
- d) Preparing reports to inform decision-making and stakeholder engagement.

16. Following the work of the aforementioned bodies, which includes their monthly publications, monthly bulletins, yearbooks and online statistical databases, is useful as they would assist the interim Director-General in obtaining accurate and timely information on capacities, production, usage, trade, stocks, prices, technologies, research development and in other areas that may influence the supply and demand of metals.

**D. Assessment of available data relating to reserved areas**

17. In keeping with the provisions of Section 2 paragraph 1(e) of the Annex to the 1994 Agreement, the interim Director-General's duties and responsibilities also include "*evaluation of information and data relating to areas reserved for the Authority*". The legal regime of reserved areas is provided for in Articles 8 and 9 of Annex III to the Convention as amended by the relevant provisions of the 1994 Agreement, providing for what has been defined as *site-banking system*.

18. In this regard, it is noted that as of today several reserved areas have been identified, which could therefore be the object of potential joint venture operations between the Enterprise and Contractors. As of March 2024, a total of 839,218 sq. km area remains available in the reserved area site bank for polymetallic nodules and 3,000 sq. km for cobalt-rich crusts. The inability of the Enterprise to carry out activities in the Area at this stage, poses an obstacle for the use by the Enterprise of the reserved areas. The Enterprise, however, could partner with developing countries or Contractors to explore and develop these reserved areas.

19. It should be noted that the Secretariat has carried out a resource assessment of the reserved areas. It is a priority of the interim Director-General to review said assessment, which forms the primary asset of the Enterprise. Subsequent to the assessment, it would be a priority of the interim Director-General to undertake actions leading to comprehensive data evaluation on reserved areas. These actions would include assessing the quality and adequacy of environmental baseline data within the reserved areas, pinpointing any gaps

and evaluating their suitability for conducting environmental impact assessments, as well as scrutinizing existing data concerning mineral resources such as nodules, sulphides, and crusts, delving into their abundance, distribution, and economic viability within the designated regions.

#### **E. Assessment of approaches to joint venture operations**

20. The original position of advantage of the Enterprise prior to the adoption of the 1994 Agreement essentially substantiated in provisions related to the transfer of technology, as provided for in Article 144 of the Convention<sup>7</sup> and also the obligation to provide the Enterprise with sufficient funds to “*explore and exploit one mine site, and to transport, process and market the minerals recovered therefrom and the nickel, copper, cobalt and manganese obtained, and to meet its initial administrative expenses*” (Annex IV, Article 11, paragraph 3(a) of the Convention<sup>8</sup>).

21. The adoption of the 1994 Agreement led to the loss of both advantages for the Enterprise. While the transfer of technologies will be dealt with more in detail in section F below, it should be noted that the removal of the obligation for states to fund one mine site of the Enterprise resulted in the current regime which provides that the Enterprise can only finance itself through the other means envisaged in Article 11(1), and in particular in subparagraphs (b), (d) and (e), of Annex IV to the Convention.

22. It must be emphasized that in accordance with subparagraph (b) the Enterprise can access “*voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise*”, even at this stage. However, it is evident that among these funds, the most relevant and the most capable of providing the Enterprise a stable source of income is in theory the option under subparagraph (d), namely “*income from the Enterprise from its operation*”. Nevertheless, this source of funding would only be available when the Enterprise is fully operational, as pursuant to Section 2, paragraph (2) of the Annex to the 1994 Agreement the Enterprise is required to “*conduct its initial deep seabed mining operations through joint ventures*”. In other words, the source of funds envisaged in the above-mentioned paragraph 1, subparagraph (d) would only be available after the conclusion of a joint venture.

23. Based on the above, the interim Director-General is now assessing approaches to joint venture arrangements, in keeping with para 1(f) of Section 2 of the Annex to the 1994 Agreement. To this end, one of the objectives of the interim Director-General is to assess at least three potential models of joint venture operations between the Enterprise and other entities, representing diverse approaches in ownership structures, risk sharing, profit distribution, and technology transfer, based on the work previously done in the context of Technical Report 1/2019.

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<sup>7</sup> According to which “[...] the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote: (a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, inter alia, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions; (b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area”.

<sup>8</sup> The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, and to transport, process and market the minerals recovered therefrom, and the nickel, copper, cobalt and manganese obtained, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority.

24. It is also very important to recall that a total of eleven contractors, upon submission of a plan of work for exploration, selected the option to offer a future joint venture interest with the Enterprise in lieu of contributing a reserved area.

25. For the purposes of entering into joint venture agreements, it is noted that the concept of “sound commercial principles” on which such agreements should be based, though used in the Convention, the 1994 Agreement and the revised draft regulations on exploitation, is not explicitly defined in any of those legal instruments. The interim Director-General, as a priority, will be further examining the matter related to what would constitute “sound commercial principles” for joint venture operations.

#### **F. Transfer of technology**

26. As mentioned above, there is no longer any obligation to transfer technology to the Enterprise. In accordance with Section 5, paragraph 1(a) of the Annex of the 1994 Agreement, the Enterprise and developing States wishing to obtain deep seabed mining technology must “*obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements*”.

27. Consequently, based on the interim Director-General’s mandate under Section 2, paragraph 1(d) of the Annex to the 1994 Agreement, requiring an “*assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment*”, the interim Director-General has been monitoring the development of new technologies which could be potentially used by the Enterprise in the future. The study and acquisition of technology is particularly important, not only for the purposes of mining, but also related to the protection and preservation of the marine environment. This is also applicable to the Enterprise.

28. To this end, the interim Director-General participated remotely in the Expert Scoping Workshop on Charting future horizons: harnessing advanced technologies for the protection and sustainable use of the international seabed area, organized by the Authority in Porto from 3 to 5 April 2024. The workshop focused on alternative ways to acquire technology for the purposes of exploration monitoring, inspection and marine scientific research in the Area, providing potential solutions concerning the transfer of technology from different industries (such as land-based mining), as well as a greater involvement of sensors and AI-based technologies. Consequently, the interim Director-General wishes to commend the report of the workshop to members of the Council to enable an in-depth understanding of its outcome. Having regard to the importance of keeping up to date with technological advancements, the interim Director-General wishes to underscore the usefulness of attendance of workshops of this nature in the future.

29. During the period, the interim Director-General has also kept abreast of new developments in the technology of deep sea mining through an examination of major scientific reports and journals on the subject.

#### **IV. Final remarks and recommendation**

30. The Council and the Assembly are invited to take note of the present report.