



# Assembly

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## Thirty-first session

Kingston, 27-31 July 2026

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**

## **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**

### **Note by the Secretary-General**

#### **I. Introduction and rationale**

1. The present note is 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 Convention 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 of this item to the provisional agenda of the Assembly reflects the need to react to threats of activities in the Area carried out outside the legal framework provided under the Convention and aims 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 therefore details the relevant legal and procedural framework provided under the Convention and the Rules of Procedure of the Assembly and is accompanied by

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

a draft decision providing potential language of the questions for the Seabed Dispute Chamber for consideration of the Assembly.

## **II. The 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. The principle has been first stated in relation to the seabed by Arvid Pardo in his declaration of 1967, and is widely accepted by the international community, being also included in resolution 2749(XXV) of 17 December 1970 (the “Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction”) to whose adoption no State opposed.

5. Under the Convention, the importance of the principle of the common heritage of humankind is proven by the inclusion of the provision of Article 311(6), under 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 the following provisions. In particular, Article 137(1) prohibits States from claiming or exercising sovereignty or sovereign rights over any part of the Area or its resources, or from appropriating any part thereof. The provision, a crucial element of the principle of the common heritage, has been constantly and consistently respected by the international community for more than 30 years. However, its customary nature has never been explicitly declared by any international tribunal. The same paragraph prohibits States from recognizing such claim or exercise of sovereignty or sovereign rights or such appropriation.

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

8. As of today, 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 in protecting the common heritage of humankind, members of the Authority might need guidance on its exact scope and application, in the terms that will be specified in the draft decision attached to the present note.

## **III. Relevant legal basis for a request for 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 of the International Tribunal for the Law of the Sea shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions are rendered as a matter of urgency.

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

12. Pursuant to Rule 10, subparagraph (g) of the Rules of Procedure of the Assembly, the provisional agenda of the Assembly shall include items which the Secretary-General deems it necessary to put before the Assembly.

13. In the context of the present case, item 17 has been included in the revised provisional agenda of the Assembly (ISBA/31/A/L.1/Rev.1) on 29 May 2026, and such request from the Secretary-General pursuant to Rules 10 and 11 of the Rules of Procedure has been communicated to members of the Assembly through Note No. ISA/OLA/2026/223 on the same day.

#### **IV. Recommendations**

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

- (a) Take note of the present report;
- (b) Adopt the annexed draft decision.

## 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 such principle, in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (the Convention) and 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);

*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 (the Tribunal), pursuant to Article 131 of the Rules of the Tribunal, to render an advisory opinion on the following questions:

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

2. 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, paragraph (1) and other relevant provisions of the United Nations Convention on the Law of the Sea?

3. 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, paragraph (3) and in light of Article 137, paragraph (2) and other relevant provisions of the United Nations Convention on the Law of the Sea?