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Item 17 of the provisional agenda*

Consideration of a request for an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea pursuant to article 191 of the Convention on matters relating to the legal implications for the International Seabed Authority of activities in the Area undertaken by non-States Parties

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Note by the Secretary-General

I. Introduction and rationale

1. The present note has been prepared to assist the Assembly in its consideration of item 17 of the provisional agenda of the Assembly, proposed by the Secretary-General of the Authority and concerning the consideration of a request for an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea pursuant to article 191 of the United Nations Convention on the Law of the Sea on matters relating to the legal implications for the International Seabed Authority of activities in the Area undertaken by non-States Parties.
2. The proposed addition reflects the need to react to threats of activities in the Area carried out outside the legal framework provided under the Convention and is aimed at clarifying the scope of the collective obligations placed upon all members of the Authority pursuant to article 137 of the Convention.
3. The present note contains details of the relevant legal and procedural framework under the Convention and the rules of procedure of the Assembly and is accompanied by a draft decision containing proposed formulations of the questions for referral to the Seabed Dispute Chamber for consideration by the Assembly (see annex).

* ISBA/31/A/L.1/Rev.1.



II. Relevant legal framework

4. The Area, defined in article 1, paragraph 1 (1) of the Convention as “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”, is the common heritage of humankind. That principle was first articulated in relation to the seabed by Ambassador Arvid Pardo in a declaration made in 1967. It is widely accepted by the international community and was included in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution [2749 \(XXV\)](#) of 17 December 1970), the adoption of which was not opposed by any State.

5. Under the Convention, the importance of the principle of the common heritage of humankind is evidenced by the inclusion of article 311 (6), according to which States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

6. Article 136 of the Convention is supplemented by a number of provisions. In particular, under article 137 (1), States are prohibited from claiming or exercising sovereignty or sovereign rights over any part of the Area or its resources, or from appropriating any part thereof. That provision is a crucial element of the principle of the common heritage of humankind and has been constantly and consistently respected by the international community for more than 30 years. However, the customary nature of the principle has never been explicitly declared by any international tribunal. Under the same article, States are prohibited from recognizing such claims or exercise of sovereignty or sovereign rights or such appropriation.

7. Pursuant to article 137 (3), States and juridical persons are also prohibited from claiming, acquiring or exercising rights with respect to the minerals recovered from the Area except in accordance with Part XI of the Convention, and from recognizing any such claim, acquisition or exercise of such rights. The provision might require further clarifications in the light of the language contained in article 137 (2) on the prohibition of the alienation of resources except in accordance with Part XI.

8. At present, the principle of the common heritage of humankind as embodied in the Convention is threatened by the risk of activities in the Area carried out outside the relevant legal framework of the Convention.

9. In order to discharge their obligations under the Convention with respect to the protection of the common heritage of humankind, members of the Authority might require guidance on the exact legal nature, scope and extent of those obligations, as reflected in the draft decision contained in the annex to the present note.

III. Relevant legal basis for a request for an advisory opinion under the Convention and the rules of procedure of the Assembly

10. According to article 191 of the Convention, the Seabed Disputes Chamber gives advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions are to be given as a matter of urgency.

11. In the present case, the Assembly, as the supreme organ of the Authority and pursuant to article 160 of the Convention, is competent to decide on a request for an advisory opinion concerning structural threats to the legal framework established under the Convention.

12. Pursuant to rule 10 (g) of the rules of procedure of the Assembly, the provisional agenda of sessions of the Assembly shall include items that the Secretary-General deems necessary to put before the Assembly.

13. In the present case, item 17 was included in the revised provisional agenda of the Assembly ([ISBA/31/A/L.1/Rev.1](#)) on 28 May 2026, and such request from the Secretary-General, pursuant to rule 10 of the rules of procedure, was communicated to members of the Assembly through a note on the same day.

IV. Recommendations

14. In the light of the above, the Assembly of the International Seabed Authority is invited to:

- (a) Take note of the present report;
- (b) Adopt the draft decision contained in the annex to the present report.

Annex

Draft decision of the Assembly of the International Seabed Authority on the request for an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea pursuant to article 191 of the United Nations Convention on the Law of the Sea on matters relating to the legal implications for the International Seabed Authority of activities in the Area undertaken by non-States Parties

The Assembly of the International Seabed Authority,

Recalling that the Area is the common heritage of humankind,

Mindful of its obligation to protect and uphold that principle, in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982¹ and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,²

Acknowledging the importance of the mandate entrusted to the Authority by the Convention and the 1994 Agreement to govern activities in the Area,

Decides, in accordance with article 191 of the Convention, to request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, pursuant to article 131 of the Rules of the Tribunal, to render an advisory opinion on the following questions:

(a) Has the principle of non-appropriation of the Area and its resources embodied in article 137 (1) of the United Nations Convention on the Law of the Sea acquired the status of customary international law?

(b) What is the legal nature, scope and extent of the obligation of members of the International Seabed Authority not to recognize any claim or exercise of sovereignty or sovereign rights over the Area or appropriation of its resources pursuant to article 137 (1) and other relevant provisions of the United Nations Convention on the Law of the Sea?

(c) What is the legal nature, scope and extent of the obligation of members of the International Seabed Authority not to recognize any claim, acquisition or exercise of rights with respect to the minerals recovered from the Area outside the legal framework of Part XI, pursuant to article 137 (3) and in the light of article 137 (2) and other relevant provisions of the United Nations Convention on the Law of the Sea?

¹ United Nations, *Treaty Series*, vol. 1833, No. 31363.

² *Ibid.*, vol. 1836, No. 31364.