

# **Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154**

## **Interim report**

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## Executive Summary

This Performance Review of the International Seabed Authority (the Authority) has taken place at a critical juncture, when the Authority is moving from the regulation of prospecting and exploration to the regulation of exploitation of deep-sea mineral resources in the Area. The terms of reference of the review required an examination of the regime that has developed, specific attention to the performance of the organs and subsidiary organs in place to administer the regime, and a look ahead to what will enhance performance of the Authority in future as it moves into another phase of its work. The move to exploitation, when it comes, will represent a step change in the work of the Authority, with implications for planning, working methods and delivery, Secretariat support, staffing, funding and transparency.

A standard methodology, correlating influence of the external environment, organizational motivation, and organizational capacity on organizational performance has been applied by consultants to gather an evidence base of expert opinion using a questionnaire and structured interviews. Successful application of this methodology relies upon a detailed understanding of the development and evolution of the organization and, in the case of the Authority, its functions and obligations as set out in the United Nations Convention on the Law of the Sea and the 1994 Agreement. Evidence has been triangulated to generate broad conclusions supported and amplified by a range of more detailed views and a set of 50 recommendations.

The review found that to date the Authority has made significant efforts to organise and control activities in the Area, particularly with a view to administering the resources of the Area, but more strategic planning is needed. The Authority should develop a vision for the future and demonstrate 'an agenda' for seabed mining in the Area. There is some doubt whether State enterprises are currently effectively controlled. Legal rights and responsibilities have been set for exploration but are now urgently needed for exploitation and in 2014 the Authority embarked on the process to develop exploitation regulations. The Authority has effectively implemented the regime established by the Convention to promote and regulate exploration for deep-sea minerals but there is now a need for an independent regulatory body (inspectorate) to be set up that is capable of implementing or enforcing terms and conditions. Currently the means of enforcing conditions of exploration contracts is weak and the current governance processes of the Authority are not sufficiently transparent.

It is questionable whether the Authority has enhanced opportunities for all States Parties and it could do more. Monopolisation of activities in the Area is prevented and policies have been developed for the Area to ensure the development of a Common Heritage of Mankind as a whole but in recent years these have not been added to or reconsidered in any detail. Consequently the review concludes that the Authority is not yet fulfilling its obligations to ensure that activities in the Area are carried out for the benefit of mankind. The Authority has, however, made some efforts to involve developing States and has avoided discrimination.

15-year exploration contract applications and associated on-going plans of work for mineral exploration in the Area have been dealt with effectively and expeditiously. However, the review of contractors' annual reports is onerous, lacks transparency and its effectiveness in improving performance is questionable. It is also not clear whether monitoring of contractors' compliance with approved plans of work is effective. The Authority has only recently begun to promote and encourage marine scientific research with respect to activities in the Area, and although the Endowment Fund has been used effectively, no significant work has been carried out by the Authority to effectively monitor the development of marine technology relevant to activities in the Area.

Representation and attendance at the Authority's annual sessions is an issue for the Authority. Efforts to increase participation at the Assembly are needed, whilst attendance at the Council is consistently high. The Authority has found it politically challenging to agree on regional representation for the Legal and Technical Commission and has instead established a pragmatic and workable membership of 25, adhering to election and performance criteria.

The Assembly as the supreme organ of the Authority has effectively established general policies for activities in the Area. In the main it has also exercised powers under Article 160 paragraph 2. The need for a more strategic approach and failure to achieve quorum were identified by the review as significant issues. The review has suggested options to vary meeting arrangements.

The Council as the executive organ of the Authority is effective at establishing specific policies. However, to expedite exploitation the Council may need to meet more frequently and urgent consideration of the establishment of an independent inspectorate is recommended. In terms of exercising additional powers and functions pursuant to Article 162 paragraph 2 the Council is performing well for most elements. However, several elements have yet to be tested and two elements not achieved concern specific reports to the Assembly. The review supported a suggestion that there should be a formal list of decisions as an outcome of each meeting of the Council.

The performance of the Secretariat was assessed by sources external and internal to the Secretariat. External opinion was largely supportive of the performance of the Secretariat but recognised the challenges posed to a relatively small staff complement and an imbalance of effort against the functions prescribed by paragraph 5 of Section 1 to the 1994 Agreement. Little has been achieved in terms of the Secretariat's performance of the function of the Enterprise. The review called for attention to be given to finding ways to better fund substantive work, match skills to mandate, enhance corporate communication, and encourage team performance. Internal opinion focused on heavy workload and poor internal communication within the Secretariat.

The Legal and Technical Commission (LTC) and Economic Planning Commission are subsidiary organs of the Council. The review of the performance of these subsidiary organs focused on the LTC as the Economic Planning Commission has yet to be established. The LTC performs a range of different functions set out in Article 165 Paragraph 2, and it is substantially carrying out its duties. However, much effort has been placed on the development of rules, regulations and procedures for mining, and less on protection of the environment. Lack of transparency of the work of the LTC has been heavily criticised. In future consideration of smarter ways of working are recommended by the review. The Finance Committee, as a subsidiary organ of the Assembly, is perceived as performing well. Timing of Committee meetings to ensure due process and transparency was highlighted by the review as a topic for further consideration.

The review was asked to provide a series of recommendations to contribute to a debate about the Authority's future direction. Key amongst these is a need for a strategic plan. Future structure of the Authority should incorporate a regulatory body or inspectorate and give consideration to the merits and timeliness of establishing the Economic Planning Commission. In future the Secretariat will need to respond to the direction of the strategic plan and service any revised structure. In order to be more effective and efficient the review proposes a number of considerations relating to the meeting cycle and a better dialogue between the Authority and the host Government. Finally, the Authority should address the lack of transparency including confidentiality regulations, data management and data sharing, as well as aspects related to the Common Heritage of Mankind.

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## List of acronyms

ABNJ	Area Beyond National Jurisdiction
APEI	Area of Particular Environmental Interest
CHM	Common Heritage of Mankind
EIA	Environmental Impact Assessment
IMO	International Maritime Organization
ISA	International Seabed Authority
LTC	Legal and Technical Commission of the Authority
POW	Plans of Work
RC	Article 154 Review Committee
RFMO	Regional Fishery Management Organization
SDG	Sustainable Development Goal
UNCLOS	United Nations Convention on the Law of the Sea

# 1. Introduction

## 1.1 Origin and purpose of review (Terms of Reference)

In its decision dated 24 July 2015 (ISBA/21/A/9 Rev. 1), the Assembly of the International Seabed Authority decided to undertake, pursuant to Article 154 of the United Nations Convention of the Law of the Sea (UNCLOS; hereinafter referred to as the Convention), a general and systematic review of the manner in which the international regime of the Area has operated in practice. The Assembly also decided that such a review be carried out under the oversight of a Review Committee comprising the President and the Bureau of the Assembly, the President of the Council, with the current President of the Assembly remaining a member of the Review Committee until the completion of the review, and that the Chairs of the regional groups may also participate as observers in the Review Committee. The Assembly further decided that the review be conducted by independent consultants appointed by the Review Committee, based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the International Seabed Authority (hereinafter referred to as the Authority).

Article 154, Part XI, of the United Nations Convention on the Law of the Sea provides:

*“Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the Area established in this Convention has operated in practice. In the light of this review the Assembly may take, or recommend that other organs take, measures in accordance with the provisions and procedures of this part and the annexes relating thereto which will lead to the improvement of the operation of the regime.”*

The Terms of Reference for this review (The Authority 154.R.4 Annexure 1) state that the *“report shall include a review of the manner in which the various organs and subsidiary organs of the Authority have operated in practice and of whether they have effectively performed the functions stipulated in paragraph 5 of section 1 of the annex to the 1994 Agreement. In particular, the report shall include:*

- a.) A review of the level of representation and attendance of members of the Authority at its regular annual sessions;*
- b.) An analysis of the performance of the Assembly as the supreme organ of the Authority in establishing general policies and in the exercise of its additional powers and functions pursuant to article 160, paragraph 2, of the Convention;*
- c.) An analysis of the performance of the Council as the executive organ of the Authority in establishing specific policies to be pursued by the Authority on any question or matter within the competence of the Authority and in the exercise of its additional powers and functions pursuant to article 162, paragraph 2, of the Convention;*
- d.) A review of the structure of the Secretariat and of the performance of its functions as referred to in subsection D of section 4 of part XI of the Convention, including its performance of the functions of the Enterprise pursuant to paragraph 5 of section 1 of the annex to the 1994 Agreement; and*
- e.) A review of the performance, level of representation and attendance of members of the subsidiary organs of the Authority, an analysis of their current and projected workload and the identification of measures that may lead to an improvement of their operations.”*

## 1.2 Context for this review

In 2000 the Assembly decided that that in the light of the very short experience that the Authority had in implementing the regime, it would be premature for the Assembly to take any measures related to a Periodic Review under Article 154 (ISBA/6/A/19). However, no definitive rationale is on record for the absence of a Periodic Review in 2005 and 2010.

A letter of appointment dated 12 January 2016 was issued to Seascope Consultants Ltd following an official tender process.

A meeting between the Review Committee and the consultants took place on 12-13 January 2016. This meeting clarified a number of aspects of the review and as an outcome the consultants produced an inception report (as at Annex 1).

Every assistance has been afforded to the consultants during the review but it would be usual for such an activity to receive a pre-prepared dossier, relevant presentations and claims for excellence. Preparation of this nature did not take place in this instance.

Representatives of the review team met with the Jamaican Ministry of Foreign Affairs and Foreign Trade on 9 May 2016. The purpose of this meeting was to explore the special considerations of the host government for the Authority. Points made at this meeting are reflected in the report.



## 2. History and structure of the Authority

### 2.1 Establishment of the International Seabed Authority

In 1970, the General Assembly of the United Nations adopted a resolution declaring the resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (the “Area”), as the Common Heritage of Mankind, to be governed by an international regime. The development of such a regime was one of the main tasks of the Third United Nations Conference on the Law of the Sea, convened from 1973 to 1982. The United Nations Convention on the Law of the Sea was adopted in 1982. Part XI of the Convention establishes an international regime for the management of the mineral resources of the deep seabed. The fundamental principles of the regime, as reflected in the Convention and in the Implementation Agreement adopted by the General Assembly in 1994, are that:

- the mineral resources of the international seabed area shall be the Common Heritage of Mankind and not subject to appropriation by any State;
- all rights in the mineral resources of the international area shall be vested in mankind as a whole and the economic benefits from deep seabed mining are to be shared on a non-discriminatory basis for the benefit of mankind as a whole and subject to common management.

The International Seabed Authority is an autonomous international organization created by the 1982 UNCLOS and the 1994 Agreement relating to the implementation of Part XI of UNCLOS (the 1994 Implementation Agreement). The Authority is the organisation through which States Parties to the Convention organise and control activities in the Area, particularly with a view to administering the related mineral resources (Article 157(1)). The Authority is required to administer the resources of the Area, which are vested in mankind as a whole, “on whose behalf the Authority shall act” (Article 137.2). The Authority exercises its powers in accordance with the regime established in Part XI of the Convention and the 1994 Implementation Agreement. This Agreement goes far beyond the mere implementation of Part XI, since it provided a revision of the regime agreed in 1982. It made radical changes to the structure of the Council, the decision-making system in the Council, and the scope and mandate of the Authority in its early years.

The Authority became fully operational in June 1996 and has its headquarters or seat in Kingston, Jamaica (Article 156). All States Parties to the 1982 Convention are members of the Authority. On 15 January 2015, there were 167 members of the Authority plus the European Union.

According to the Convention the primary function of the Authority is to organise, carry out and control activities in the Area. This role includes both setting the detailed standards that govern the operations of deep-sea mining companies, as well as supervising the implementation of these standards and the general provisions of Part XI. Article 170 established an organ known as the Enterprise to directly carry out activities in the Area (in accordance with Article 153), though this has not happened yet. The 1994 Agreement effectively put the Enterprise ‘on ice’ pending a decision of the Council, which can only be taken upon the occurrence of one of two trigger events: a joint venture proposal or approval of an exploitation contract. In line with the provisions laid out in the 1994 Implementing Agreement (annex, Section 2), to date the Secretariat has the mandate to perform certain limited functions of the Enterprise under the 1994 Agreement (see below).

The Authority also has the responsibility for protection of the marine environment (Article 145), the promotion of marine scientific research (Article 143), and the protection of underwater cultural heritage in the Area (Article 149).

There are many detailed publications setting out the history of the development of the Authority and its regime, for example see Nandan et al. (2002)<sup>1</sup>

## 2.2 Structure of the International Seabed Authority

The Authority is composed of three principal organs (the Assembly, the Council, and the Secretariat) and two subsidiary organs of the Council (the Legal and Technical Commission, and the Economic Planning Commission) (Article 158(1) and 163; 1994 Implementation Agreement, Section 1(4), and Section 9). The Economic Planning Commission is currently not operational as a result of the 1994 Agreement, and its functions are carried out within the Legal and Technical Commission. However, a decision can be made by the Council to bring it into force when appropriate. Financial management of the Authority is overseen by a Finance Committee, which reports to the Assembly. An additional organ, the Enterprise, is also provided for by the Convention (Article 158), but this is not yet in place.

The following sections provide an overview of the role and functions of the various components of the Authority, according to the articles of the Convention and the 1994 Agreement relating to the implementation of Part XI of the Convention.

### 2.2.1 The Assembly

The Assembly is the supreme body of the Authority with the power to establish general policies. It consists of all members of the Authority. It also has the following powers:

- It elects the members of the Council and other bodies, as well as the Secretary-General, who heads the Secretariat.
- It sets the two-year budgets of the Authority as well as the rates by which members contribute towards the budget, based on the assessment scale established by the United Nations for that body's activities.
- Following adoption by the Council, it approves the rules, regulations and procedures that the Authority may establish from time to time, governing prospecting, exploration and exploitation in the Area.
- It examines reports from other bodies, notably the annual report by the Secretary-General on the work of the Authority. This periodic examination gives members the opportunity to comment and make proposals on any aspect of the Authority's work.

The Convention also assigns several other powers to the Authority, which will come into play once deep-sea mineral exploitation gets under way. These include decisions on the equitable sharing of financial and other economic benefits deriving from activities in the Area, and on compensation or other economic adjustments to developing countries whose export earnings from their land-based mineral extraction are diminished by seabed production.

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<sup>1</sup> Nandan, S.N., Lodge, M. W. and Rosenne, S. (2002) *The development of the regime for deep seabed mining*. Kluwer Law International, The Hague 70pp.

### **2.2.2 The Council**

The Council is the executive organ of the Authority and consists of 36 members elected by the Assembly in accordance with Article 161. The 1994 Agreement (Annex, Section 3, paragraph 4) introduced a *renvoi* provision, which severely qualifies the capacity of the Assembly to take any action independent of the Council as follows:

*“Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendation of Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council. The Council shall reconsider the matter in the light of the views expressed by the Assembly.”*

The Council establishes specific policies in conformity with the Convention and the general policies set by the Assembly. It supervises and coordinates implementation of the elaborate regime established by the Convention to promote and regulate exploration for and exploitation of deep-sea minerals by States, corporations and other entities. Under this system, no such activity may legally take place until contracts have been concluded between each interested entity and the Authority. The Council's task is to draw up the terms of contracts, approve contract applications, oversee implementation of the contracts, and establish environmental and other standards. Its specific functions include the following:

- It approves 15-year plans of work in the form of contracts, in which governmental and private entities spell out the mining activities they intend to conduct in precisely defined geographical areas assigned to them.
- It exercises control over activities in the Area, and supervises and coordinates implementation of the seabed provisions of the Convention.
- It adopts and applies provisionally, pending approval by the Assembly, the rules, regulations and procedures by which the Authority controls prospecting, exploration and exploitation in the Area.
- In cases where an environmental threat arises from seabed activities, it may issue emergency orders to prevent harm, including orders to suspend or adjust operations.
- It plays a role in various aspects of the regular functioning of the Authority, for example by proposing candidates for Secretary-General, reviewing and recommending the Authority's budget for approval by the Assembly, and making recommendations to the Assembly on any policy matter.

The Council will also assume additional responsibilities as and when deep-sea mining commences in earnest. These include the issuance of directives to the Enterprise, action (including compensation) to protect land-based mineral producers in the developing countries from adverse economic effects of seabed production, and the establishment of mechanisms for a staff of inspectors who would ensure compliance with the Authority's regulations and contracts.

### **2.2.3 The Secretariat**

The Secretariat is headed by the Secretary-General and is currently organised into four functional units (see also ISBA/ST/SGB/2011/02):

- Office of the Secretary-General
- Office of Resources and Environmental Monitoring
- Office of Legal Affairs
- Office of Administration and Management

The main functions of the Secretariat include:

- Providing secretariat services to the Assembly, the Council, the Legal and Technical Commission and the Finance Committee; providing information and advice to the Bureau of those organs and bodies and to delegations; and assisting in planning the work of the sessions, in the conduct of the proceedings and in drafting reports;
- Preparing and submitting draft texts, reports and other documents, analysis, research findings, policy suggestions and recommendations, etc.;
- Providing meeting services (including interpretation, translation, document reproduction services and press releases);
- Producing publications, information bulletins and analytical studies;
- Organizing and servicing expert group meetings, seminars and workshops;
- Disseminating information on the activities and decisions of the Authority;
- Programme planning and allocating resources for the effective, economic and efficient performance of the services and functions of the Secretariat

**The Office of the Secretary-General** assists the Secretary-General in supervising and coordinating the work of the Authority, pursuant to his or her executive direction and the relevant directives of the Council and the Assembly. The office of the Secretary-General is also responsible for protocol and liaison services and public information.

**The Office of Resources and Environmental Monitoring** is the economic, technical and applied scientific arm of the Authority. In this regard it a) Provides scientific and technical inputs in the preparation of rules, regulations and procedures for the conduct of activities in the Area, and b) develops and manages the data and information required to be provided by contractors in fulfillment of their obligations under contracts. This work includes data and information required to, inter alia, assess mineral resources in contract areas, establish and monitor environmental baselines in contract areas, facilitate standardisation of data, data collection and taxonomy, and data to monitor the impact of activities on the environment in contract areas. Finally, this office has the responsibility to encourage marine scientific research in the Area, in furtherance of the Authority's mandate to administer the resources of the Area.

**The Office of Legal Affairs** is the central legal service of the Authority and provides legal advice to the Secretary-General, Secretariat and the Authority's organs and subsidiary bodies. It takes the lead in formulating rules, regulations and procedures for activities in the Area as directed by the Assembly and the Council. This Office is also responsible for external relations, the training programme and the library.

**The Office of Administration and Management** provides general administrative and management support to the Secretary-General, Secretariat and the Authority's organs and subsidiary bodies. Its functions include financial management and control, preparation of the Authority's biennial budget, assessment of contributions of member States, recruitment of staff and contractors, procurement of goods and services, personnel management and security, representation at meetings of agencies of the common system, provision of required documentation of a financial nature to the Finance Committee of the Authority, and servicing of meetings of the Finance Committee of the Authority.

#### **2.2.4 The Legal and Technical Commission**

The Legal and Technical Commission (LTC) is an organ of the Council of the International Seabed Authority and currently consists of 25 members who are elected by the Council for a period of 5 years on the basis of personal qualifications relevant to the exploration, exploitation and processing of mineral resources, oceanography, economic and/or legal matters relating to ocean mining and related fields.

The Commission is entrusted with various functions relating to activities in the Area, including the review of applications for plans of work, supervision of exploration or mining activities, assessment of the environmental impact of such activities and provide advice to the Authority's Assembly and the Council on all matters relating to exploration and exploitation of non-living marine resources (such as polymetallic [manganese] nodules, polymetallic sulphides and cobalt crusts).

Since its inception, the LTC has developed the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and the Regulations on Prospecting and Exploration for Polymetallic Sulphides and Cobalt-Rich Ferromanganese Crusts in the Area. The LTC has also developed various Guidelines and reporting formats in environmental standards and financial reporting.

Meetings of the LTC usually precede the annual sessions of the Authority, and the LTC tables its report to the Council during the session. In 2013, the LTC commenced holding two sessions per year with its first two-week session held in February and its second session in the week immediately prior to the Authority's annual sessions.

#### **2.2.5 The Economic Planning Commission**

The Economic Planning Commission was envisaged under Article 163 as a subsidiary organ to the Council, responsible for:

- Proposing measures to implement decisions relating to activities in the Area;
- Reviewing trends of and factors affecting supply, demand and prices of materials which may be derived from the Area;
- Examining any situation arising from exploitation of resources in the Area likely to lead to adverse effects on developing countries' economies, and propose a system of compensation or other measures of economic adjustment assistance for affected developing countries.

However, under the terms of the 1994 Agreement (Annex, Section 1, paragraph 4) the functions of the Economic Planning Commission are currently performed by the Legal and Technical Commission until such a time as the Council decides otherwise, or until the approval of the first plan of work for exploitation.

#### **2.2.6 The Finance Committee**

The Finance Committee was stipulated in the 1994 Part XI Agreement to oversee the financing and financial management of the Authority. This Committee comprises 15 members elected by the Assembly for a period of 5 years taking into account equitable geographical distribution among regional groups and representation of special interests, and has a central role in the administration of the Authority's financial and budgetary arrangements. The five largest contributors to the budget are guaranteed seats on the Finance Committee.

Finance Committee members are expected to have qualifications relevant to financial matters and they are involved in making recommendations on financial rules, regulations and procedures of the

organs of the Authority, its programme of work as well as the assessed contributions of its member States. The Finance Committee meets during the annual session of the Authority and tables its report on the budget of the Authority to the Assembly. The 1994 Agreement determined that all decisions of the Council and the Assembly having a financial or budgetary implications shall be based on the recommendations of the Finance Committee.

### 2.2.7 The Enterprise

The Enterprise is described within the Convention to enable the Authority to directly carry out activities in the Area pursuant to Article 153, as well as the transporting, processing and marketing of minerals recovered from the Area. The 1994 Agreement Annex, Section 2, provides that the Secretariat shall perform the functions of the Enterprise until it can operate independently of the Secretariat. This work should be overseen by a Director-General who is appointed by the Secretary-General. However, to date no progress has been made to operationalize the Enterprise.

## The International Seabed Authority

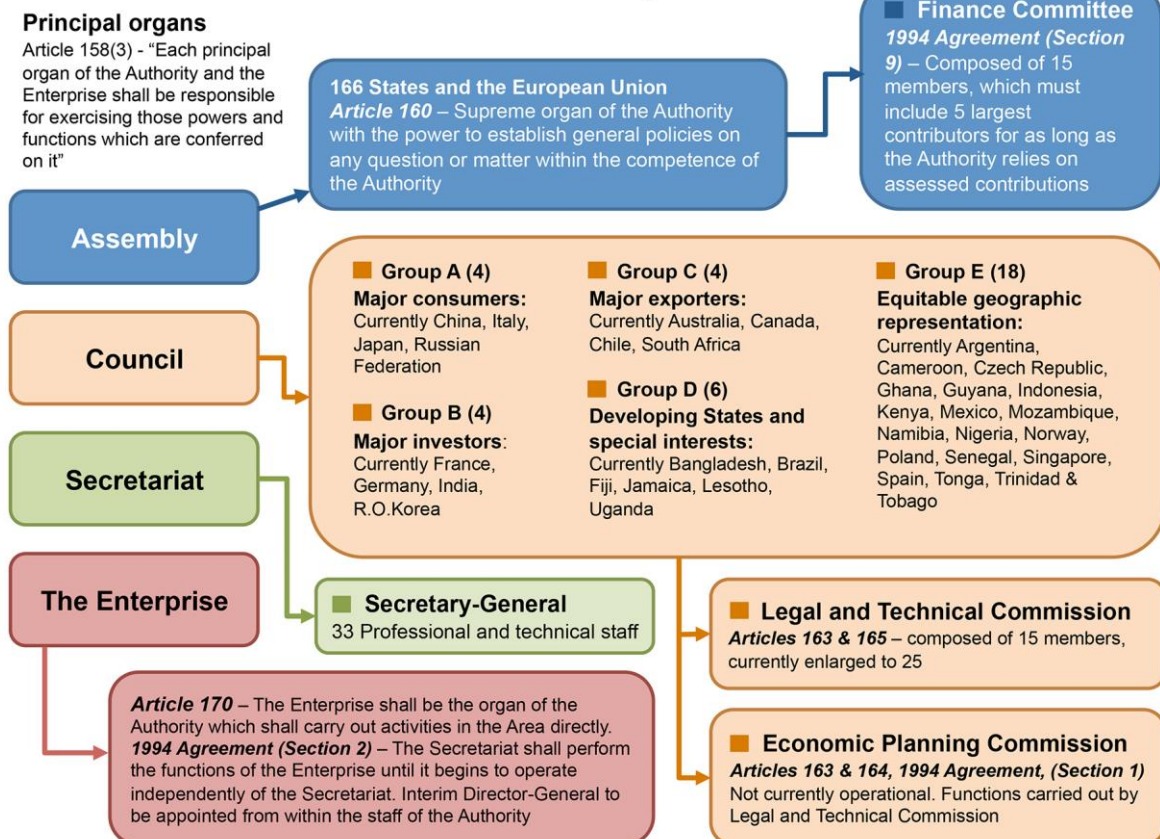


Figure 2.1: Organogram illustrating the structure of the Authority

### 3. Methodology

#### 3.1 Overall approach

Seascope's approach to the Article 154 review was based on three strands: i) a questionnaire to stakeholders; ii) interviews with stakeholders, and iii) a review of work relating to the Secretariat, including consultation with staff and review of documents. The overall approach to the review was guided by the widely used Institutional and Organizational Assessment Model (Lusthaus et al., 2002<sup>2</sup>) that enables assessment of organisational performance based on its key drivers, namely: External Environment, Organisational Capacity and Organisational Motivation. The model breaks each of these down into a number of factors that are common to all major organisations (see Figure 3.1). The Organisational Motivation factor has determined the current size of the Authority and the ambiguity of its current dual role (combining contract issue and regulation). For the Authority the External Environment is particularly important, since it comprises the organs and subsidiary organs of the Authority plus the contractors, and it must also relate to other competent international organisations and civil society. However, its effectiveness also depends on Organisational Capacity, determining, for example, how well the Secretariat functions in meeting the demands of this external environment.



Figure 3.1: Institutional and Organizational Assessment Model (Lusthaus et al., 2002)

This overall approach, endorsed by the Review Committee, is designed to engage all stakeholder groups in identifying key issues, whilst also looking at the functionality of the Secretariat and their role in promoting and carrying out the mission of the organisation.

In terms of reporting, the Assembly decided that an **interim report**, including comments by the Review Committee, the Secretariat, the Legal and Technical Commission and the Finance Committee of the Authority, should be submitted for consideration by the Assembly at its 22<sup>nd</sup> Annual Session in 2016. The **final report**, including any draft recommendations for the improvement of the operation of

<sup>2</sup> Lusthaus, C., Adrien, M-H., Anderson, G., Carden F. and Montalvan, G.P. (2002) Organizational Assessment: A Framework for Improving Performance. Canada and Washington: International Development Research Centre and Inter-American Development Bank. 202 pp



the regime, will be presented by the Review Committee to the Assembly at its 23<sup>rd</sup> Annual Session in July 2017. The Assembly requested that the Secretary-General provide the necessary and appropriate administrative and logistical support to the Review Committee and to circulate copies of the final report to all member States at least three months in advance of the 23<sup>rd</sup> Annual Session.

### 3.2 Questionnaire (electronic) survey

The questionnaire was designed to determine whether the Authority has carried out its obligations under the various articles of Part XI of the United Nations Convention on the Law of the Sea. Fifty-three questions were compiled into eight sections, each with a simple choice of six answers. Each question included an optional box for written comments and the questionnaire concluded with the opportunity for respondents to make additional comments on any topic and suggest recommendations for the future direction and operation of the Authority. The questionnaire is given in Annex II.

The questionnaire was transmitted electronically (in the six official UN languages) by the Secretary-General's office to the following groups of stakeholders involved with the Authority:

1. States Parties
2. Observers (observing states, UN and Intergovernmental organisations, NGOs)
3. Contractors
4. LTC members
5. Finance Committee members
6. Within the Secretariat
  - Secretary-General
  - Head of Legal Affairs
  - Head of Resource and Environmental Management
  - Head of Administration and Management
  - All other professional staff in the Secretariat
7. Other individuals: respondents to the ISA stakeholder surveys carried out in 2013 and 2014, and individuals recommended by members of the Review Committee.

The invitation to participate in the questionnaire was circulated on 29 January 2016 and respondents were given four weeks for its completion. Invitees were sent a reminder one week before the closure deadline. Transmission of 385 questionnaire invitations resulted in 74 complete (of which 5 were submitted as manual written comments). Of the responses, 14.5% were submitted by States Parties, 39.1% on behalf of organisations, and 46.4% in a personal capacity (Fig. 3.2). The results of the questionnaire are presented in later sections of this report.



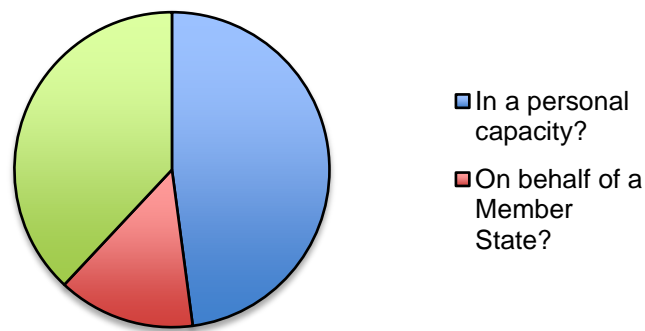


Figure 3.2: Affiliation of respondents to the questionnaire designed to determine whether the Authority has carried out its obligations under the various articles of Part XI of the United Nations Convention on the Law of the Sea (N = 74)

The respondents represent a wide range of interest groups, with the highest single group of respondents being the contractors (Fig. 3.3).

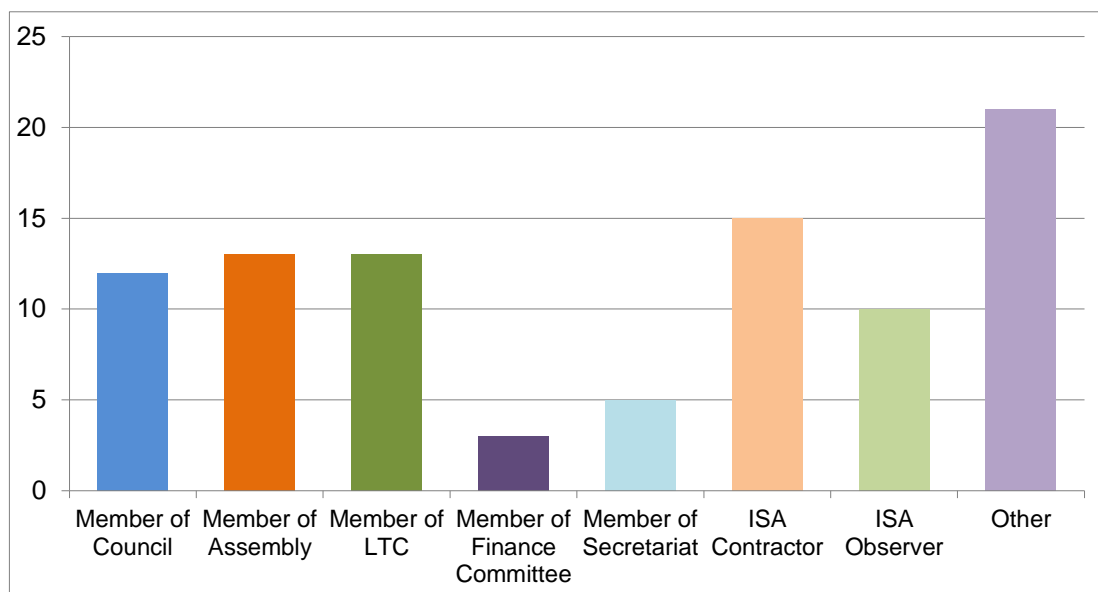


Figure 3.3: Interest groups of respondents to the questionnaire. . Note some respondents belong to more than one group e.g. all Council members are also members of the Assembly. Although they appear multiple times in this table they only completed a single questionnaire response.

The respondents to the questionnaire represented all geographic regions, with the greatest numbers of respondents from Western Europe and Others, and Asia-Pacific (Fig. 3.4).

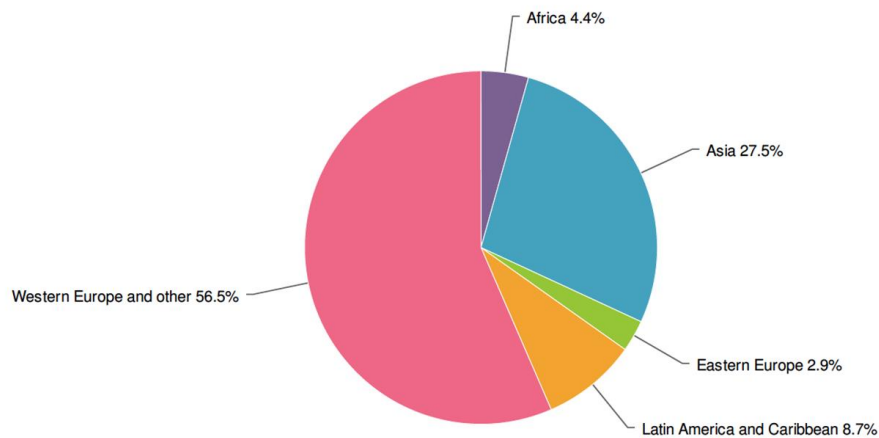


Figure 3.4: Regional distribution of respondents to the questionnaire.

In an attempt to gather information on how well the respondents understood the Authority, the questionnaire asked how long respondents had been involved with activities of the Authority. The results show that a considerable number of respondents had relationships extending over more than one year with many having relationships extending for several years (Fig. 3.5).

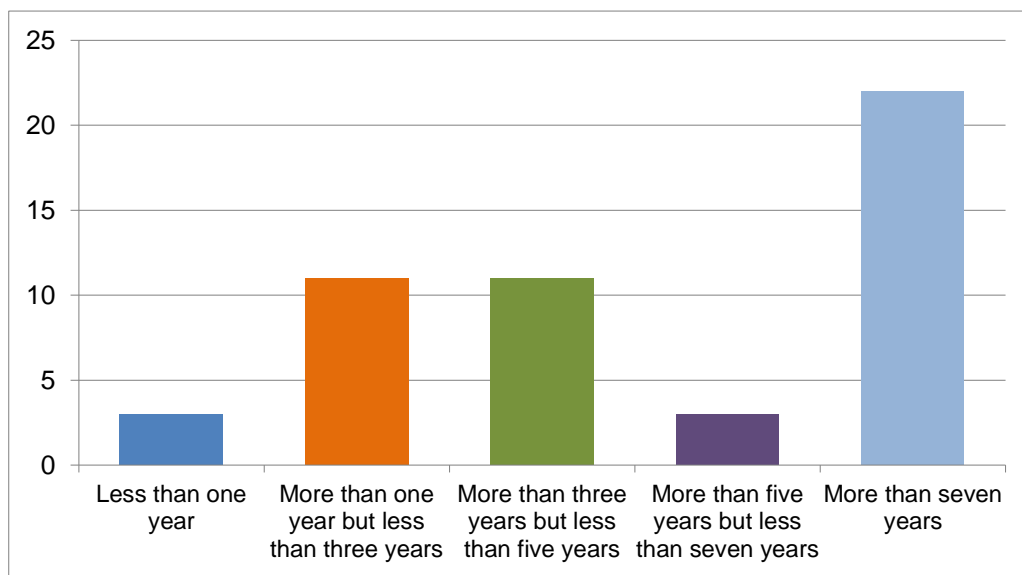


Figure 3.5: Length of engagement of respondents with the ISA. Note that only 50 respondents answered this question.

Many of the respondents were familiar with the Annual Sessions of the Authority: only 21 respondents had not attended any Annual Sessions, and 48 had attended the most recent session in 2015 (Fig. 3.6)

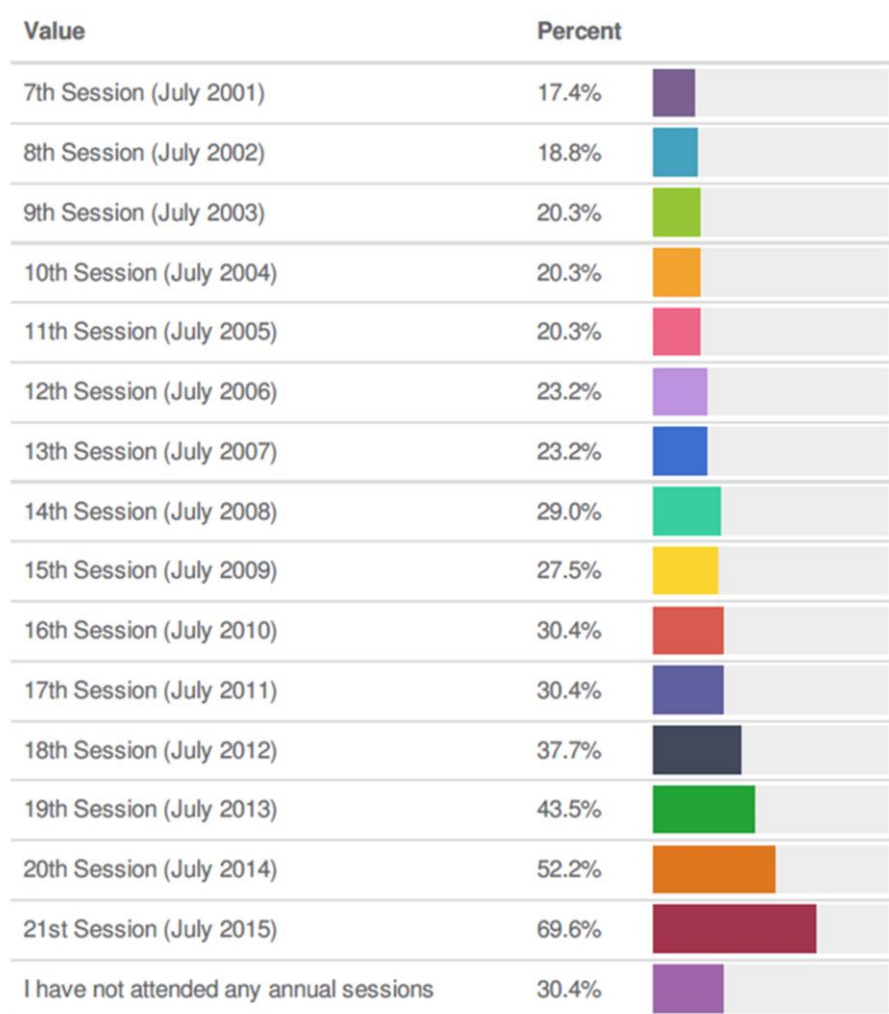


Figure 3.6: Attendance at annual sessions of the ISA by respondents to the questionnaire.

### 3.3 Interview survey

Interviews with individuals were carried out during March and April 2016, following the conclusion of the questionnaire exercise. The aim of the interview process was to seek the detailed views of individuals with knowledge of the Authority who did not respond to the questionnaire. Candidates for interview were also identified on the basis of their particular knowledge of the relevant Convention articles and the functioning of the Authority. Efforts were made to ensure balanced regional representation, with a target of fifteen interviews for each of the geographic regions.

The interviews followed a series of semi-structured questions, based on the topics explored by the questionnaire exercise. An initial analysis of the questionnaire results identified particular issues that merited further investigation through the interview process. The interview protocol used is at Annex III.

In total 144 interview requests were issued, from which 40 individual interviews were carried out, either in person or via teleconference. The invitations and subsequent interviews were delegated to the members of the Review Team on a regional basis, with Prof. Dire Tladi covering the Africa region, Mr Akuila Tawake covering the Asia Pacific region, Prof. Angel Perez covering the Latin America and

Caribbean region and the remaining regions covered by Prof. David Johnson, Prof. Philip Weaver and Mr Wylie Spicer.

Reasons given by individuals for declining the opportunity for interview included lack of expertise in the issues covered by the questionnaire, or insufficient knowledge of the detailed workings of the Authority. Several ITLOS judges were invited for interview but some declined on the grounds that they felt it was inappropriate for a member of one of the UNCLOS conventional organs (ITLOS) to comment on the activities and performance of another organ established by the same Convention.

In lieu of interview or questionnaire return, the UN Division for Ocean Affairs and the Law of the Sea (DOALOS) provided a letter to the Secretary-General dated 14 April 2016 (see Annex IV). This view, incorporated into the review, was based on ocean-related meetings serviced by DOALOS during which statements were made in relation to the manner in which the international regime of the Area has operated in practice.

### 3.4 Secretariat review

The review of the Secretariat included time at the Authority's offices in Kingston on 11-15 January 2016. A meeting was held with the senior management team (Secretary-General and Heads of departments), individual interviews were carried out with senior professional staff, and a further meeting was convened for all other members of staff to explain the process and seek input on an individual basis from anyone wishing to contribute. In addition, the Secretariat made available documentation relating to the functioning of the Secretariat including financial management, minutes of meetings, and human resources information. In a letter dated 22 March 2016, the Secretary-General provided a detailed response to the Review Team's specific request for sight of copies of exploration contracts, examples of minutes of internal meetings of the senior management team, examples of minutes of meetings between the Secretary-General and contractors following evaluation of contractors' annual reports, and examples of annual information reports to the States' Parties of UNCLOS in New York.

The following sections of the report summarise the results of the questionnaire and interview processes, and are structured to reflect the Terms of Reference for the Article 154 review. Where appropriate, groups of respondents are referred to by the categories used in the questionnaire:

- Members of the Council
- Members of the Assembly
- Members of the Legal and Technical Commission
- Members of the Finance Committee
- Members of the Secretariat
- Contractor
- Observer (including observing states, UN and Intergovernmental organisations, NGOs)
- Other

It is evident from the total number of responses received to the Article 154 Review that relatively few experts understand the specialised nature of the work of the Authority. Even those participating in the work of different organs and subsidiary organs stated that they are not necessarily familiar with the work of the Authority overall. The review concludes therefore that the sample of questionnaire and interviews undertaken represents a valid and fair cross-section of available expertise and opinion.

RAG (Red-Amber-Green) indicators used in tables within this document represent expert judgement by the review team based on the evidence base gathered by the review. Green indicates satisfactory performance. Amber indicates either questionable performance where improvements are possible or where some activities have been achieved but other have not. Red indicates topics where the Authority should consider improving its performance. No colour indicates activities that are yet to take place. Question marks indicate issues where the evidence base is weak and/or the review team is unsure of the conclusion.

## 4. The regime for exploration for and exploitation of deep-sea minerals in the Area

Members of the Assembly and the Council generally thought the Authority has generally effectively organised and controlled activities in the Area, particularly with a view to administering the resources of the Area.

Quote from a member of the Council:

*“Ever since its establishment more than two decades before, the Authority has made great achievements in effectively organizing and regulating activities in the Area. First, the Authority has preliminarily finished the work of establishing basic framework through adopting regulations. The Authority has set out and streamlined the three exploration regulations for polymetallic nodules, polymetallic sulphides and ferromanganese crusts, and established the environmental management plan and issued the guidances on environmental impact assessment and on training programs, etc. The Authority has also started the work of drafting exploitation regulations for seabed resources. Second, the Authority has conducted effective supervision on the international seabed activities. The number of the approved work plans for exploration has reached 27, and the Authority has signed 23 exploration contracts with the contractors. Third, by organizing various seminars and workshops, including the workshop on Taxonomic Methods and Standardization of Macrofauna and workshop on Polymetallic Nodule Resources Classification, the Authority has helped the international community improve the knowledge and understanding of the international seabed, which is beneficial to the implementation of the principle of the common heritage of mankind”.*

However, a detailed analysis of the commentary within the questionnaires and a significant number of the interview responses identified shortcomings that need to be addressed in future. The review concluded that to date **the Authority has made significant efforts to organise and control activities in the Area**, particularly with a view to administering the resources of the Area. Notwithstanding these efforts, respondents from all groups recognised that **more strategic planning is needed** by the Authority to adequately foresee tasks such as developing the exploitation regulations, mechanisms for regulation and enforcement, developing the fiscal regime mechanisms to address the Common Heritage of Mankind. Observers and Others gave credit for the work done so far but called for greater transparency to enable an assessment to be made of how the Authority was monitoring the performance of the contractors. Respondents also suggested the Authority should put more effort into developing a better scientific basis to understand the impact of potential exploitation so that it can develop adequate protection and conservation measures. This should include access to the data collected by the contractors and data collected by independent scientists. In addition, there was a call for the Authority to sponsor independent scientific research.

A clear message to the review was that **the Authority should develop a vision for the future and demonstrate ‘an agenda’ for seabed mining in the Area**. Greater visibility of the Authority, what it is trying to achieve and the “reality of mining” are fundamental to the step change needed in the next phase of the Authority’s evolution (see Section 11.1).

Whilst the Authority sets the rules and regulations for deep-sea mining it is the States Parties who have responsibility to ensure that activities in the Area are carried out in conformity with Part XI, Section 2, Article 139 of the Convention. An LTC respondent was of the view that some governments had effective control, whilst others concentrated on resource assessment to the exclusion of environmental issues. Observers and Others drew attention to the fact that there is a lack of transparency about whether sponsoring States had adequate legislation in place to monitor contractors’ activities and whether some Small Island Developing States had the capacity to effectively manage multinational companies. **There is some doubt whether State enterprises are currently**

**effectively controlled.** Based on the ITLOS Seabed Disputes Chamber Advisory Opinion on the duties of sponsoring States, more information needs to be publically available on: 1) the types of legislative and administrative controls that sponsoring States have in place, 2) the financial capacity of sponsoring States to implement the measures necessary to control contractors, and 3) their financial capacity to cover any potential liability stemming from failure to exercise due diligence.

**Recommendation 1:** A study on the adequacy of sponsoring States legislation to control entities with whom they enter into contracts for exploration, drawing on the Seabed Disputes Chamber Advisory Opinion, should be commissioned.

Respondents agreed that the Authority has fully elaborated the regime (rules, regulations and procedures) for prospecting and exploration of polymetallic nodules, cobalt crusts and seafloor massive sulphides but there was concern from some Contractors and Observers that not enough has been done to facilitate the gathering and sharing of environmental knowledge (data protocols and meta data), especially baseline data. Consequently, each new contractor needs to develop its own procedures for collecting this data, which ultimately makes it much more difficult to share information collected in different ways and to different standards. Some Contractors therefore called for the Authority to take necessary steps to incentivise or otherwise provide for mandatory sharing of environmental (not proprietary resource) data. Some Observers commented that a lack of transparency in the work of the LTC meant that it was not possible to assess how well the Authority was monitoring compliance to ensure that contractors fully comply with their responsibilities. Some Observers called for the Authority to establish an effective/user-friendly database requiring quality controlled standardised data and incorporating the requirement for a standardised taxonomic nomenclature for biological material. There was also a suggestion that the Authority should not rely solely on contractor-collected data to assess environmental information but should also support and encourage independent research.

**Recommendation 2:** Whilst contractors have been provided with a standard reporting template as of 2014, attention should be given to internal policies and procedures to enforce its use and review the quality and consistency of data gathered.

In response to the review question about the **legal rights and responsibilities** established by the Authority it was clear from the responses that these **have been set for exploration but are now urgently needed for exploitation**. The Authority will need to establish these regulations in light of the Authority's mandate to administer the Area for the benefit of the Common Heritage of Mankind. Some Observers and Others responded that the Authority should make more effort to engage NGOs in the development of these regulations. Although this has begun via the stakeholder engagements in 2014 and 2015 and a consultancy contract, further elaboration by the LTC is being undertaken as a closed expert process. Some Observers and Others also noted that it was difficult to assess how the Authority was dealing with the legal responsibilities of contractors since the contracts between the Authority and the contractors were not open to scrutiny. Some LTC respondents noted that contracts were often vague and did not necessarily set clear objectives which could be assessed e.g. in the 5-year plans of work.

**Recommendation 3:** Future contracts should be prescriptive with standard terms and conditions and detailed plans of work that set clear objectives, which can be monitored and enforced

Whilst most respondents (>60% to the questionnaire) agreed that **the Authority has effectively implemented the regime established by the Convention to promote and regulate exploration for deep-sea minerals<sup>3</sup>**, some Contractors called for a more robust regulatory system to be put in place. They pointed out, for example, that the Authority has not enforced the requirement on the pioneer contractors to publicly share their collected environmental data, and thus they have not fulfilled the function of a regulatory body. One Contractor responded that the LTC, reporting to the Council (a political body), could not be expected to carry out the function of a regulator. Contractors called for the exploitation regulations to be developed expeditiously and emphasised that **there is now a need for an independent regulatory body to be set up that is capable of implementing or enforcing terms and conditions**. These steps are necessary to reduce uncertainty before investment decisions can be made. One respondent also noted the need for a system for bonds, fines for breach of contract and a financial liability regime to include strict liability for any/all environmental damage (as in the oil industry). Observers also called for the establishment of a regulatory body, the sharing of environmental data, the publication of contractors' environmental management plans and their annual reports, together with more scientific scrutiny. Respondents noted that the lack of shared environmental data makes it difficult to establish environmental baselines - a requirement before mining can begin.

**It is questionable whether the Authority has enhanced opportunities for all States Parties.** It has approved exploration contract applications from some developing States, **and it could do more**. Some ambiguities were identified by respondents, particularly the term 'developing State' (not defined by the Convention) - some countries that rank highly on the Human Development Index and/or Gross Domestic Product rankings still hold this status. This has potential to influence access to sites reserved only for developing States. Several respondents questioned whether the reserved area system is effective in promoting opportunities. In 2010 and 2012, the *Sulphides Regulation* and the *Cobalt-rich Ferromanganese Crusts Regulation* were adopted, respectively. In these regulations, an alternative to the reserved areas regime was provided by allowing contractors the choice to elect either to provide a reserved area or to offer an equity interest in a future joint venture with the Enterprise. The joint venture route may potentially restrict options available to developing States. Many developing States also find it difficult to participate in the activities of the Authority due to financial and other constraints, and hence encounter problems when developing their own applications. The Enterprise, which was intended to partner with developing States, has not yet been developed by the Authority and some of the reserved areas that were destined to be developed by the Enterprise have now been approved for individual States to explore. Some respondents called for contractors to be required to relinquish license areas when they do not visit the site for a specified period of time. Some respondents also noted that the training programme opportunities have only very recently been extended to cover training in onshore activities such as laboratory analysis and international policy.

<sup>3</sup> In 2015 the Authority published a revised edition of the consolidated regulations and recommendations on prospecting and exploration



**Recommendation 4:** Clarification of the definition of ‘developing State’ as applied by the Authority would be helpful to satisfy Articles 148 and 150.

**Recommendation 5:** Carry out the study of relevant issues relating to the operation of the Enterprise requested in 2013 by Council of the Secretary-General, including the failure to reappoint a new Director-General and extend any such study to include an analysis of operation of the reserved area system.

Most respondents to the questionnaire (>50%) agreed that overall the Authority is ensuring that **monopolisation of activities in the Area is prevented**, but some concerns were raised about the effective control of the sponsoring State, and the emerging reality that only a small number of private and State enterprises are (technically and financially) capable of carrying out activities in the Area. Respondents suggested the effect of the possible future merger or take-over of companies needs to be anticipated. A discussion in the Council was recalled (ISBA/19/C/18, paragraph 14) regarding there being ‘nothing in the nodules regulations to monitor monopolistic behaviour’ and a suggestion to align these regulations with those for sulphides and crusts.

**Policies have been developed for the Area to ensure the development of a Common Heritage of Mankind as a whole but in recent years these have not been added to or reconsidered in any detail.** A majority of respondents to the questionnaire agreed that significant consideration had been given to this important issue. One Contractor suggested that preserving the security of supply of affordable metals was sufficient. One LTC respondent thought that the position of investors is taken more into account than the development of the Common Heritage of Mankind. The Common Heritage of Mankind will need to continue be taken into account as the regime for exploration and exploitation of deep-sea minerals evolves. Many other respondents were waiting to see what the exploitation regulations would include with respect to environmental protection; managing allocation of areas for the benefit of future generations; benefit sharing with developing countries; investing in long-term conservation; establishing a Sustainability Fund to foster marine scientific research; establishing a liability fund to recover damages from contractors as well as sponsoring States; ensuring effective public participation, access to information and review mechanism; and ensuring effective protection of the marine environment for the benefit of present and future generations. Some Observers noted the potential role for the Enterprise and some called for greater involvement of civil society in the decision-making process to ensure the Common Heritage of Mankind was adequately addressed.

**The Authority is not yet fulfilling its obligations to ensure that activities in the Area are carried out for the benefit of mankind** (Article 140). Again, respondents pointed out that the test of this will be in the exploitation regulations that are currently being developed. Observers pointed out that the one area where the benefit to mankind should be apparent is in the sharing of environmental data, but that this has not happened in the last 15 years. Observers and Others also raised issues of transparency, the lack of a stakeholder engagement framework, and effective scrutiny of contractor performance as indications that more could be done in this area.

**The Authority has however made some efforts to involve developing States** through granting of exploration contracts, through training of individuals from developing States (via the Endowment Fund and the Training Programme) and through sensitisation seminars. A comprehensive report on training programmes was undertaken in 2014 (Simpson, 2014)<sup>4</sup>. Respondents noted that how well developing States’ involvement will fare in the future will be dependent on more effort being put in this direction,

<sup>4</sup> Simpson, A. 2014 Review of Training and Capacity Building obligations of exploration Contractors with the International Seabed Authority<sup>1</sup> Desk Study report to the Authority

including aspects of transparency and environmental protection. The review noted concerns expressed by respondents about the total number of training opportunities provided by contractors. Some interviewees pointed out that only a small number of developing States had benefited from exploration opportunities and some regions such as Africa had not benefited at all. One interviewee suggested that the Authority should help developing States to form consortia that would allow them to become contractors.

Due to insufficient evidence the review was unable to address whether the Authority has also taken into account the interests of peoples who have not obtained full independence or other self-government status recognised by the United Nations.

The consensus of respondents suggests that, to the best of their knowledge, in exercising its powers **the Authority has avoided discrimination** (Article 152).

In general, respondents agreed that **15-year exploration contract applications and associated on-going plans of work for mineral exploration in the Area have been dealt with effectively and expeditiously**, except for a delay in 2013. Some contractors were concerned that the Authority's enforcement and oversight capabilities of these contracts need improvement and they suggested setting up an independent regulatory body. Observers and Others showed concern about the on-going contract extension process that started in 2015, mainly due to lack of transparency, concern over whether the contractors had fulfilled their obligations and how these activities had been monitored during the 15-year period of the contract. One observer suggested a mid-period contract audit to ascertain whether a contractor was fulfilling their obligations or not, and a recourse to appropriate sanctions in cases of inadequate performance.

**Recommendation 6:** An independent review of enforcement and oversight capabilities of the Authority is needed to inform the setting up of an independent regulatory body (Inspectorate).

The evaluation of contractors' annual reports is carried out by the LTC (on the basis of preliminary review by the Secretariat) and reported to the Council. **The review of contractors' annual reports is onerous, lacks transparency and its effectiveness in improving performance is questionable.** An LTC respondent drew attention to the large amount of work required to review the reports, which is increasing year on year as more contracts are approved. This is particularly a problem since there is not enough time during the meetings of the LTC to read all the documents and many members may not have time beforehand as they occupy full-time jobs. LTC respondents also pointed out the wide disparity between contractors in performance and called for better enforcement of contractors' obligations. Some contractors also called for greater compliance, particularly relating to the sharing of environmental and non-proprietary data. Respondents from the Council, Observers and Others all showed concern for the lack of transparency - since the contractors' reports are not made public there can be no independent scrutiny other than within the LTC. They stressed that only those parts of the reports with commercial information should be kept confidential. Several respondents praised the Authority for developing the contractor's reporting template (ISBA/21/LTC/15), which should ensure consistency of reporting and help to effectively review and monitor the contractors' annual activities.

Each contractor has an approved plan of work for their contract period, alongside more detailed plans for 5-year periods within that 15 years. Since the annual reports of the contractors are only seen by the Secretariat and LTC, with a report being passed by the LTC to Council, only the LTC and the Secretariat can assess compliance of the contractors with their approved plans of work. **It is not clear whether monitoring of contractors' compliance with approved plans of work is effective.** LTC respondents commented that the approved plans of work were rather vague and non-specific, with

few, if any, performance milestones. Respondents noted that annual reports of the LTC show dissatisfaction in reports from some contractors. Observers and Others noted this lack of transparency about contractors' reports and the lack of information about how the Authority is monitoring compliance.

**Recommendation 7:** The system of reviewing annual reports and approved plans of work made by contractors should be reviewed in the context of LTC workload and the feasibility of alternatives considered, such as requiring alternate short and long reports in alternate years, with 50% of contractors producing short reports each year. Consideration should be given to maximum report length or page limits for annual reports. The review of contractors' reports could be assigned to an independent regulatory body.

**To date the Authority has not sufficiently addressed the economic aspects of its mandate.**

Paragraph 5(d) of Section 1 to the 1994 Agreement calls for the Authority to effectively monitor and review trends and developments related to seabed mining activities, including regular analyses of world metal market conditions and metal prices, trends and prospects. So far the Authority has not addressed this issue. A few respondents questioned the need for such activity, but most encouraged the Authority to begin the task. A polymetallic nodule resource classification workshop was convened in 2014 by the Authority in collaboration with the Ministry of Earth Sciences of India (Briefing Paper 01/2016) but the report of this workshop has yet to be published by the Authority. In 2015 the Secretariat employed a mineral economist whose task is to undertake market analyses and review global minerals markets. Paragraph 5(e) of Section 1 to the 1994 Agreement calls for the Authority to study the potential impact of mineral production from the Area on the economies of developing land-based producers, but so far the Authority has not addressed this issue. One Contractor suggested the Authority should focus on facilitating dialogue among States Parties, contractors and perhaps other stakeholders, to understand the market dynamics of these intersecting sources of minerals.

**Recommendation 8:** Consideration should be given to establishing the Economic Planning Commission sufficiently ahead of the advent of commercial seabed mining and/or identifying economic issues of common concern that require further study.

The Authority is required to incorporate applicable standards for the protection and preservation of the marine environment into its operations (Article 145). This is not always an easy trade off with facilitating seabed mining, which is inherently a destructive activity. A Council member suggested that the Authority should be fully involved in the intergovernmental negotiation process to develop an international legally binding instrument under UNCLOS on Biodiversity Beyond National Jurisdiction (BBNJ)<sup>5</sup> and link this process to the work of the Authority. Efforts to date have been patchy. The Authority has recently completed some standardisation work on taxonomy by holding three workshops led by international experts, to which the contractors were invited. Proceedings from a workshop held by the Authority in 2004 to establish environmental baselines and an associated monitoring programme for polymetallic sulphides and cobalt-rich ferromanganese crust deposits have been published. Technical Study 10 on Environmental Impact Assessment is published, and a further workshop on Environmental Impact Assessment is planned for 2016. The Authority has also

<sup>5</sup> Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological of areas beyond national jurisdiction

provisionally established Areas of Particular Environmental Interest (APEIs) in the Clarion-Clipperton Zone as a means of preserving biodiversity and as a key design element of a strategic Environmental Management Plan. One Other respondent noted that the APEIs had not been permanently designated and that they should have been established before the issuance of exploration contracts. A Contractor noted that environmental management plans should be developed for other areas where exploration is taking place. Some Observers responded that there were very few rules regarding the protection and preservation of the marine environment. The review concluded that **clear and enforceable rules and standards for protection and preservation of the marine environment still need to be developed, with mechanisms for assessment and enforcement in all ocean basins.**

**Recommendation 9:** The levels of expertise in both the LTC and the Secretariat required to incorporate applicable standards for the protection and preservation of the marine environment should be increased as appropriate.

The Authority has only recently begun to promote and encourage marine scientific research with respect to activities in the Area (Articles 143 and 147). As stated above it has carried out a number of activities such as conducting seminars and workshops on environmental issues. However, LTC respondents noted that there was no specific budget for this and therefore progress in this area has been limited. A Contractor and some Observers perceived the previous lack of engagement by the Authority in managing and encouraging the sharing of environmental data and in setting protocols for its collection as a missed opportunity, which has led to much greater efforts being required to fill gaps in knowledge. Some Observers noted that the plans of work by contractors were not public documents and therefore the extent to which the Authority was promoting scientific research and environmental data gathering was not open access. Some Observers and Others called for the establishment of a scientific committee to encourage and supervise marine scientific research. One interviewee suggested the Authority should promote independent scientific research and not only rely on data provided by contractors. The Authority has recently joined a collaborative initiative has on Monitoring Marine Biodiversity in Genomic Era ([http://www.snis.ch/project\\_monitoring-marine-biodiversity-genomic-era](http://www.snis.ch/project_monitoring-marine-biodiversity-genomic-era)).

**Recommendation 10:** Consider how to seriously engage with the scientific community and relevant deep-sea science projects and initiatives

The Authority maintains an Endowment Fund that promotes and encourages collaborative marine scientific research in the Area, including the facilitation of production and sharing of data, through supporting the participation of qualified scientists and technical personnel from developing States in research programmes and activities. As of 31 May 2015, 66 scientists or government officials from 36 developing States were beneficiaries of financial support from the Endowment Fund. Most of those respondents who were familiar with the Fund agreed that **the Endowment Fund has been used effectively**, although there was also agreement that the resources available are very limited.

**No significant work has been carried out by the Authority to effectively monitor the development of marine technology relevant to activities in the Area** except the monitoring of technology development as described in the annual reports of the contractors. The review noted a Resource Classification Workshop that took place in Goa, India in 2014. Some Contractors suggested the Authority should take a more proactive role in technology development by identifying

environmentally acceptable performance objectives for contractors to meet. Contractors would then have the responsibility to make technology choices designed to meet those performance standards, which would protect and preserve the marine environment. Some Observers suggested it would be difficult for the LTC to take on this work and that it should be carried out by a new scientific or environment committee.

**Recommendation 11:** Whilst the onus to develop relevant marine technology should rest with the contractors the Authority should accelerate the specification of agreed performance standards

In 2014, the Authority embarked on the process to develop exploitation regulations with a stakeholder engagement activity. Respondents from all groups welcomed the progress that had been made and the public consultations that were part of the process. Some Contractors reflected that the development of the regulations should have started several years previously to enable them to make appropriate investment decisions. Some Observers and Others responded that insufficient scientific information had been gathered to enable the regulations to be developed. One Observer commented that the development work was being carried out solely by external contractors with little involvement from the Secretariat. However, the Secretariat perceives itself as managing the process, albeit constrained by lack of staff capacity.

Concern was expressed by some Contractors, Observers and Others that the Authority's **means of enforcing conditions of exploration contracts is weak**. However, the evidence base is not easily accessible because only the Secretariat and the LTC have sight of the contractors' reports and only a summary report is passed to the Council. To date the Authority has not issued any performance warnings. The LTC is provided with an evaluation of the contractors' reports by the Secretariat and a respondent from the LTC noted that these evaluations were factual but not critical and did not address non-compliance. An LTC respondent noted that exploration contracts rely heavily on self-policing by contractors with little evidence that any activities to monitor potential impacts from exploration have occurred. The timely submission of reports of cruises by contractors was also seen as an issue by an LTC respondent. Some Observers responded that there was a lack of clear mandate or entity within the Authority to perform any monitoring and enforcement function. Such an entity would need to establish procedures and standards including transparency, accountability and liability provisions. Several Contractors, Observers and Others called for the establishment of a regulatory body, and were of the view that this should be independent of the Council.

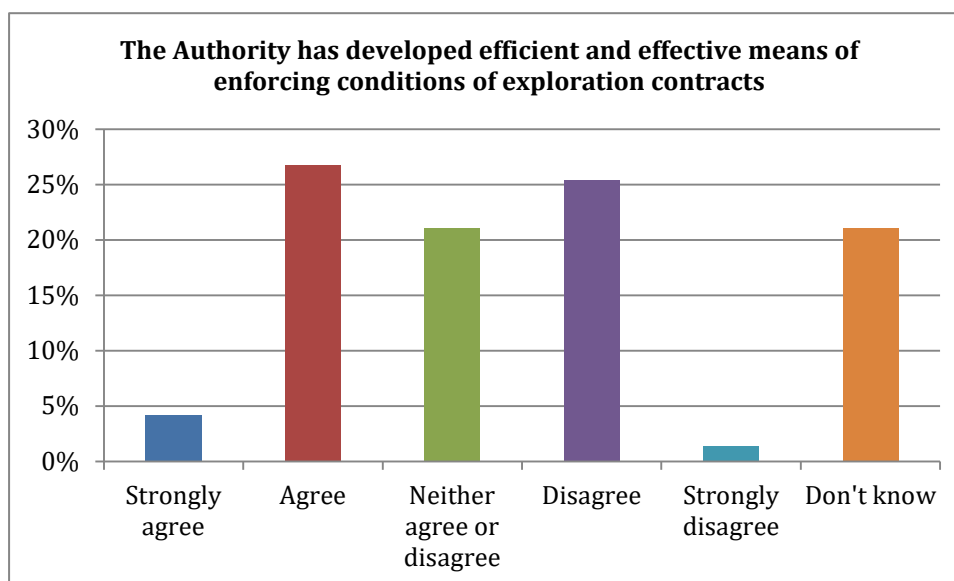


Figure 4.1: Survey response on whether the Authority has developed efficient and effective means of enforcing conditions of exploration contracts

Respondents from all groups expressed concern that **the current governance processes of the Authority are not sufficiently transparent** and representatives from all groups called for greater transparency. Under the confidentiality provisions of the Polymetallic Nodules Regulations, for example, data and information shall be considered confidential if the Secretary-General and the contractor designate it to be confidential, unless the data and information meets certain limited criteria to be public. Council members suggested keeping only commercially sensitive information in confidence. Some Contractors called for greater sharing of environmental data so that environmental baselines can be established and the sharing of those parts of contractors' annual reports that do not contain commercially sensitive information. One Contractor also called for greater transparency on the finances of the Authority, especially during the transition to the exploitation phase. Observers and Others called for much greater transparency and access to information so that States and civil society could have confidence that the Authority is effectively administering seabed mining for the benefit of all humankind. In particular, the lack of transparency in the LTC was mentioned by several respondents who called for all proceedings and documents to be open to Observers except for discussion of clearly defined commercially sensitive information. Respondents also called for all the environmental data collected by contractors to be made public. One member of LTC called for greater transparency in the process of contracting "consultants" by the Authority.

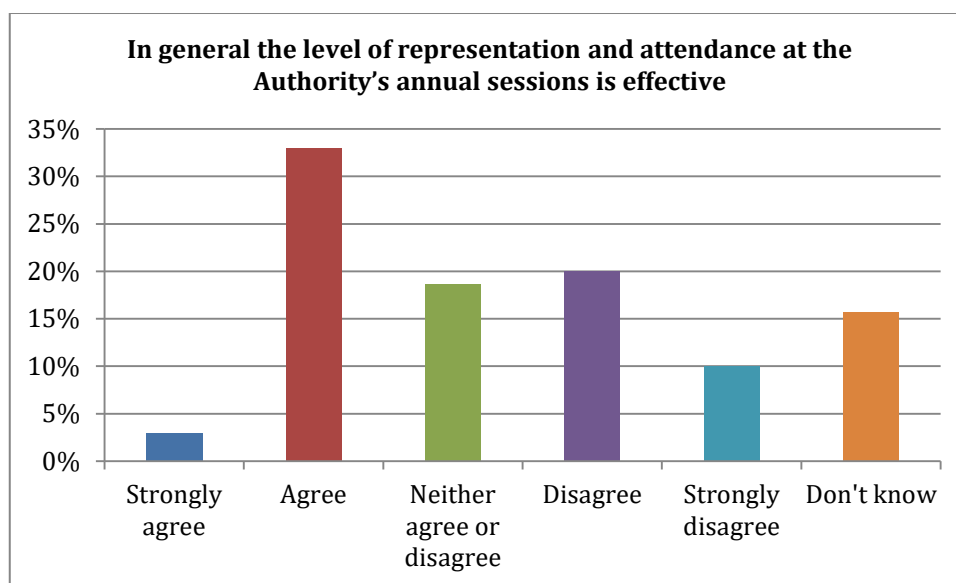
**Recommendation 12:** The Authority should be proactive in an emerging discussion about transparency, including a review of the confidentiality clause in contractors' contracts, and should consider revising the Regulations regarding confidentiality.

## 5. Representation and attendance at the Authority's Annual Sessions

The review was asked to include a review of the level of representation and attendance of members of the Authority at its regular annual sessions.

### 5.1 General comments on attendance and representation

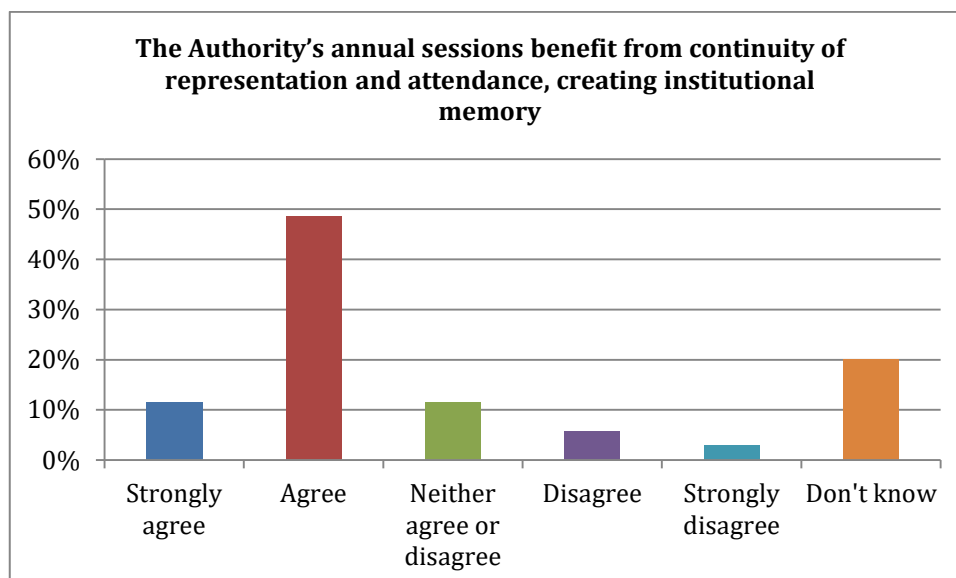
Whilst overall a majority of respondents to the questionnaire (>35%) considered the level of representation and attendance to be effective, a significant percentage of respondents disagreed (30%), and consequently the review considers this to be an issue for the Authority.



*Figure 5.1: Survey response on whether the level of representation and attendance at the Authority's annual sessions is effective.*

All groups of respondents considered that institutional memory within the Assembly was beneficial but could be compromised if representatives attending the Annual Sessions rotated too frequently. This was not regarded as a major issue at the present time and, in any event, is primarily a consideration for Member States and other delegations.



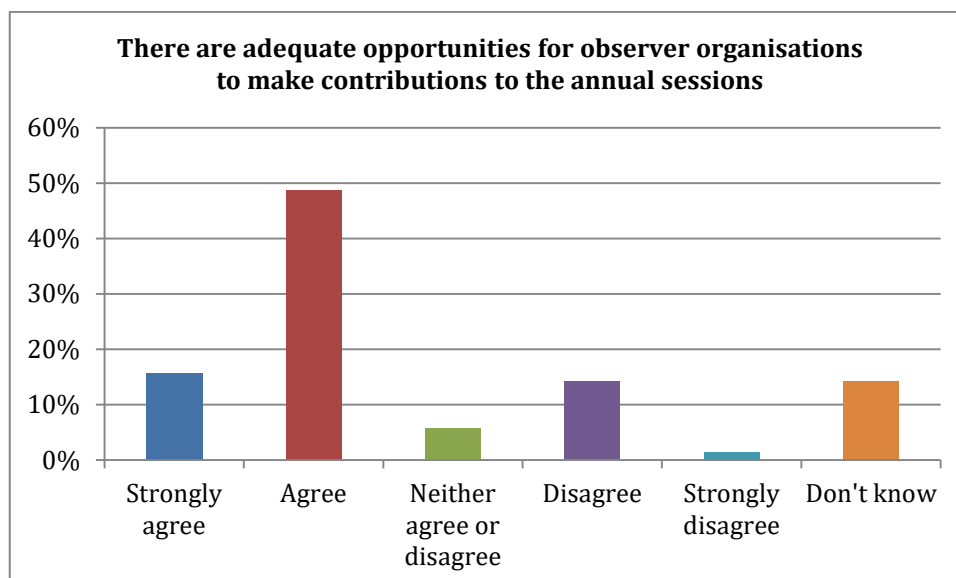


*Figure 5.2: Survey response on whether the Authority's annual sessions benefit from continuity of representation and attendance, creating institutional memory.*

When considering representation and attendance by Observers, respondents generally agreed that there were enough opportunities for Observers to participate in the Annual Sessions. Comments were made by members of the Council, Observers and Others that Observers should be encouraged to participate as much as possible and to be allowed to attend some open sessions of the LTC. The rules governing participation of Observers in debates were regarded as unclear by some Observers and Others (especially regarding verbal and written interventions), and there was a suggestion that it would be useful if the Authority adopted the procedures used by the IMO.

To facilitate greater participation in the Authority's Annual Sessions, respondents suggested publication of the meeting agendas well in advance of the meeting dates; provision of financial support for delegates, including for NGOs from developing States who could then apply for Observer status; and better promulgation of the activities of the Authority so that there was more knowledge of the Authority's work.





*Figure 5.3: Survey response on whether there are adequate opportunities for observer organisations to make contributions to the annual sessions.*

The cost-benefit of attending meetings in Jamaica is an issue for many delegations few of whom have permanent missions in Kingston. This issue is explored in more detail in Sections 5.2 and 6.5 of this report.

The host country feels very strongly that that seat of the Authority should be respected. They are committed to generating more interest in the work of the Authority and a higher level of participation.

At the outset negotiations to host the Authority raised expectations associated with the prestige of hosting an influential international organisation with associated indirect benefits for Jamaica including economic inputs and links to tourism (e.g. rentals). These have not materialized at the scale envisaged. Initially there were more meetings and delegates attending than now. Initial host government expectations were perhaps unrealistic and have not been met leaving a legacy of dissatisfaction. To address this, Member States need to show/renew intent.

At the same time the Government of Jamaica acknowledge the host country has experienced resource constraints. The Ministry of Finance is working with the Kingston Urban Development Corporation to improve facilities and educate service providers.

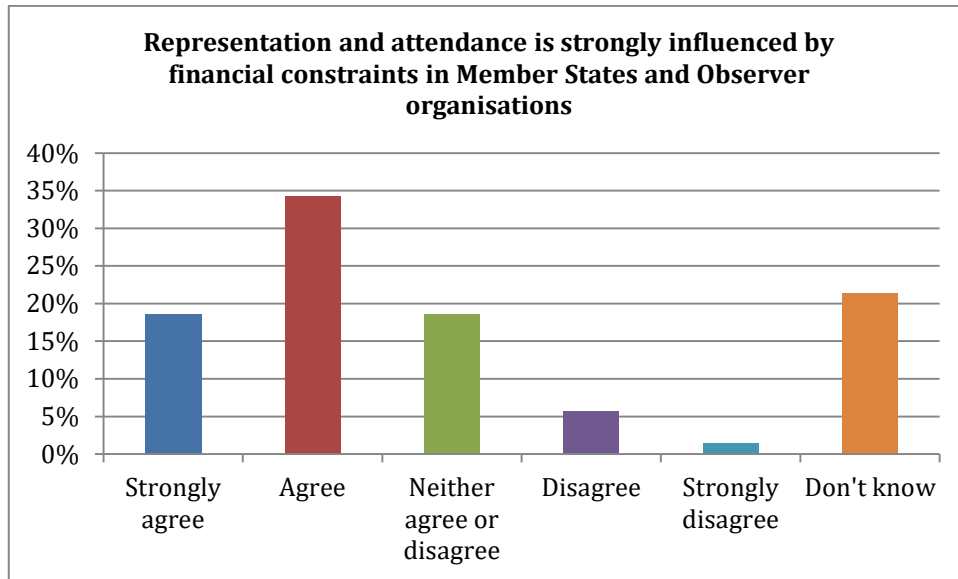


Figure 5.4: Survey response on whether representation and attendance is strongly influenced by financial constraints in Member States and Observer organisations

## 5.2 Attendance and representation at the Assembly

*The Assembly shall consist of all the members of the Authority and that a majority of the members of the Assembly shall constitute a quorum (Article 159).*

Respondents to the review were under the impression that quorum rules are correctly applied.

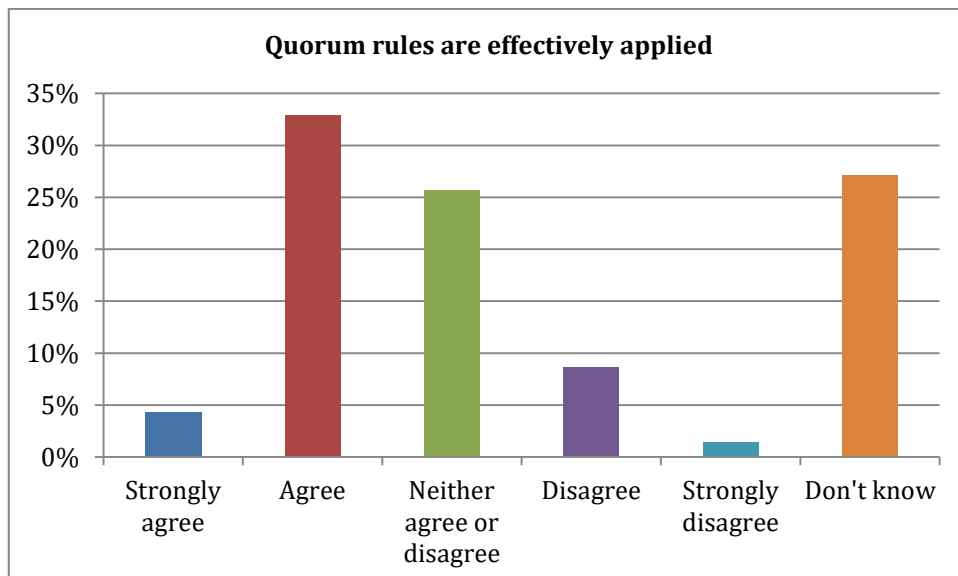


Figure 5.5: Survey response on whether quorum rules are effectively applied.

However, an analysis of the data (Figure 5.6) shows that the Assembly has (with the exception of 2008) consistently fallen short of achieving a quorum over the last 11 years. The lack of a quorum was a matter of concern for all categories of respondents. A variety of reasons were put forward for the lack of attendance by member States, including lack of finance, lack of available persons or lack of persons with the appropriate skills base from some small developing countries, conflicting meetings (again especially affecting smaller countries with less human resources), long duration of the meeting, perceived lack of relevance to national interests, lack of major items on the agenda (most important work done in the Council), timing of the meetings (mid-summer for northern hemisphere countries), and the location of all meetings in Jamaica (see Section 6.5). The prospect of exploitation becoming a reality has also been on the far horizon until recently, which some respondents considered a reason for lack of engagement by many Member States.

**Recommendation 13:** The Authority should consider setting up a Standing Committee between the Secretary-General and the host Government (see also 11.4) with a structured meeting schedule.

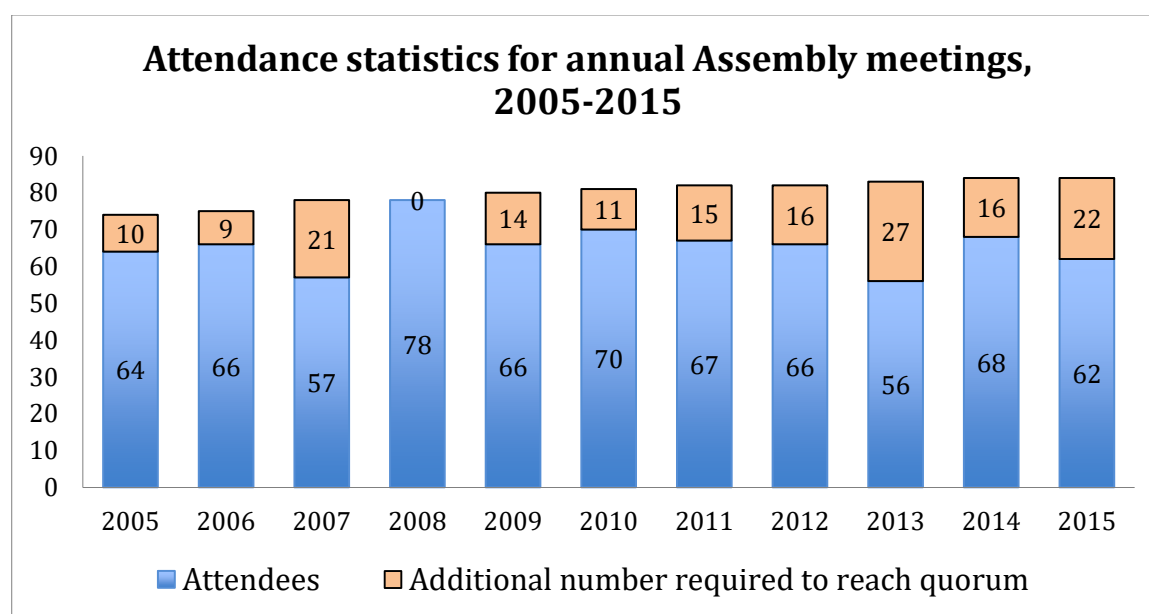


Figure 5.6: Number of attendants at the annual Assembly meetings (lower number), with the number required to achieve a quorum listed above each column.

It has been suggested that in the early years of the Authority, attendance at the annual meetings was not a major issue because few substantive decisions were made. However, the Authority has developed rapidly in recent years and has seen a large increase in the number of contractors, some of whom may apply for exploitation contracts in the foreseeable future. Respondents noted that important decisions with commercial implications will need to be made in future sessions of the Assembly, relating to renewal of contracts, adoption of a mining code, benefit sharing, and establishment of an inspectorate, amongst many other issues. For all these issues, a quorum of Assembly members should be regarded as essential both to allow a full and proper debate, leading to “buy-in” from all stakeholders, and to prevent future legal challenges against decisions.

Respondents have also noted poor regional distribution of delegates attending the Assembly especially from developing countries (SIDS and some African States, and including some sponsoring States), and insufficient representation from countries whose terrestrial mining activities could be negatively affected by the advent of deep-sea mining. Some Observers commented that the development and interpretation of the concept of the Common Heritage of Mankind requires representation from both developed and developing States.

An Observer pointed out that some States also hold status as contractors and have representation on the Assembly, the Council and the Legal and Technical Commission, thus enabling them to potentially have a disproportionately strong influence on decision making. In 2016, the following contracting States have representation on the Council, the LTC and Finance Committee, as well as their position in the Assembly: Brazil, China, France, India, Japan, Russia and the United Kingdom. Germany is also part of this group though has temporarily relinquished its position on Council to Belgium in 2016.

### 5.3 Attendance and representation on the Council

The composition, procedure and voting of the Council is set out in Article 161. The Council consists of 36 members, elected based on representation and eligibility criteria laid out in the 1994 Agreement, Annex, Section 3, para 15. Assessment of eligibility for Council membership against these criteria is carried out by the Secretariat prior to Council elections (for the last Council election, in 2014, see analysis in paper ISBA20/A/CRP2).

The agreed allocation of seats on the Council is 10 seats to the African Group, 9 seats to the Asia-Pacific Group, 8 seats to the Western European and Others Group, 7 seats to the Latin American and Caribbean Group and 3 seats to the Eastern European Group. The Authority has applied the allocation of seats in accordance with the agreed system. Since the total number of seats allocated according to that formula is 37, it is understood that, in accordance with the understanding reached in 1996 (ISBA/A/L.8), each regional group other than the Eastern European Group will relinquish a seat in rotation. The regional group that relinquishes a seat will have the right to designate a member of that group to participate in the deliberations of the Council without the right to vote during the period the regional group relinquishes the seat.

### 5.4 Attendance and representation in the organs of the Council

Organs of the Council are the Economic Planning Commission and the Legal and Technical Commission, established by Article 163, paragraph 1. Under Article 163, paragraph 2, each Commission shall be composed of 15 members, elected by the Council from among the candidates nominated by the States Parties. However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency.

#### 5.4.1 Economic Planning Commission

Further to the 1994 Agreement (see section 2.2.7) the Council has not operationally established the Economic Planning Commission, however several respondents consider this option is now mature for consideration (see Section 7). Article 164 includes a stipulation that the Economic Planning Commission should include “*at least 2 members from developing States whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies*”,

the spirit of which was to factor in, assess and regulate economic impacts of exploitation of mineral resources from the Area.

#### 5.4.2 Legal and Technical Commission

The procedures for election to and service on the LTC are laid out in Articles 163 and 165. An analysis of adherence to the election and performance criteria set out in Article 163 as they apply to the Legal and Technical Commission are set out in Table 5.1 below.

Article 163 paragraph	Membership criteria	RAG indicator	Comment
3	Appropriate qualifications in the area of competence (see also article 165)		Candidate members' qualifications are screened as part of election process
4	Equitable geographical distribution and the representation of special interests		See Figure 5.7 showing geographic representation - geographic distribution is not representative
5	No State party may nominate more than one candidate for the same Commission. No person shall be elected to serve on more than one Commission		As the Economic Planning Commission does not yet exist, by default this criterion is met
6	5-year term of office. Eligible for a further term		Rotation rules correctly applied to date. 2016 will see 5 LTC members retire after 10 years of service, and a further 13 members reaching the end of their first 5-year term.
7	Re-election process followed in the event of premature exit from term of office		Re-election has honoured geographic region
8	Members have no financial interest in any activity relating to exploration or exploitation in the Area		LTC members serve in their individual capacity and make a sworn statement attesting to their independence, including declaration of no financial interests. However, several review respondents have raised the issue of conflict of interest, particularly where contracting States are members of LTC.

Table 5.1: Analysis of adherence to representation criteria for LTC membership. The third column indicates status using a Red-Amber-Green system.

In the election of members of the LTC, due account should be taken of the need for equitable geographical distribution and the representation of special interests. The regional representation of LTC members from 1997 to 2016 is shown in Figure 5.7. From this graph, it can be seen that African representation has declined and the number of members from Western Europe and Other has increased. However, no agreement has been reached by the Council on regional representation in LTC. Rather it has been more pragmatic to increase the size of LTC to 25 and several respondents were of the view that this is an appropriate size.

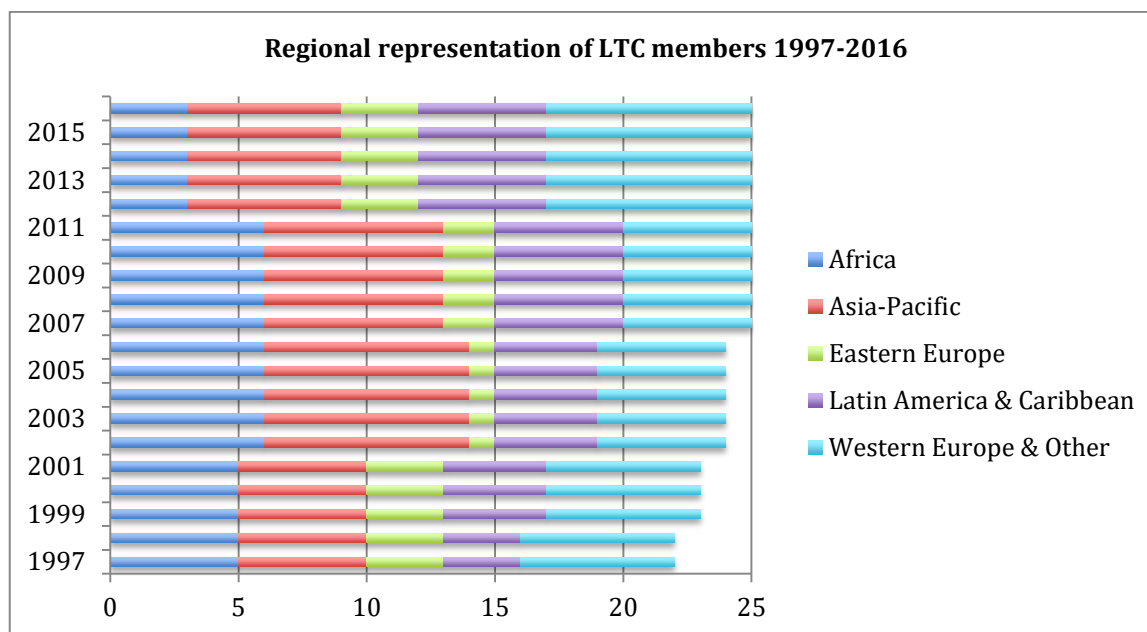


Figure 5.7: Regional representation of LTC members from 1997- 2016

## 6. Performance of the Assembly

The review requires an analysis of the performance of the Assembly as the supreme organ of the Authority in establishing general policies and in the exercise of its additional powers and functions pursuant to Article 160, paragraph 2 of the Convention.

### 6.1 Remit and functioning

Although the remit of the Assembly is clearly understood by the majority of respondents to the review and there is strong agreement that the functioning of the Assembly corresponds to its role as the supreme organ of the Authority, there was also some dissatisfaction expressed. Some respondents with legal backgrounds remarked on the dilution of the Assembly's power by the modifications introduced in the Part XI Agreement, which effectively put more emphasis on the decisions of the LTC and Council. The contention of these respondents is that by the time any matter reaches the Assembly, having been first considered by the LTC and the Council, there is very little room for changes to be made without upsetting the balance achieved in the previous negotiations. A contrary opinion considered the Assembly and the Council to be working well together. Several respondents commented that decisions adopted by the Council are not always ratified by the Assembly, which could undermine the Authority's authority.

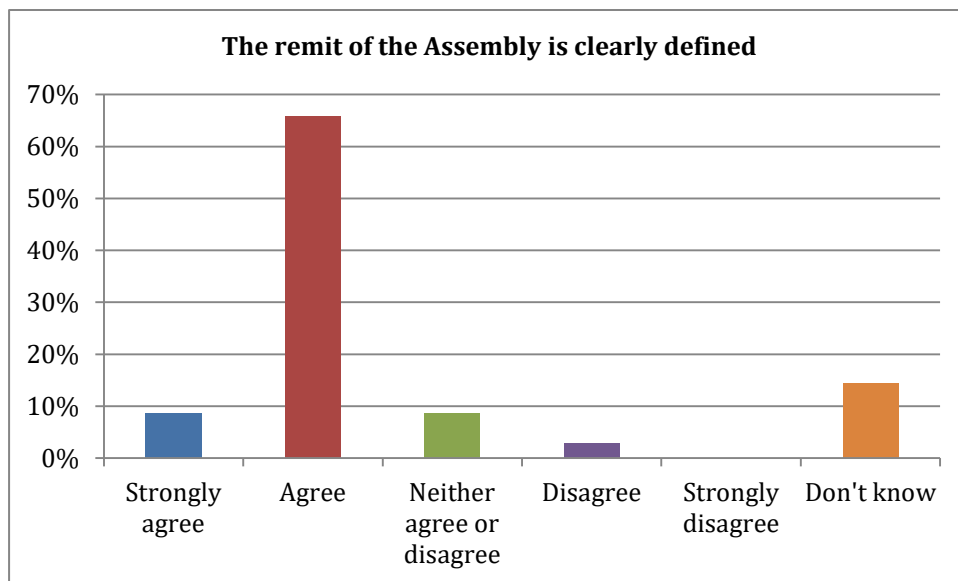


Figure 6.1: Survey response on whether the remit of the Assembly is clearly defined

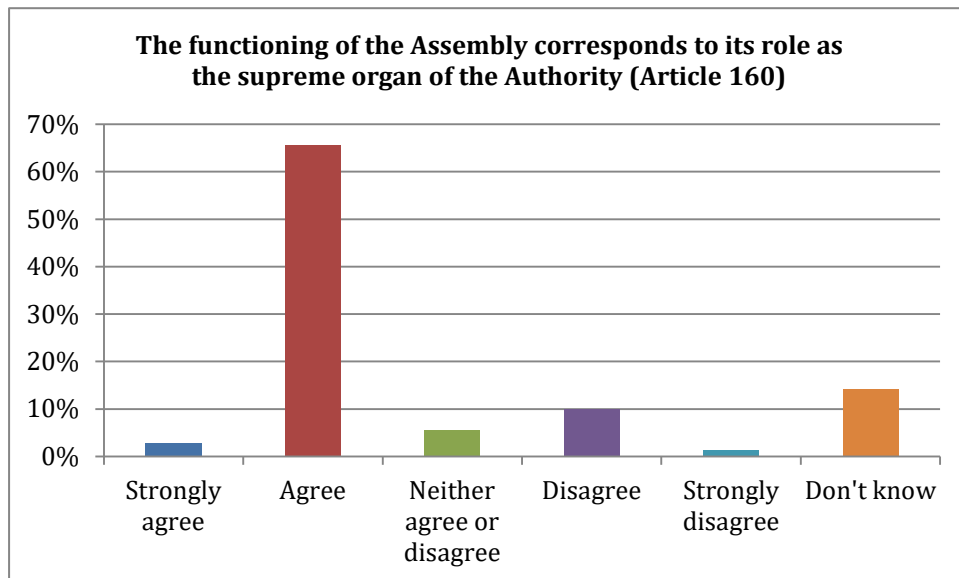


Figure 6.2: Survey response on whether the functioning of the Assembly corresponds to its role as the supreme organ of the Authority (Article 160)

## 6.2 Establishment of general policies

A majority of questionnaire respondents (>50%) considered that the Assembly, as the supreme organ of the Authority, has been effective in establishing general policies for activities in the Area. The Assembly is regarded as a good forum for States Parties to openly share views and opinion.

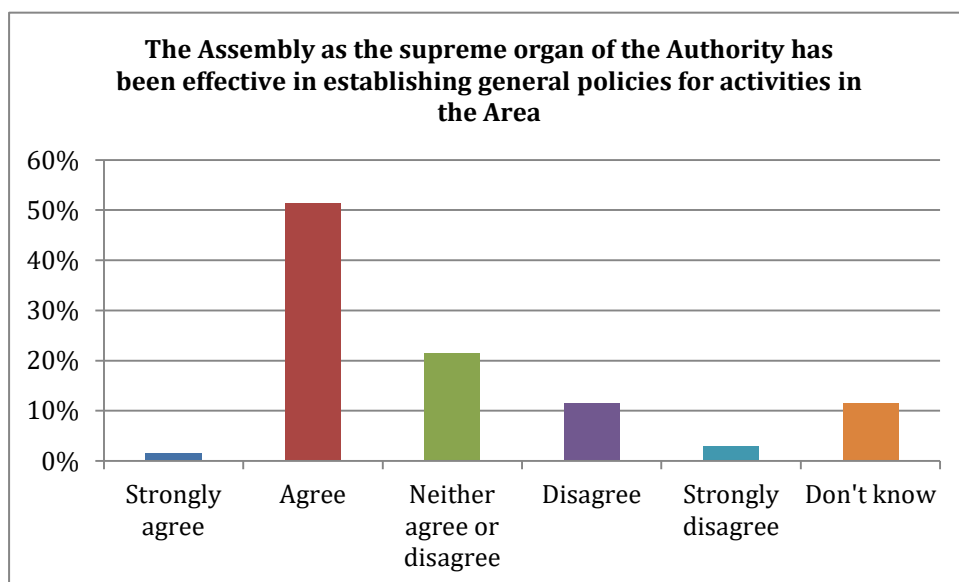


Figure 6.3: Survey response on whether the Assembly as the supreme organ of the Authority has been effective in establishing general policies for activities in the Area

In interview many respondents thought that the Assembly and/or the Council should embark upon establishing a strategic plan for the Authority that looks forward to what needs to be put in place before and after exploitation contracts are approved. Such a plan should include a roadmap of activities and milestones, including promoting more international cooperation.



### 6.3 Exercise of powers under Article 160, paragraph 2

The majority of those contributing to the review were of the view that the Assembly has efficiently exercised its additional powers and functions to the extent possible given the current status of the deep seabed mining industry, albeit that a significant proportion respondents considered they did not know about this aspect (>20% of questionnaire respondents).

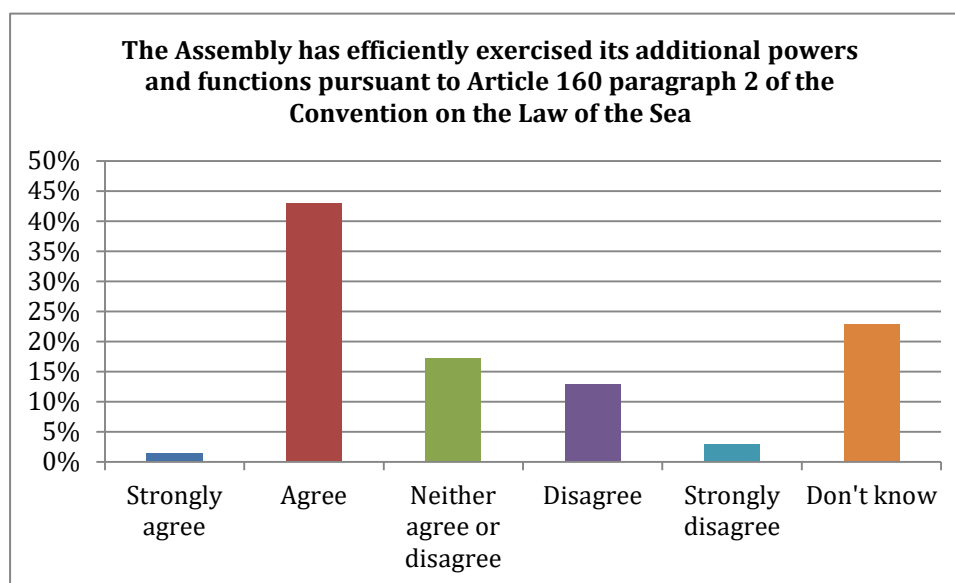


Figure 6.4: Survey response on whether the Assembly has efficiently exercised its additional powers and functions pursuant to Article 160 paragraph 2 of the Convention on the Law of the Sea

However, a number of interviewees were of the opinion that the Assembly has carried out the more procedural aspects of its mandate (electing committees, assessing contributions, adopting budget), but it has made very little substantive contribution to considering wider problems or making recommendations. Furthermore, whilst in the main the Assembly has exercised its basic powers, there are also several instances where it is yet to do so or where its performance can be criticised. The Assembly's powers described under Article 160, paragraph 2 can therefore be split as shown in Table 6.1:

Summary of sub-elements of article 160	RAG indicator	Comment
a. b. c. Elections (except for the Enterprise)		Performing as required
d. Establishment of suitable subsidiary organs		Finance Committee is established but there is potential for consideration of a separate Environmental Commission
d. Assess contributions of members		Contribution levels are assessed
f(i) Rules and regulations for equitable sharing of benefits		Under development but very preliminary and needs more impetus and meaningful discussion
f(ii) Rules, regulations and procedures relating to prospecting, exploration and exploitation of the Area		Balancing political realities with technological abilities. Exploration rules in place. Exploitation rules under development

g. Equitable sharing of financial and other benefits		Survey conducted but only preliminary and more impetus needed
h. General budget responsibility		Annual budget of the Authority as submitted by the Council fully considered
i. Examination of periodic reports from the Council and from the Enterprise and special reports		Reports from the Council considered, the Enterprise yet to be established
j. Initiate studies and make recommendations for the purpose of promoting international cooperation		Limited studies but evidence of interaction e.g. North-East Atlantic Collective Arrangement consideration, Sargasso Sea Commission (Hamilton Declaration), Workshop with the International Cable Protection Committee.
k. Problems of a general nature, particularly those of developing States		Scope to request studies of matters likely to be difficult to resolve (definition of developing State, monopolization etc). Developing States claim to have difficulty participating in activities in the Area and greater attention should be given.
l. System of compensation		Not in place
m. Suspension of membership (Article 185)		Gross violation of the Convention has not arisen to date
n. Decide on which organ deals with any question or matter within the competence of the Authority		No evidence of outstanding matters

*Table 6.1: Analysis of the performance of the Assembly in exercising its powers and functions as described in Article 160. The middle column indicates current status using a Red-Amber-Green system.*

Most respondents thought the Assembly had efficiently exercised its powers under Article 160 paragraph 2, but some legal respondents considered that it could have done more in relation to establishing the Enterprise and new subsidiary organs. Some Observers and Others suggested the Assembly should establish a Scientific Committee and an Environmental Committee in parallel with the development of the rules, regulations and procedures relating to exploitation in the Area. These committees would be able to deal specifically with: 1) the regulation, monitoring and control of the environmental impacts of seabed mining, and 2) wider marine scientific issues. Some Observers and Others also pointed out the need for a compliance committee to be set up in the future to monitor exploitation activities. The establishment of such additional committees is an additional cost but could bring the benefit of reducing the LTC's workload.

The Assembly has overseen the development of mining rules and regulations but views were expressed that there is scope for the role of the supreme organ to become more defined, stronger and with specific mandate. Currently the precise role of the Assembly in the execution of its powers and functions under Article 160.2 (f) ii is open for interpretation. Any move to biennial Assembly meetings (as suggested in section 6.5) would require further clarification of how the Assembly exercised its powers.

A view was also expressed that whilst general policies have been established they have not always been effective and the Assembly has not implemented solutions. For example, some argue there is no effective control over information/data gathered from exploration, in the context of sharing, quality control and so forth. Hence, even though some contractors have had the opportunity to carry out more than a decade of research activity there is little to show for it, in particular with regard to environmental

baseline data. The Authority also currently lacks any mechanisms for independent scientific review of data and information to act as a ground-truthing mechanism to aid plausible and accurate science based decision-making.

Whilst some effort has been directed to the needs of developing States, failure to operationalise the Enterprise is seen by some respondents as an impediment for developing States to fully participate in the activities conducted in the Area. Several respondents felt more progress is needed on both the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area (as per Article 160(2)(f)(i)) and the rules, regulations and procedures relating to exploitation in the Area (Article 160(2)(f)(ii)).

## 6.4 Leadership

A majority of views (40% of questionnaire respondents) received by the review agree that the Assembly exercises strategic leadership on behalf of the Authority (Figure 6.5). However, one candid view suggested the Assembly is only as strong as its States Parties, which to date have shown little leadership, and indeed at times demonstrated something akin to the opposite, allowing regional issues to taint international discussions.

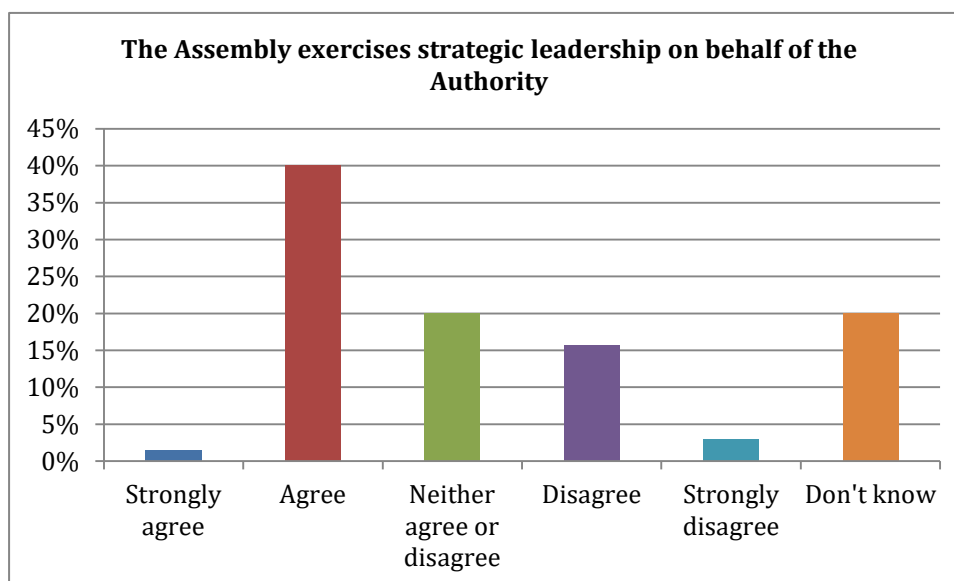


Figure 6.5: Survey response on whether the Assembly exercises strategic leadership on behalf of the Authority

In detailed comments and in interview responses, several respondents from all sectors considered that the Assembly does not show sufficient strategic leadership. Many considered that the Council provides more strategic leadership than the Assembly. Several respondents remarked on the lack of the Assembly's ability to tackle substantive issues and some felt that it was a "rubber stamping" body, merely concurring with the Council and tending to be predominantly focused on administrative matters. These respondents were of the view that the Assembly is underutilised, which in turn contributes to poor attendance and lack of interest. Compared to supreme organs in other intergovernmental organisations (e.g. IMO, RFMOs) the Assembly has very limited powers to draft

new resolutions, and cannot table new rules and regulations. In practice therefore the Assembly appears to act as a body that is informed of decisions taken elsewhere, without then taking much of a meaningful 'consideration and approval' role. To this end the review did not find any instance of the Assembly holding other bodies of the Authority to account. Stronger direction of this nature in the context of the transparency of the workings of the subsidiary organs is perceived as advantageous regarding overall perception of the work of the Authority and the representation of the Common Heritage of Mankind. Furthermore, there is an impression that the Assembly is now beginning to drive progress in a number of other key areas, such as the Mining Code and the Article 154 review. Review respondents suggested the development and approval of the exploitation regulations and effectively improving the working methods of the Authority as part of the Article 154 review would stand as a key test of the Assembly.

Some Observers and Others wish to see the Assembly tackle issues such as taking effective control of making environmental data available from the contractors, developing policies for exploitation that include the prevention of subsidisation of seabed mining, non-domination of access, strategic environmental management plans, and stakeholder engagement and transparency.

At present the President and Bureau of the Assembly hold office for one year and traditionally they have had little involvement outside the Annual Session. A recommendation from a number of member States was to extend the period of office to up to three years for the President, and possibly the Bureau, to provide greater continuity and help the Assembly fully assume the role it has been granted by the Convention. They (the President and such other officers as may be required) shall hold office until a new President and other officers are elected at the next regular session (Article 159, paragraph 4), which does not appear to restrict re-election.

**Recommendation 14:** Consider extending the period of office for the President of the Assembly to two or three years.

## 6.5 Quorum

A majority of the members of the Assembly shall constitute a quorum (Article 159, paragraph 5). The issue of the Assembly reaching quorum is discussed in Section 5.2 of this review and highlighted as a significant concern. As stated earlier in this review the Assembly has rarely been quorate and in future years this may become a major issue as it may undermine the decisions of the Authority. Furthermore, the Assembly has not sought to address this issue or questioned whether the quorum level is set too high. Respondents generally consider that the level of attendance should be increased by creating suitable stimuli. According to the current system, the Assembly is convened once a year for a 2-week period and it generally meets for a maximum of 4 days during that period. Travelling to Jamaica for such a limited engagement is a significant disincentive. The Assembly could meet biennially. Alternatively, the Assembly could, for example, consider holding an Annual Session away from the seat of the Authority (Article 159, paragraph 3), for example in New York or Geneva where there is a permanent mission. However, some respondents also question how lack of quorum might be challenged in practice and before which authority.

**Recommendation 15:** Consider options to improve quorum of the Assembly, including the option of meeting biennially or at a different location.

## 7. Performance of the Council

The review requires an analysis of the performance of the Council as the executive organ of the Authority in establishing specific policies to be pursued by the Authority on any question or matter within the competence of the Authority and in the exercise of its additional powers and functions pursuant to article 162, paragraph 2, of the Convention. Composition, procedures and voting of the Council are set out in Article 161.

Respondents (>80% of those who answered the questionnaire) agreed that the remit of the Council was clearly defined. One member of the Council suggested that the Assembly should be more dynamic in driving the agenda of the Council. Some members of the Council commented that Council should produce a record of decisions taken at each session with a timetable for them to be carried out – this would enable better monitoring of activities undertaken by the Secretariat, especially since the sessions of the Authority are on an annual basis.

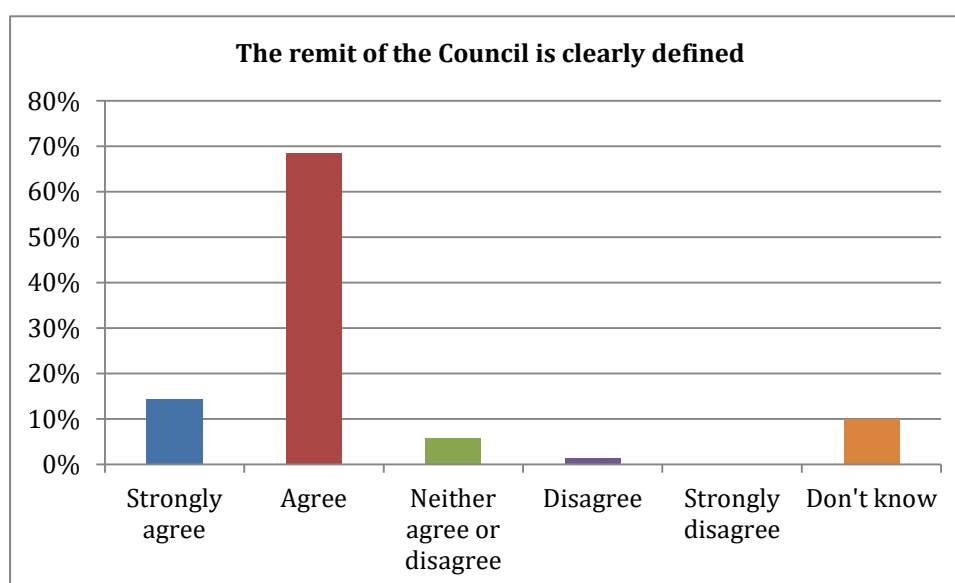


Figure 7.1: Survey response on whether the remit of the Council is clearly defined

**Recommendation 16:** The Council should consider producing a record of decisions taken at each session with a timetable for them to be carried out.

### 7.1 Establishing specific policies

Overall the respondents to the review consider the Council to be effective (>65% of those who answered the questionnaire). Member States acknowledge the political nature of the Council and the inevitability of robust negotiations. Perhaps inevitably, some contractors would like quicker decision-making. There is a valid concern that the current functionality of the Council and restrictive nature of its working methods is not conducive to taking urgent action that may be required in future.

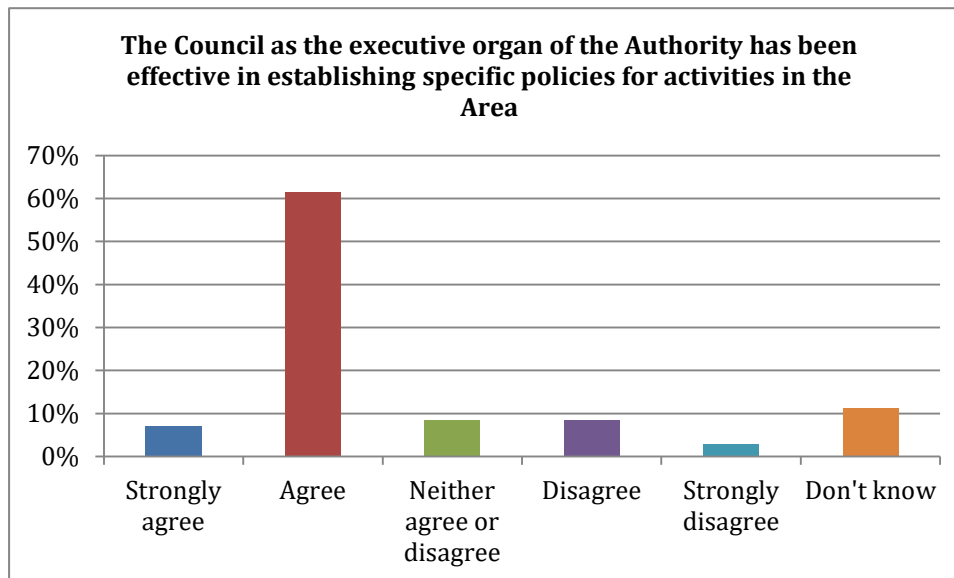


Figure 7.2: Survey response on whether the Council as the executive organ of the Authority has been effective in establishing specific policies for activities in the Area

Contractors, Observers and Other respondents would all like to see the Council being more proactive in respect to developing policies. Observers stressed the need for more urgency to develop policies relating to environmental issues and exploitation regulations and the need for the establishment of the Enterprise, as well as work on data reporting and standardisation, and compliance by contractors. A number of respondents called for independent scientific review of data and the establishment of a ground-truthing mechanism to aid science-based decision-making. The absence of a mechanism to verify and enforce compliance was noted by multiple respondents, which is a particular concern for Council as the Authority moves towards the exploitation phase.

Observers and Other respondents raised the issue of the relationship between the LTC and the Council. Several respondents noted that the LTC effectively works as a preparatory committee for the Council, and have observed that the LTC is not transparent, hence the Council is obliged to accept the work of the LTC with limited opportunity to question it, especially since a 2/3 majority of votes is required to overturn any LTC recommendations for approval of plans of work and extensions to contracts. There is a question over whether the Council can even have access to the Plans of Work submitted by the contractors. It was observed that the LTC does not have a decision-making or policy determination remit and does not represent or consult the wider membership of the Authority or public. Hence decisions made by the Council (based upon work by LTC) may not be as widely discussed or thoroughly debated as possible. The LTC has a very heavy workload, which may have caused a bottleneck, impacting upon the remit of the Council and impeding progress. One Observer believes the Council will remain limited in its ability to effectively supervise and implement the regime if the LTC continues to operate with closed meetings and limited access to information.

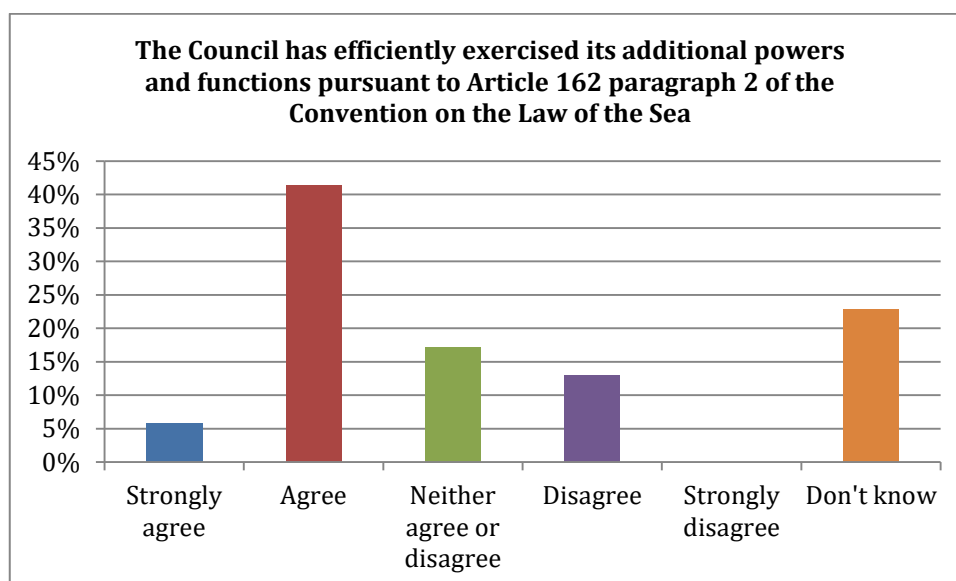
**Recommendation 17:** Consider making the work of LTC more transparent, limiting closed sessions to commercial in-confidence matters only.

Several respondents noted that the Council may have an increasing workload in the future and may therefore need to meet more regularly. As a comparative example, in the International Maritime Organization the Council meets twice per year and the Assembly meets once per two years.

**Recommendation 18:** As the workload increases, the Council should consider meeting twice per year. This should recognise the value of synergy between LTC and the Council (as well as the value of opportunities for non-members of the Council to observe and make interventions concerning the Council's business) and therefore relate any additional meetings of the Council to appropriate meetings of LTC.

## 7.2 Exercising additional powers and functions

Less than 15% of questionnaire respondents considered that the Council has not efficiently exercised its additional powers and functions pursuant to Article 162, paragraph 2.



*Figure 7.3: Survey response on whether Council has efficiently exercised its additional powers and functions pursuant to Article 162 paragraph 2 of the Convention on the Law of the Sea*

A snapshot of performance of the Council against Article 162, paragraph 2, is summarised in Table 7.1 below. Respondents commented that the fact that this mandate is articulated in detail may be contributory in enabling the Council to perform well in exercising its powers and functions. However, several respondents considered that some specific policies now require more urgency and that a significant number of powers and functions have never been exercised. These are mainly associated with the Enterprise (which has not come into being) and active mining (which has yet to start).

Summary of sub-elements of Article 162, paragraph 2	RAG indicator	Comment
a. Supervise and coordinate its remit and work with the Assembly		Generally performing well
b. Propose Secretary-General candidates		
c. Recommend candidates for the Governing Board and Director-General of the Enterprise	N/A	The Enterprise does not yet exist
d. Establish subsidiary organs		LTC and Economic Planning Commission (see section 9 in this report)
e. Adopt rules of procedure for selecting its President		
f. Enter into agreements with UN or other international organizations		Some MoUs exist with external organisations
g. Consider reports of the Enterprise	N/A	The Enterprise does not yet exist
h. Present annual and special reports to the Assembly		None presented
i. Issue directives to the Enterprise	N/A	The Enterprise does not yet exist
j. Approve plans of work as recommended by the LTC (Agreement, Annex, Section 3, Paragraphs 11)		Concern expressed by one observer over structure of decision making.
k. Approve plans of work submitted by the Enterprise		Proposal received but rejected
l. Exercise control over activities in the Area (Article 153, paragraph 4)		LTC may have effective control. Concerns Council is hamstrung by lack of transparency and overwork of LTC. Also concerns that the restrictions of the working methods of Council prevent it from exercising effective control.
m. Provide protection from adverse economic effects upon recommendation by Economic Planning Commission (i.e. LTC)		Premature as exploitation not yet started
n. Recommend to Assembly compensation / economic adjustment based on advice from Economic Planning Commission (i.e. LTC) (Article 151, paragraph 10)		Premature as exploitation not yet started
o. (i) Recommend to the Assembly equitable sharing rules and (ii) adopt exploration and exploitation rules and regulation with priority to polymetallic nodules		Major efforts for exploration rules and regulations. Work started on other issues but is late.
p. Review the collection of payments to be made by or to the Authority in connection with operations pursuant to Part XI		Overhead charges levied against Contractors for annual report evaluation and contract application processing
q. [does not apply - Agreement, Annex, Section 6, paragraph 7]	N/A	
r. Submit proposed annual budget of the Authority to the Assembly	N/A	
s. Make recommendations to the Assembly concerning policies		None made
t. Make recommendations to the Assembly concerning membership suspension	N/A	Not an issue



u. Institute proceedings before the Seabed Disputes Chamber in cases of non-compliance	N/A	None yet Transparency concerns result in concerns about there being non-compliance which is not being acted upon. Also concerns about the ability of Council to act upon instances of non-compliance with its current functionality.
v. Notify the Assembly upon a Seabed Disputes Chamber decision and make recommendations		ITLOS Advisory Opinion
w. Issue emergency orders		None required yet but implications for current governance arrangements in future. Enforcement arm of Authority required.
x. Disapprove areas for exploitation in cases where substantial evidence indicates the risk of serious harm to the marine environment		None yet, so yet to be tested Mechanism needed for exploitation phase. Requires the Authority to find 'threat of serious impact'
y. Establish Finance Committee		See Section 10 of this review
z. Establish Inspectorate		Yet to be established but urgent consideration now needed

Table 7.1: Performance of the Council against functions described in Article 162, paragraph 2. The middle column indicates current status using a Red-Amber-Green system.

The powers and functions pursuant to Article 162, paragraph 2, are a long and complex list. Specific comments received by the review that relate to individual powers and functions are set out below:

(d) A number of respondents commented that the Council should give more attention to exercising its right to establish new subsidiary organs. Both Contractors and Observers called for the setting up of an independent body with regulatory monitoring and enforcement capabilities (Inspectorate – Article 162, paragraph 2(z)). At present there is no mechanism in place to monitor compliance with regulations. Observers also suggested creating a scientific committee, and an environmental committee as well as a compliance review committee. It was suggested that the compliance review committee could serve to remove any potential for conflict of interest in the review of contractor performances. These subsidiary bodies could provide advice to the Council so as to enable it to effectively discharge its duties with respect to the exploitation regulations, applications for exploitation as well as additional exploration licenses, the adoption and ongoing review of Regional Environment Management Plans, review and promotion of marine scientific research and the review of contractors' environmental data.

**Recommendation 19:** Consider the establishment of an independent regulatory body or inspectorate.

(f) Another Observer commented that the Council should establish additional bilateral agreements with other relevant bodies to determine the potential for cumulative environmental impacts.

(j) Observer comment: "Regarding approval of POW (plans of work), it is difficult considering the amount of information provided and the structure of decision making to disapprove a POW, as we

*move towards potential exploitation, the link between POW and potential avoidance, mitigation and triggers for the cessation of activities need to be more apparent and linked to potential impacts via good quality comparable baseline environmental data using tools like EIA to identify such impacts and adapt the POW accordingly and link to the potential trigger of emergency orders to stop or adjust activities if sufficient impact mitigation is not in place and the probability of serious harm is increasing."* [Note that plans of work are recommended to Council by LTC: Agreement, Annex, Section 3, paragraph 11]

(o) An emphasis has been placed on developing exploration regulations and a majority of respondents to the questionnaire agreed that this work has been effective.

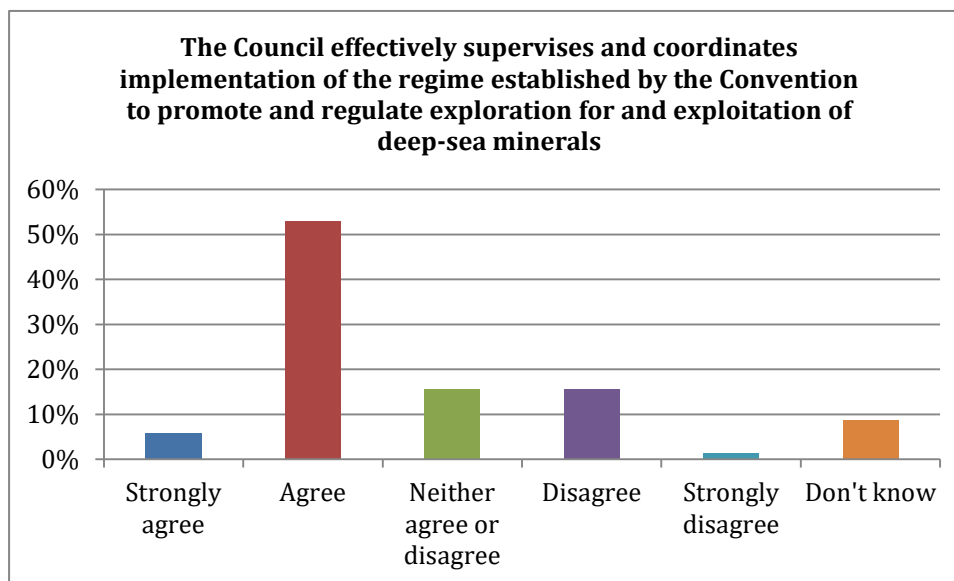


Figure 7.4: Survey response as to whether the Council effectively supervises and coordinates implementation of the regime established by the Convention to promote and regulate exploration for and exploitation of deep-sea minerals.

However, a number of respondents suggested the Council needed to be more active in developing rules regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the rules, regulations and procedures relating to exploitation in the Area.

## 8. Performance of the Secretariat

The review is asked to include a review of the structure of the Secretariat and of the performance of its functions as referred to in Subsection D of Section 4 of part XI of the Convention, including its performance of the functions of the Enterprise pursuant to Paragraph 5 of Section 1 of the Annex to the 1994 Agreement.

The review acknowledges the key role played by the Secretariat and its efforts to date. Feedback on the performance of the Secretariat is divided into feedback from sources external and internal to the Authority.

### 8.1 External Secretariat review

#### 8.1.1 Structure and efficiency

A majority of respondents to the questionnaire considered the current structure of the Secretariat to be appropriate and a significant number agreed that the Secretariat efficiently provides support to the organs of the Authority.

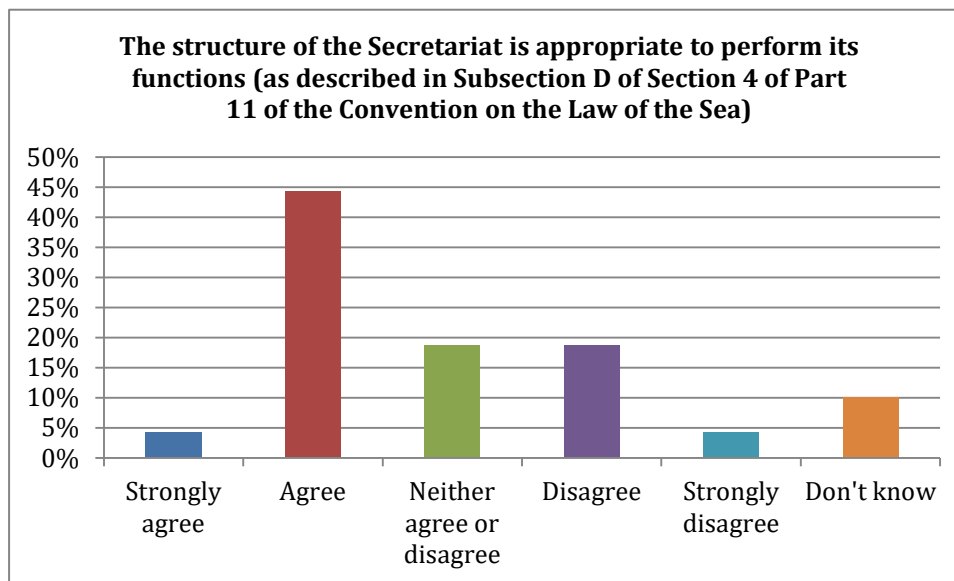


Figure 8.1: Survey response to the question on whether the structure of the Secretariat is appropriate to perform its functions.

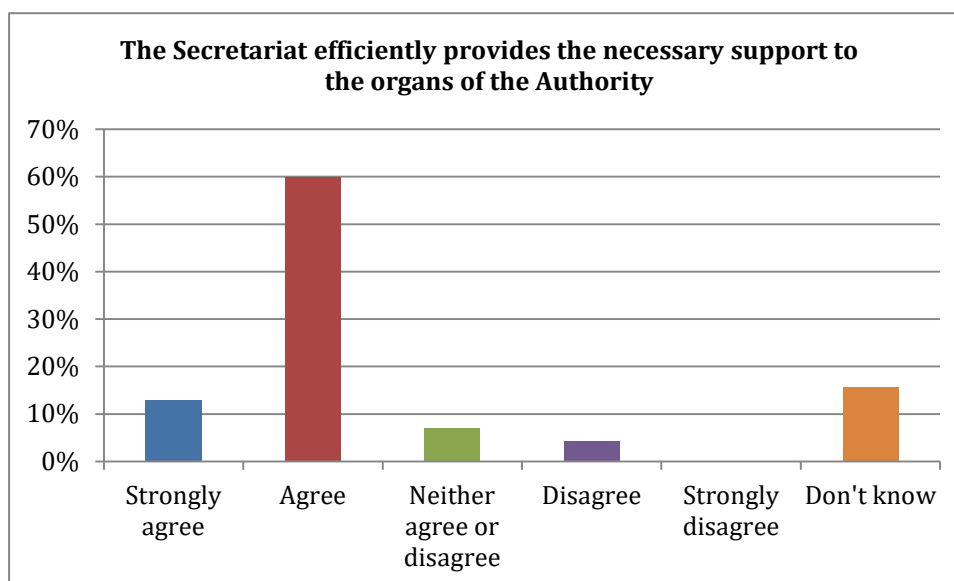


Figure 8.2: Survey response to the question on whether the Secretariat efficiently provides the necessary support to the organs of the Authority

However, respondents (from within all groups) had issues with the structure of the Secretariat being variously inadequate for the roles it is expected to carry out in future. Respondents attributed this to the changing role of the Authority during the time where it has progressed to a situation where exploitation is on the horizon. Some commented that the Secretariat was currently, for the main-part, a conference-servicing organisation, others that its limited staff were far too few for the complexity of the task envisaged. The budgetary exercise for 2017-2018 has identified the requirement for potential new posts subject to approval.

Some respondents suggested more Secretariat effort was needed on preparation of technical papers for LTC meetings and improvement in timing of notifications. One respondent expressed concern over how decisions made by the Council and the Assembly are sometimes not acted upon by the Secretariat. A specific issue is that no formal list of decisions is recorded (see Recommendation 16 in Section 7). LTC members and observers also called for a strategic approach to data handling including the use of powerful but user-friendly databases for environmental data to enable data sharing and regional analysis (see also ISBA/19/LTC/CRP.6).

Many considered that the structure of the Secretariat needs to be reassessed and adjusted as the regime for deep-sea mining develops. New teams or bodies within the Secretariat were suggested. Members of the Assembly and the Council, Contractors and Observers identified the need for a Mining regulatory body and/or Inspectorate to effectively transition from monitoring exploration to regulating exploitation operations. Some respondents suggest this should be established within the Secretariat, though several others suggested this should be an independent body to prevent conflict of interest between the licensing authority and the Inspectorate. Observers identified the following operations as missing from the current Secretariat - an Inspectorate, a compliance team, an environmental permitting / monitoring team and expertise in regulatory or commercial know-how.

### 8.1.2 Funding

With regard to funding for the Secretariat, a number of responses (>35% of respondents to the questionnaire) called for an increase in budget as would be required if the additional tasks listed above were added to the workload. However, there were also many responses that thought the budget was sufficient, especially views of members of the Council and some Contractors. Some respondents

called for a reorganisation of the Secretariat to streamline its operations and focus the resources where most needed. A number of respondents commented that staffing constraints forced the Secretariat to rely on external funding for key activities (e.g. hosting workshops), which had the potential to expose the Authority to undue pressure for certain outcomes.

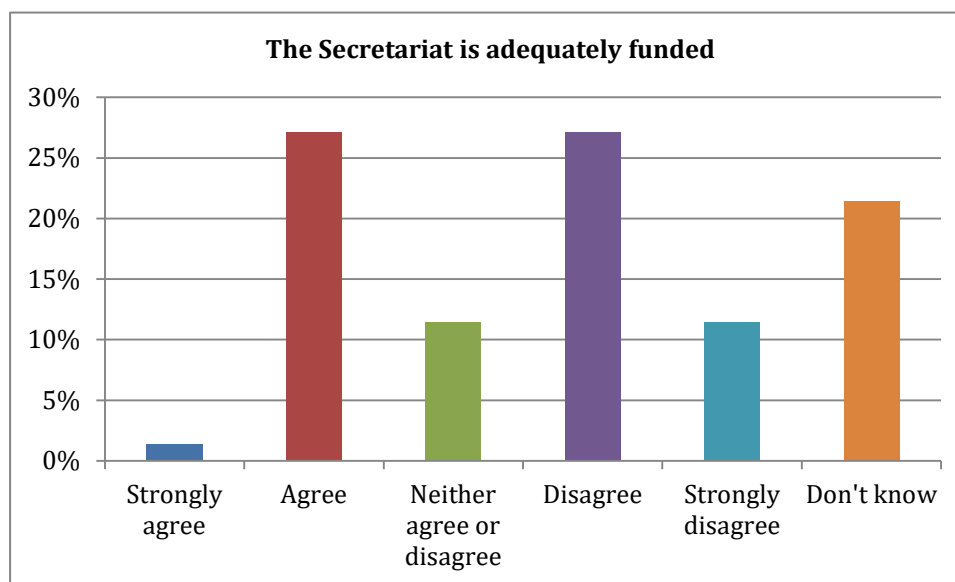


Figure 8.3: Survey results on the question of whether the Secretariat is adequately funded

Some Contractors noted that an opportunity to increase the funding of the Secretariat may have been lost in 2015 when additional fees were levied on contractors to cover the costs of the administration and supervision of contracts and of reviewing annual reports (ISBA/19/A/12). This additional income was used to offset the annual contributions of the member States (ISBA/20A/5/1/2) rather than being used for the purpose for which it had been collected.

The escalating costs of conference services as a proportion of the Secretariat budget has implications for the level of resources available for substantive work (see Section 11.4, Recommendations 42-45). Savings on meeting costs could boost performance of other tasks. This should include further considerations on moving to an electronic system of documents in line with most other intergovernmental organisations.

**Recommendation 20:** Discussions should be held with the member States with a view to increasing financial support for the Secretariat. This could include allowing the Authority to ring fence the additional fees levied on contractors, with the aim of employing more professional staff to administer their increasing workload rather than offsetting member States' contributions.

### 8.1.3 Functions

More specifically with respect to functions as referred to in Subsection D of Section 4 of Part XI of the Convention:

#### a) The Secretariat (Article 166)

The Authority has appointed a Secretary-General. The current Secretary-General has been elected for two terms of 4 years. He has acted as the chief administrative officer and made annual reports to the Assembly on the work of the Authority and to annual meetings of the States Parties to the Convention in New York. Observers called for the Secretary-General to have a more proactive role in promoting the reporting and compliance of contractors, and also to be more specific and detailed when reporting to the Council on his efforts to improve reporting and compliance.

In a detailed response to a request from the review team for examples of minutes between himself and contractors following up contractors' annual reports, the Secretary-General recalled the clauses in the Regulations requiring contractors to make such reports and the process of internal review by the Secretariat for presentation to the LTC. He explained that the LTC provides draft letters to send to the concerned contractors containing its problems with the annual reports and ways in which to redress them. The contractors then respond to the Secretary-General who transmits these responses to the LTC at its next meeting. The major exceptions have revolved around standardisation of different faunal taxonomies and reporting of contractors' polymetallic nodule evaluations. In both instances workshops were convened to address the issues.

#### b) The staff of the Authority (Article 167)

The skills of the staff of the Authority should reflect the highest standards in terms of efficiency, competence and integrity.

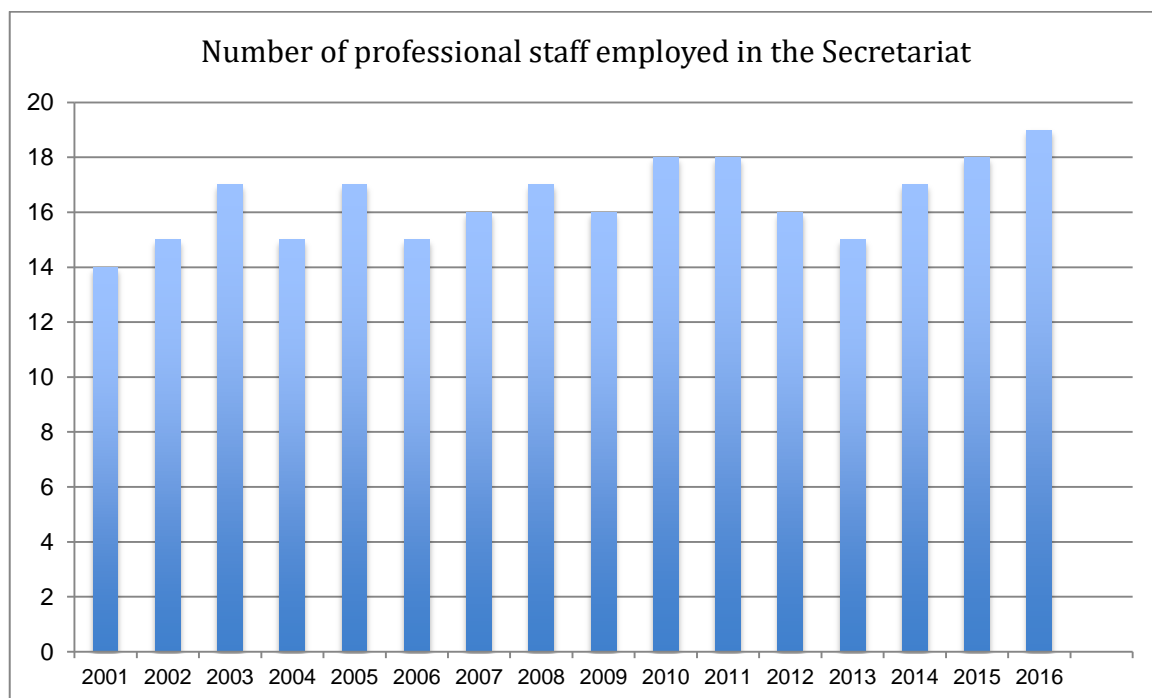
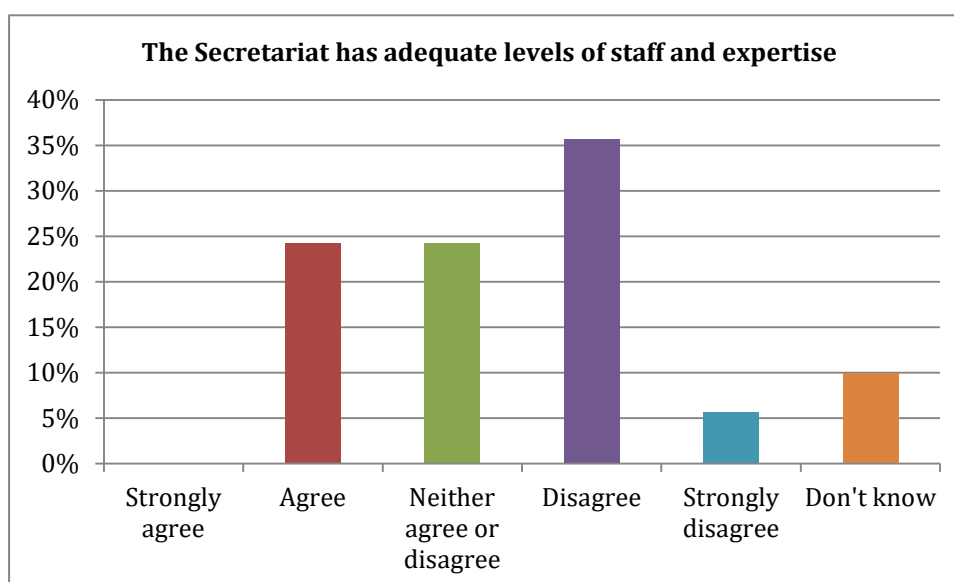


Figure 8.4: Number of professional staff employed in the Secretariat since 2001

The professional staff of the Secretariat has increased in number from 14 in 2001 to 18 in 2010, and 19 in 2016 (Figure 8.4). This is clearly not in line with the increased workload described in Section 8.2.1 of this report and, compared to other international organisations with a global mandate the size of the Authority's Secretariat, is small. Over 40% of respondents to the questionnaire from all sectors suggested additional staff were needed to fill new roles and bring in new expertise, though it was also suggested that a review of existing posts is necessary to ensure all roles are clearly defined. Whilst a reclassification of posts was undertaken in 2015, what may also be needed is a skills matching exercise against current and emerging requirements.

Council members suggested additional skills were necessary in legal issues, mining, economics, public relations and communication. LTC respondents suggested more expertise was needed in environmental management and data management. Contractors identified gaps in regulatory and economic matters and suggested more engineers (mining and naval) were needed to provide technical knowledge. Observers and Others identified environmental scientists, inspectors / monitoring and enforcement officers, commercial and contract law, and economists as being areas where additional expertise needed to be recruited.



*Figure 8.5: Survey response to the question exploring whether the Secretariat has adequate levels of staff and expertise*

The relatively small number of professional staff in the Secretariat has led to a lack of expertise in certain areas. For example, the Authority does not employ a specialist contract lawyer even though it negotiates high-level contracts with States and major organisations. Neither is there a lawyer with specialism in mining law so support for the drafting of the exploitation regulations needs to be externally sourced (see section 4, page 22 of this report). The Secretariat employs no in-house expert economists or fiscal policy personnel, and only one marine biologist even though environmental issues are a major component of the Authority's mission and will form a significant part of the exploitation regulations that are currently under development. There is no data manager despite the requirement on all contractors to submit data on an annual basis to the Authority. The absence of a data manager means that it is difficult to provide guidance for the contractors on data submission (format, quality, missing data sets). There is no dedicated communications officer but there will be an increasing need to communicate with public and stakeholders as exploitation nears reality. As the Authority develops

its exploitation regulations and moves towards mining a variety of new activities will need to be developed, each of which will require specialist staff.

**Recommendation 21:** A review of required skills and available staff expertise should be carried out for current and future predicted activities. Any identified skills gaps should lead to the creation of new posts for which funding should be sought through the normal channels or fees imposed on the contractors. Forward planning should identify additional new skills and further posts that will be required. Secondments should also be investigated. The GESAMP model of consultative scientific advice would also be worth investigating.

Other staffing issues brought to the attention of the review included difficulties in recruiting specialist professional staff due to the relatively low level of salary in Jamaica as a result of the reduction in value of the Jamaican dollar over the last 10 years; the low prospect of promotion in such a small organisation; and the difficulty of employment in Jamaica for spouses due to host country work permit restrictions. This is another matter for dialogue between the host Government and the Authority<sup>6</sup>. Notwithstanding these difficulties, recruitment appears to have given "*due regard to a wide geographical basis*" as required by Article 167.

#### c) International character of the Secretariat (Article 168)

The review found no evidence to doubt that the exclusively international character of the responsibilities of the Secretary-General and his staff has been respected. It does not appear that any of the staff of the Secretariat, including the Secretary-General, receive instructions from any government or other sources external to the Authority. However, with respect to potential external influences on the Secretary-General and his staff there was a call from Observers and Others for more transparency especially in regard to the on-going monitoring and regulation of contractors. In turn, contractors assume the Secretary-General consults with States Parties but stated that they were "*unaware of such contact outside the meeting rooms and have no visibility into any broader informal consultation or source of directions*". The Stakeholder Survey, published by the Authority in 2014, was regarded by several commentators as "*an excellent way for the Authority, including the Secretary-General and his staff, to engage with stakeholders*".

#### d) Consultation and cooperation with international and non-governmental organisations (Article 169)

Whilst the review found arrangements in place for consultation and cooperation with international and non-governmental organisations and comments from DOALOS are supportive (Annex IV), there is a strong opinion that this is an area where improvements can be made. It was argued that better dialogue and interaction with other sectoral UN agencies, facilitated by the Secretariat, is needed. It was highlighted that such efforts require input from all organisations but this is highly relevant in the context of wider discussions related to negotiation of a legally binding instrument for biodiversity beyond national jurisdiction and Sustainable Development Goal 14. Several commentators suggested the office of the Authority in New York could be boosted to forge better connections to the work of the United Nations and that this should be permanently staffed by a senior Secretariat appointment.

<sup>6</sup> NB: A statement was made by the host Government on this issue in 2013 (ISBA/19/A/14, paragraph 7) but no detail is given in the Statement of the President of the Assembly



There was also a suggestion from some Observers and a member of the LTC for Secretariat members to attend more international workshops and meetings. This 'outward facing' role has primarily been undertaken by the Legal Division, and for many the current Deputy Secretary-General is the 'face' of the Authority rather than the Secretary-General himself.

The review was not able to substantiate whether the Secretary-General has been proactive in distributing to States Parties written reports submitted by non-governmental organisations. It is not usual for any such reports to be included as documents for consideration by the Assembly, however such documents may be available in the Authority's library (see below).

The Secretariat has organised and contributed to numerous workshops on deep-sea mining. It maintains a specialist technical library in Kingston. Since 2011 upgrades have been proposed to the library management system to meet the needs of staff and facilitate subscription to digital journals. A strategic approach has been proposed subject to resources. In terms of disseminating information and informing a wide range of stakeholders about the work of the Authority, a key resource is the website ([www.isa.org.jm](http://www.isa.org.jm)) which was updated in 2015. Although some respondents thought the new website was an improvement, there were a number of suggestions for further improvement from all groups of respondents. Members of the Council suggested making the website more user friendly, improving the outreach component and providing more access to database information. Other remarks included improving the search functions; providing information for a wide range of interested parties such as information on the benefits of deep-sea mining and the steps being taken to ensure good environmental management, and improving the corporate image. Observers and Others suggested putting the central data repository online; publishing explanations of the process of drafting regulations; explaining the methods for monitoring and ensuring compliance of contractors, and providing access to the contractors' annual reports. Some respondents were critical of the press activities during the Annual Sessions and press communications between sessions. Generally there is limited understanding of how the Secretariat works in practice.

With respect to the Secretariat's performance of the functions of the Enterprise (Subsection E, Article 170), respondents from all groups agreed that little had been done. Some thought it was still premature to consider establishing the Enterprise. Some respondents from the Contractors and Observers commented that potential opportunities had been missed and this could be to the detriment of developing nations.

*"The Enterprise has been glossed over by almost all parties as 'premature'. This is a shame, as while there may be significant challenges operationalization at this time, it does still present one of the only meaningful, fair and transparent ways that developing States might be involved in activities in the Area, and that the minerals of the Area might genuinely be developed in the interests of the CHM"* (Observer comment quotation).

One Council member called for the Enterprise to be put in place quickly to help developing countries to develop their own expertise and take advantage of Common Heritage of Mankind. A Council member considered the Enterprise concept to be no longer viable, and a number of Contractors consider it now unrealistic to expect the Enterprise to carry out commercial deep-sea mining. One Observer commented that the Council had shut down discussion on this topic when an unorthodox joint venture proposal was received by the Authority in 2013. The report of the President of the Council to the Assembly at the 19<sup>th</sup> Session concluded that it was premature for the Enterprise to function independently (ISBA/19/C/18).

**Recommendation 22:** A consultation process on how the Secretariat should perform the functions of the Enterprise going forward should be encouraged with all member States, including appointment of a Director-General.

With specific reference to Paragraph 5 of Section 1 to the 1994 Agreement the Secretariat's performance against its prescribed functions are summarised in Table 8.1.

Para 5 of Section 1 to the 1994 Agreement	RAG indicator	Comment
a. Processing of applications for approval of plans of work for exploration in accordance with Part XI		Considerable efforts made by the Secretariat
b. Implementation of Preparatory Commission decisions		Now superseded
c. Monitoring of compliance with plans of work for exploration approved in the form of contracts		Annual evaluation of contactors' annual reports for consideration by LTC: but quality of evaluation is variable and the process is problematic (see section 4)
d. Monitoring and review of trends and developments relating to deep seabed mining activities		But limited due to nascent state of the industry
e. Study of the potential of mineral production from the Area on the economies of developing land-based producers		Mineral economist recently employed in secretariat and some relevant discussions e.g. resource presentations during Chile sensitisation event (ISA Briefing Paper 02/2016)
f. Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress		Exploration procedures in place for all 3 minerals
g. Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment		Efforts underway but not comprehensive
h. Promotion and encouragement of the conduct of marine scientific research		Taxonomy supported and promoted by Secretariat workshops but more efforts needed to help establish baselines and disseminate results
i. Acquisition of scientific knowledge and monitoring of the development of marine technology		Analysis of contractors' reports
j. Assessment of available data relating to prospecting and exploration		Recent taxonomy workshops and resource classification workshop
k. Timely elaboration of rules, regulations and procedures for exploitation		Underway but slow

*Table 8.1: Performance of the Secretariat in relation to Paragraph 5 of Section 1 to the 1994 Agreement. The middle column indicates progress using a Red-Amber-Green system.*

## 8.2 Internal Secretariat Review

Two common themes were expressed by almost all interviewees contributing to this part of the review – the heavy workload and poor internal communication within the Secretariat. Other issues concerned devolvement of budgets and budgetary control.

### 8.2.1 Secretariat workload

One measure of the heavy workload undertaken by the Secretariat is the number of documents relating to the meetings of the organs of the Authority listed on the website. Numbers have increased from 21 documents in 2000 to 50 documents in 2010, and reaching 67 documents in 2015. This heavy workload is a reflection of the success of the Authority in attracting new contractors over the last six years. The number of contractors increased from eight in 2010 to 24 in May 2016, with three more waiting to be signed. Each of the applications requires preparatory work, the production of a contract for signature and the preparation of paperwork to be placed before the LTC, the Council and the Assembly. Once signed the contractor is obliged to produce an annual report and to submit data to the repository. A major exercise for the Secretariat is to write a summary report of the contractor's annual report for consideration by the LTC. Since each contractor report can be up to 800 pages in length this can create a significant burden. In 2015 the Secretariat developed a new reporting template (ISBA/21/LTC/15) for the contractors that should standardise the reporting process, but it is not aimed at reducing the report length even though an Executive Summary is now required.

Suggestions were made that the Authority should look into the possibility of requiring short summary reports in alternate years from the contractors, with full-length reports in the intervening years. Dividing the contractors into two groups with one group providing short reports and the other full-length reports each year would significantly reduce the workload of both the Secretariat and the LTC.

The increase in the number of contractors also puts a burden on the Secretariat's support for the training programme. Contractors are asked to provide a minimum of at least 10 trainees during each five-year period of the contract (ISBA-19/LTC/14). The number of trainees has grown from 36 in total between 2013 and 2015 to 120 expected between 2015 and 2020, assuming that the three contracts for exploration that are pending are signed. Considerably more trainee opportunities will be added if the extensions to existing contracts are made in 2016 and 2017 (ISBA/21C/16, paragraph 5). The Secretariat is required to draw-up and maintain the programme, manage applications, monitor and manage the process, receive the final reports from each trainee, liaise with the LTC and report to the Council.

Contractors are required to collect a range of data from their contract blocks on an annual basis. They are mandated to supply this data to the Authority where it should be assessed for accuracy and quality, as far as is possible, and then added to the Authority database. The new reporting template for contractors sets out in detail how data is to be supplied and in what format. It is expected that this new reporting template will reduce the work of the Secretariat in terms of converting the data into standard formats, but it is hoped that it will encourage a much greater supply of data for the database. Again, increasing the supply of data as well as increasing the number of contractors supplying data will add additional workload for the Secretariat.

The increased interest in exploitation of deep-sea minerals since 2010 has necessitated the Authority to take a more proactive role in disseminating information and a series of sensitisation seminars have been run to explain the work of the Authority (Indonesia 2007, Brazil 2008, Nigeria 2009, Spain 2010, Jamaica 2011, Mexico 2013, New York 2014, Chile 2015). A series of taxonomic workshops has also been initiated with three completed on faunas related to manganese nodules since 2013. All of these require considerable Secretariat staff effort and expense.

**Recommendation 23:** Examine ways of reducing the burden on the Secretariat such as by adjusting the reporting requirements on contractors (see Section 4) and making additional appointments such as a dedicated training officer<sup>7</sup>.

### 8.2.2 Communication within the Secretariat

Poor internal communication was a common theme amongst nearly all of the Secretariat staff interviewed. Lack of any announcement of start of the Article 154 Review exemplifies this concern. Thus there were no prepared presentations and some senior members of staff were not aware of some of the meetings until the very last minute.

The Authority has a relatively small staff (19 professional and 17 general service) but their roles require them to interact with a wide variety of people and committees in the international arena, making the work of the professional staff both sensitive and critical. Internal communication should therefore be paramount to Secretariat functioning. Nevertheless, there appear to have been no formal senior management team meetings over the last eight years. In place of these the Secretary-General and three Office heads meet informally with no regular frequency and the Secretary-General holds frequent bilateral meetings with individual heads of offices.

*“The Senior Management team of the ISA comprises the Secretary-General and the Chiefs of the three Offices of the Secretariat...The Meeting of the four persons is normally in relation to matters that cut across the four Offices, the progress of the work currently being undertaken by each Office and the timelines for work requested by the organs and subsidiary organs of the Authority. An agenda for such meetings is prepared but there are no minutes kept.”* Letter from Secretary-General to Review Team, 22 March 2016.

This leads to a lack of transmission of information across the Secretariat, lack of knowledge about what each of the groups do, and consequently lack of integration between the three groups and general confusion about the direction of the organization. It also facilitates micromanagement by the Secretary-General rather than collective decision-making and does not provide any mechanism for strategic planning or setting a vision for the future. These aspects will be essential as the organisation moves forward and needs to tackle the complexity of establishing mechanisms for managing exploitation of minerals.

One consequence of the lack of strategic planning is the absence of a yearly programme of work with associated budget allocations and periodic review, even though work is imposed on the Secretariat by the annual Assembly meetings. It therefore appears that each group works independently of the other groups. The Assembly is moving towards programme planning of the work of the Secretariat with associated budget control (as reflected in the report of the Finance Committee at the 21<sup>st</sup> Session, endorsed by the Council and the Assembly). For this to work in practice it will be essential to have a functioning senior management team who can ensure that their respective teams work together to produce high quality outputs.

<sup>7</sup> The review was informed that there will be a proposal in the 2017/2018 budget for a national officer position within the Secretariat to support training activities

**Recommendation 24:** Mechanisms should be put in place to enhance corporate communication and facilitate collective management. These should include monthly senior management team meetings, weekly or bi-weekly meetings of each group. The senior management team meeting should be minuted.

### **8.2.3 Management of budgets in the Secretariat**

It was reported to the review that all budgetary decisions are taken at the Secretary-General level with no devolvement of budgets or budgetary decision-making to the three group heads. This must make it very difficult for each group to function and to plan activities. A consistent remark was that many professional staff, including senior staff, found it very difficult to travel, hire consultants or attend conferences because budgets were not made available. The review was informed that the move to programme planning imposed by the Assembly should improve budgetary control, but this will need to be monitored and should be one of the items for discussion at the monthly management meetings.

**Recommendation 25:** The new budgeting system proposed by the Finance Committee and adopted by the Assembly (ISBA/21/A/6 section VIII) requiring a devolvement of budget planning to the four offices of the Secretariat, requiring both a general budget and six programme budgets needs to be monitored to assess its effectiveness. Budgetary issues including monitoring of spend should be a standing item on the monthly management meetings.

## 9. Performance of subsidiary organs

The review is asked to include a review of the performance, level of representation and attendance of members of the subsidiary organs of the Authority, an analysis of their current and projected workload and the identification of measures that may lead to an improvement of their operations. An Economic Planning Commission and a Legal and Technical Commission (LTC) are established by Article 163, paragraph 1. However, functions of the Economic Planning Commission are currently carried out by the LTC (1994 Agreement Annex Section 1, paragraph 4), thus both organs are considered together in this section of the review.

### 9.1 Mandate and performance

#### 9.1.1 Legal and Technical Commission

The mandate of the LTC is set out in Article 165, paragraph 2. Although respondents generally agreed that the mandate of the LTC is clear and well defined, there was concern from all groups of respondents that the LTC is being given an increasingly broad range of work to do, driven by the needs of the Council. Many respondents agreed that the LTC had become a preparatory organ for the Council. Some members of the Assembly agreed with this, though others suggested it was not the case.

One observer outlined the scenario where the Secretariat operates as an administrative support body for the LTC, and the LTC see themselves a body that make recommendations only to the Council. However, the Council see only brief reports from the LTC and require a two-thirds majority to overturn their recommendations on plans of work and contract extensions. Therefore the LTC has become the *de facto* decision-making body with very little transparency, scrutiny or supervisory oversight, and with an absence of clear instruction or policy direction.

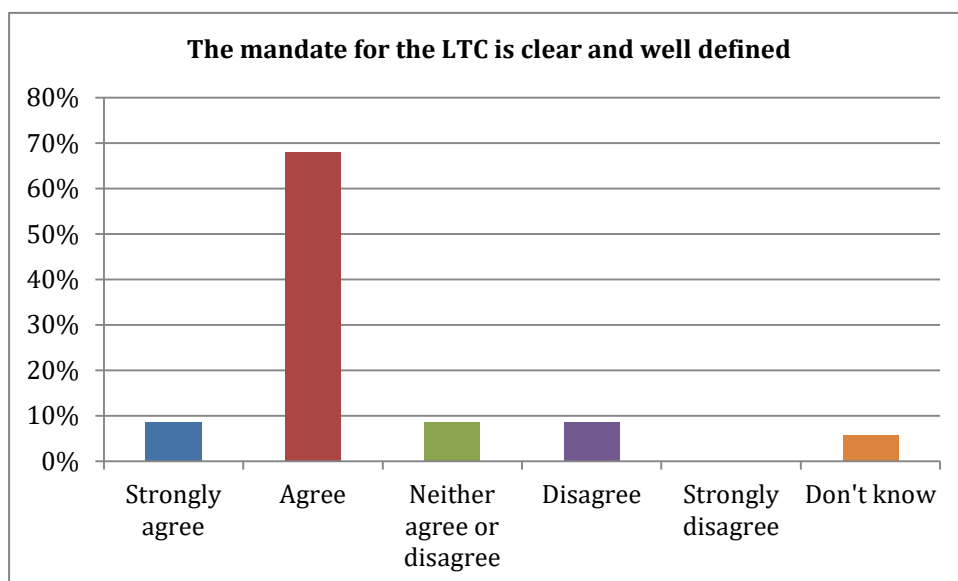


Figure 9.1: Survey results on whether the LTC mandate is clear and well defined

The lack of interaction between the Assembly and the LTC was regarded as an issue by some respondents who suggested that more of the LTC meetings should be open to participation by members of the Assembly, the Council and Observers (as provided for under Rule 6 of the LTC Rules of Procedure). Conversely a number of Contractors consider that there has been an increasing level of dialogue between the Council and LTC over the past five years. These respondents encouraged structured and consistent implementation of this dialogue at every Council meeting, although some Observers, whilst welcoming the LTC Chair report to the Council, considered it to be lacking in technical detail, nuances, analysis and record of divergent views. The absence of open meetings and the 2/3 majority needed to overturn LTC recommendations on plans of work and contract extensions led a number of respondents to suggest that the Authority was not able to fulfil its requirement under the Common Heritage of Mankind principle.

A summary of performance against functions set out in Article 165, paragraph 2 is given in Table 9.1 below.

Article 165 (2) sub-section	RAG Indicator	Comment
a. Make recommendations with regard to exercise of the Authority's functions		Undertaken annually
b. Review formal written plans of work for activities in the Area		Scrutiny of contract applications
c. Supervise activities in the Area	?	Annual reports scrutinised but is this sufficient?
d. Prepare assessments of the environmental implications of activities in the Area		Technical guidelines published but no assessment to date
e. Recommendations to the Council on protection of the marine environment		CCZ Environmental Management Plan but needed for other areas
f. Rules, regulations and procedures		Developed for all three mineral types
g. Keep such rules, regulations and procedures under review		
h. Monitoring programme		Not yet in place
i. Recommend proceedings be instituted before the Seabed Disputes Chamber		Opinion sought from ITLOS in 2011
j. Recommendations to the Council with respect to measures related to (i)	?	Unknown
k. Recommendations to issue emergency orders		N/A yet
l. recommendations to disapprove areas for exploitation		N/A yet
m. Direction and supervision of a staff of inspectors		N/A yet
n. [does not apply – Agreement, Annex, Section 6, paragraph 7]		

*Table 9.1: Assessment of LTC performance against functions as set out in Article 165, paragraph 2. The middle column indicates progress using a Red-Amber-Green system.*

This summary confirms the LTC is substantively carrying out its duties, however, the review raised concerns about how efficiently the LTC is working, the priority given to some functions (e.g. extensions to exploration mining contracts) versus others (finalising the Mining Code and environmental

protection rules and regulations), and LTC's capacity to deliver its mandate in the coming years (i.e. the mandate of LTC is not static and evolves according to the needs of the Authority). Many considered that the work of the LTC should become more transparent and accountable (see Section 11.5).

### 9.1.2 Economic Planning Commission

The work of the Economic Planning Commission (currently undertaken by LTC) is elaborated in Article 164, paragraph 2. Performance is summarised in the table below:

Article 164, paragraph 2, sub-section	RAG Indicator	Comment
a. Propose measures to implement decisions relating to activities in the Area upon request of Council		
b. Review trends of and factors affecting supply, demand and prices of minerals		
c. Examine any situation likely to lead to adverse effects (Article 150(h)) brought to its attention by the State Party or State Parties concerned		
d. Propose a compensation system		Work on financial regulations has started but does not include the compensation system

Table 9.2: Assessment of Economic Planning Commission work (currently undertaken by LTC) against functions as set out in Article 164, paragraph 2. The middle column indicates progress using a Red-Amber-Green system.

## 9.2 Expertise

The Council is mandated to endeavour to ensure that the membership of LTC reflects all appropriate qualifications (Article 165, paragraph 1).

A majority of those interviewed considered LTC members to be well qualified. However, respondents from all groups expressed concerns about the balance of expertise on the LTC. They noted that as Commission membership is driven by the nominations from States it is difficult to ensure consistent balance of expertise. The result is potential lack of sufficient expertise in some areas such as economics or subsea technical operations.

Currently, the Commission is considered by some to have too many experts in fields such as geology – expertise that was needed in the initial phase, but less so today. Many respondents called for additional expertise in environmental issues. As the LTC is also required, at least for now, to carry out the functions of the Economic Planning Commission, it is also questionable whether members have "appropriate qualifications such as those relevant to mining, management of mineral resource activities, international trade or international economics".

*"The LTC requires a more diverse range of expertise to keep pace with the evolution of the depth and breadth of knowledge needed, in particular towards the transition from exploration to exploitation. This will require a team with greater familiarity with business models, economics, minerals market, technical long-term offshore and subsea operations which is particularly lacking."*  
Quote from a Contractor response to the review.



An option suggested by Observers and Others would be to establish separate sub-committees for science, environment, legal, and economic planning issues.

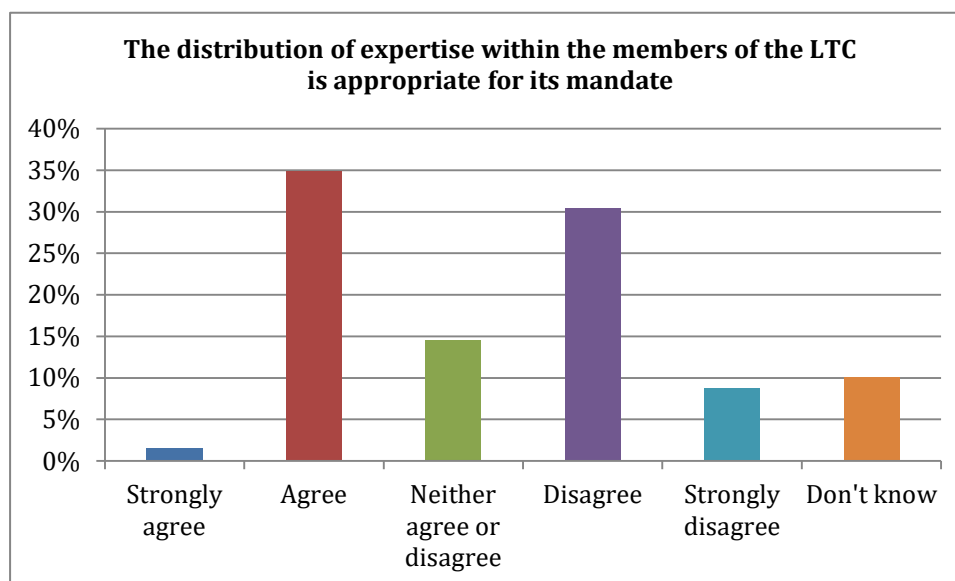


Figure 9.2: Survey response to whether the distribution of expertise within the members of the LTC is appropriate for its mandate

**Recommendation 26:** States Parties nominating experts for LTC should be informed by a strategic plan for the Authority that identifies a roadmap of when key activities will be undertaken and highlights expertise priorities. It may also be appropriate to review membership rules to maintain an appropriate expertise mix.

### 9.3 Current and projected workload

A majority of respondents to the questionnaire considered the current and projected workload of LTC to be unmanageable. The majority of tasks undertaken by LTC are considered to be complex technical issues and there is an issue of combining routine work (such as analysis of annual reports) with important policy and drafting work. It was observed that the workload is increasing exponentially and concern was expressed that the Council is currently overtaxing what is essentially a group of unpaid experts, many of whom have other roles and responsibilities.

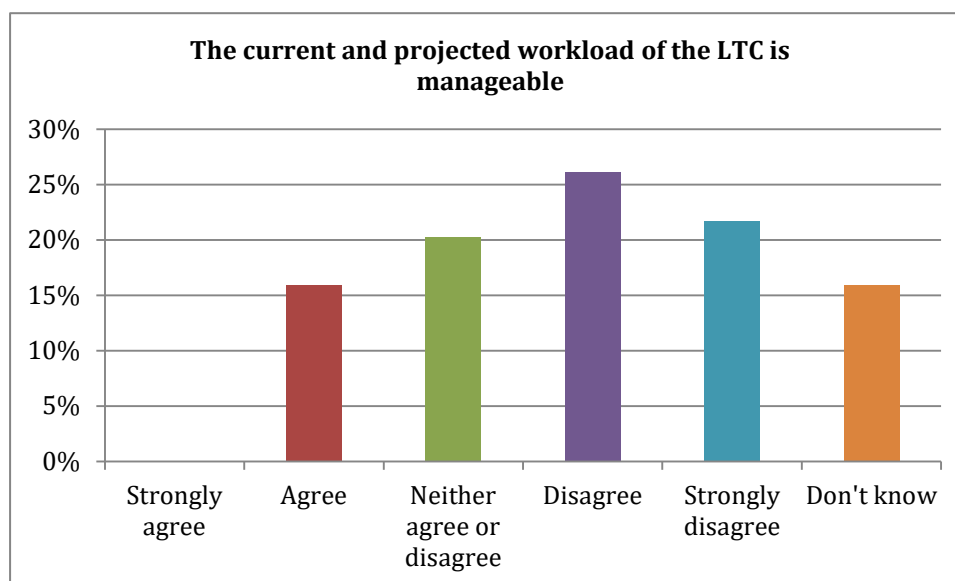


Figure 9.3: Survey response as to whether the current and projected workload of the LTC is manageable

Respondents from the Council suggested the Council or the LTC itself should seek ways to better manage this workload such as through intersessional working groups. Some respondents also noted that insufficient time may be available within the LTC for some discussions and that some members may not be able to contribute fully due to other commitments. As the workload continues to increase these issues will be exacerbated. One member of the Council suggested that it was becoming increasingly difficult for member States to identify high quality nominees for election to the LTC, since the demands on them were so high, and consideration should be given to the appropriate use of external contractors. LTC respondents suggested a need for more support from the Secretariat, an extended meeting schedule (possibly a third meeting during an annual session) with some online meetings. Some respondents including an LTC member suggested dividing the LTC into separate Legal and Technical Commissions. Some suggested that the LTC could mandate environment and/or scientific committees with experts in specific fields to take on some of its technical work and at the same time include consultative and transparent access.

As a consequence of the workload many (>45% of questionnaire respondents) agreed that the LTC has gradually transformed into a 'preparatory committee' for the Council and the Assembly. Providing more time for strategic discussion and elaboration of advice was suggested. Several considered it incumbent on the Council and LTC to ensure the LTC operates in line with international governance standards (including ensuring no conflict of interest and transparency).

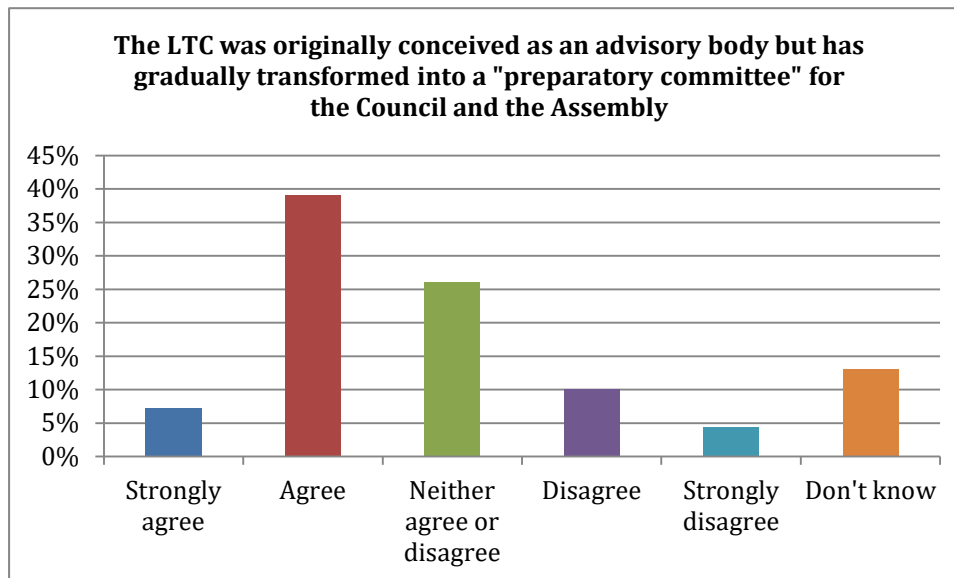


Figure 9.4: Survey response to determine opinion on whether The LTC was originally conceived as an advisory body but has gradually transformed into a "preparatory committee" for the Council and the Assembly.

## 9.4 Representation and membership

Representation and attendance at LTC meetings is considered in Section 5.4.2.

Some respondents expressed concern about the independence of LTC members. Currently members attend in their 'own personal capacities' but it is hard to demarcate national interests from technical expertise. At present ten of the 25 members of the LTC are from countries that sponsor a mining claim or themselves hold a mining claim. Whilst members of the LTC act in a personal capacity the perception could be that sponsoring States could gain an unfair influence through over representation. Furthermore, the funding capacity of member States may be an issue that limits the ability of some States (especially developing States) to participate by proposing candidates to the LTC. Offering financial support through the Voluntary Trust Fund was suggested as one mechanism to help developing States.

A majority of respondents to the questionnaire (>45%) considered the impartiality of the LTC is at risk of being compromised by some members' dual roles, however, LTC members noted that Rule 11 of LTC Rules of Procedure provides guidance on this.

**Recommendation 27:** Review the Rules of Procedure for rotation of LTC members to avoid situations where up to half the Commission is replaced at any one time.

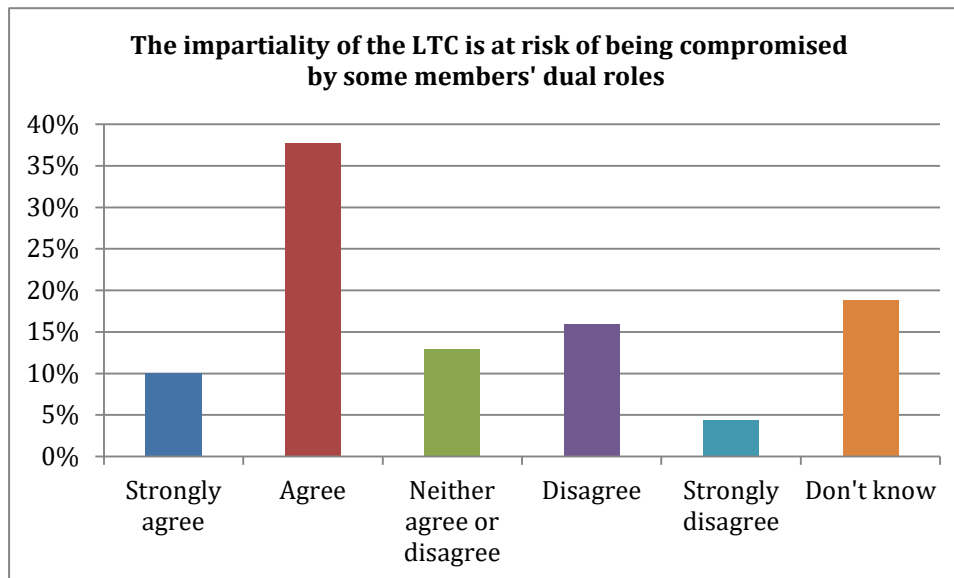


Figure 9.5: Survey response on whether the impartiality of the LTC is at risk of being compromised by some members' dual roles

One interviewee pointed out that the LTC was moving into the role of making recommendations on both contract issue and on regulation. This was the situation in which the former Minerals Management Service found itself during the Gulf of Mexico disaster, following which the authorities in the USA have divided up those responsibilities into three independent entities with the following missions (<http://www.boem.gov/Reorganization/>):

1. Ensuring the balanced and responsible development of energy resources on the Outer Continental Shelf (OCS) ([Bureau of Ocean Energy Management \(BOEM\)](#));
2. Ensuring safe and environmentally responsible exploration and production and enforcing applicable rules and regulations ([Bureau of Safety and Environmental Enforcement](#)); and
3. Ensuring a fair return to the taxpayer from offshore royalty and revenue collection and disbursement activities ([Office of Natural Resources Revenue](#))

Parallels with the work of the Authority are clear.

The impartiality of members of the LTC raised many comments by Observers and Others in the review although one member of the Council also noted the link between LTC members and contractors. It was pointed out that there was no barrier to employees of contractors also being members of the LTC and that such cases are not infrequent. This must make it difficult for those persons to be objective in reviewing applications from other contractors, reviewing annual reports of contractors and in developing exploitation regulations that contractors will have to adhere to. There must therefore be a high potential for many conflict of interest situations to arise. Given that the LTC operates through closed meetings there is a complete lack of transparency about how those situations are dealt with. Respondents stated that this could undermine the credibility of and trust in the LTC and called for an urgent review to upgrade and enforce conflict of interest guidelines and recusal procedures.

Some Observers also noted the high degree of overlap between nationalities who sit on the LTC and the Council. In 2016, only 6 out of the 25 States represented on LTC were not represented on the Council (note that in 2017, this will reduce to 5 States as Germany will regain its seat on the Council).

With respect to continuity of experience by members of the LTC most respondents agreed that this had not been an issue up until now. However, the Commission is re-elected every five years with members only able to sit for a maximum of two terms. In the last two renewals 15 and 16 new members were elected respectively, out of a total of 25 members. This represents a high proportion of members. A system with a more phased renewal (e.g. 20% change every year) may be more appropriate.

## 9.5 Measures to improve operation

In summary, suggestions to improve the operation of LTC were to:

- Set up an independent regulatory body (Inspectorate);
- Resolve excessive workload by establishing sub-committees;
- Improve transparency of scrutiny of documents and decision-making and thus interaction with the Council and the Assembly recognising a need for closed sessions as appropriate for reasons of commercial sensitivity.

**Recommendation 28:** Consideration should be given to restricting and re-focusing the remit of LTC. Alternative ways of working (e.g. more frequent meetings) should be considered as part of this exercise as well as the practicality of creating sub-committees, working groups or other Commissions and the setting up of an independent inspectorate or enforcement body that could relieve the LTC of part of its work relating to regulation and enforcement (see Recommendation 19).

## 10. Performance of the Finance Committee

The review considered the performance, level of representation and attendance of members of the Finance Committee, which was established as a subsidiary organ under Article 162, paragraph 2 (y), with a scope and terms of reference set out in the 1994 Agreement, Annex 9.

Very few comments were contributed regarding the Finance Committee. Some respondents were not familiar with the work of this Committee, and others stated that they did not follow its work. Consequently, responses to the questionnaire relating to membership rules, workload and impartiality of the Finance Committee attracted very high scores in the “Don’t know” category. Nevertheless, the consensus is that Finance Committee’s mandate is clear and well defined.

Overall a high degree of satisfaction was expressed with the way in which the Finance Committee has overseen the financing and financial management of the Authority.

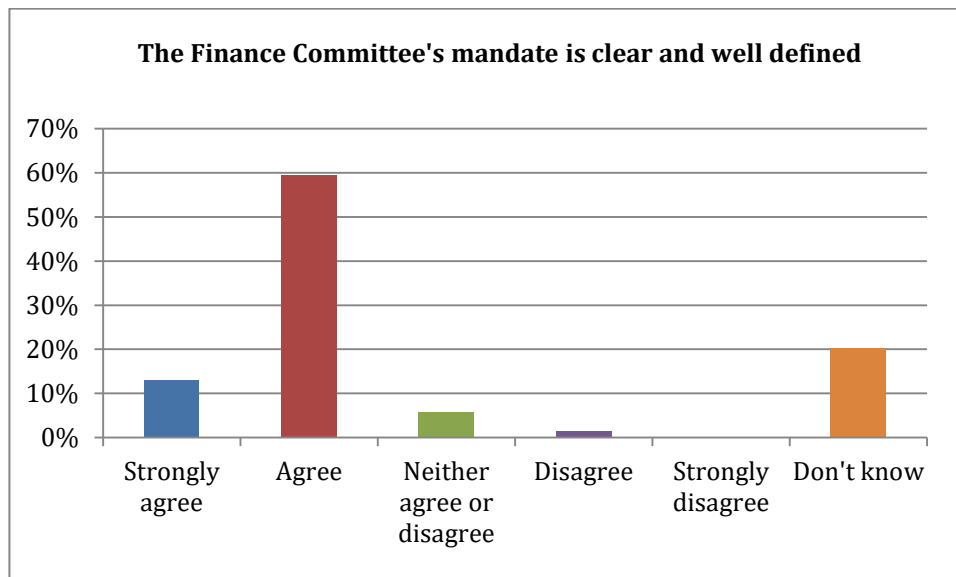


Figure 10.1: Survey response on whether the Finance Committee's mandate is clear and well defined.

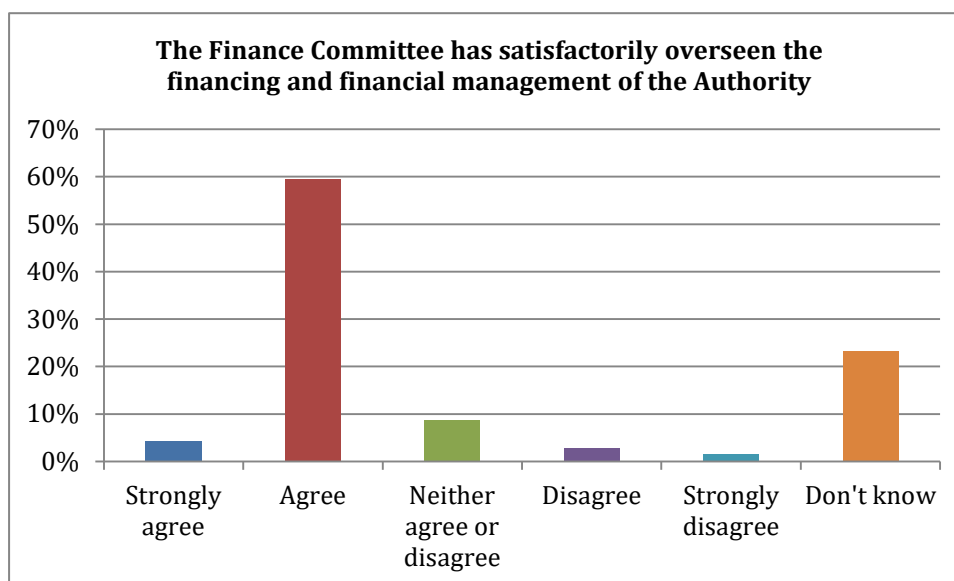


Figure 10.2: Survey response on whether the Finance Committee has satisfactorily overseen the financing and financial management of the Authority

Comments by members of the Council and Contractors suggested that in the future the Finance Committee should better define its role in drafting the financial components of the exploitation code as well as developing benefit-sharing rules. A member of the Council and a Contractor called for the Secretariat to develop better budgeting and accountancy procedures so that the Finance Committee could in turn provide better scrutiny of the financial management of the Authority. A comment was made by a Finance Committee member that the main role of the Committee was to balance the budget and ensure cost-effectiveness. Contractors and a respondent from the Secretariat suggested the Finance Committee should play a more proactive role in determining value for money and assessing the budget needed to fit the work programme. This perception suggested the Finance Committee is perhaps more concerned about the bottom line or total budget level, rather than giving attention to programme delivery or efficiency. Some members of the Council called for more transparency in the working of the Finance Committee. A concern expressed by members of the Secretariat is the disconnect between budget and work programme. The work programme is driven by the available budget, rather than the budget being driven by a work programme that is approved through a rigorous process.

Several respondents highlighted a concern regarding the timing of Finance Committee meetings in relation to meetings of the other organs during the Annual Sessions. Typically, the Finance Committee meet in parallel with LTC but conclude their business well before the LTC meeting finishes. Therefore, any issues arising from LTC with a financial implication cannot be considered by the Finance Committee. Additionally, some States Parties expressed concern that insufficient time was allowed for Assembly members to scrutinise and digest the draft biennial budget before being required to give their approval and a call for greater transparency of Finance Committee documents has also been made in the Council (ISBA/19/C/18, paragraph 21).

**Recommendation 29:** Review the timing of the Finance Committee meeting within the Annual Session cycle and publish the proposed budget as well as a final proposal to the Assembly to ensure transparency.

No respondents identified an excessive workload for the Finance Committee at present. However, Observers noted that there will be a future need to develop both liability and sustainability funds and a benefit sharing scheme once exploitation begins, as well as the need to fund an Inspectorate if and when it is established. These activities will lead to a substantially increased workload that may require a number of sub-committees or working groups.

Part of the Finance Committee's mandate is to submit recommendations regarding the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decision to be made thereon. At this stage, it is unclear what this will entail as there is no clarity on the payment mechanism and the exploitation regulations. Several respondents raised the issue of the sustainability of the Voluntary Trust Fund. Recently several significant donations have been made to the Fund (see ISBA/19/A/14, paragraph 9) and current draw-down from the fund is in the order of \$ 60,000 - 70,000 US dollars per annum.

**Recommendation 30:** Consideration should be given to any implications for the sustainability of the Voluntary Trust Fund if and when the increasing workload of the Authority results in more meetings and an increased requirement for voluntary contributions

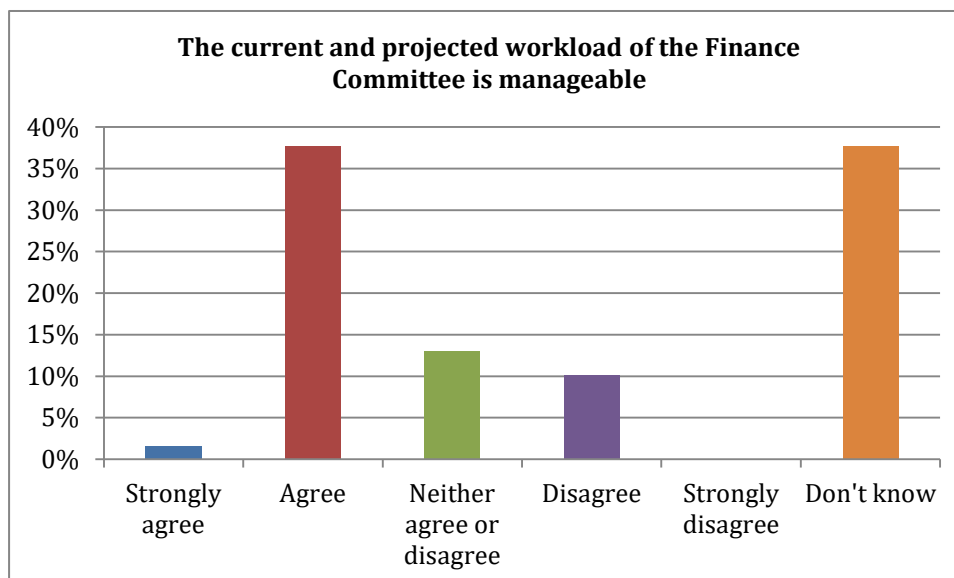


Figure 10.3: Survey response on whether the current and projected workload of the Finance Committee is manageable



With regard to the impartiality of the members of the Finance Committee, respondents from the Council and the Finance Committee itself suggested that Committee members should not also participate as delegates of their countries in regular meetings of the Authority. There was a consensus that operating in this way would ensure the independence and impartiality of the Finance Committee, avoiding any conflict of interests. However, several respondents also suggested that members of the Finance Committee will naturally have more than one role within the Authority, therefore the risk of lack of independence cannot be eliminated and simply has to be managed. As it is, the onus is on member States to nominate candidates of the highest standards of integrity.

In addition, whilst members of the Finance Committee typically form part of their member State's delegation to the Authority, there was a view that this does not raise the same problems and concerns associated with the membership of the LTC. The member States provide the bulk of the Authority's finance and therefore it is appropriate that they are in a position to scrutinise the way in which that money is managed and to make recommendations to their fellow member States on the Council and in the Assembly on the appropriate level of the Authority's budget.

In summary therefore the review concludes that the qualifications and procedures of the Finance Committee is in line with the international practice and the elected members have fulfilled their functions. Independence and impartiality of the members should not be questioned.

## 11. Forward look: future-proofing the Authority

The review was asked to provide a series of recommendations looking forward and contributing to the Authority's future strategic direction. The recommendations set out below draw on the evidence base collected by the review and seek to suggest ways in which the Authority could more effectively deliver its mandate. Each represents a 'stand alone' option, that could be applied individually and/or in combination with one or more of the other options subject to agreed priorities and resources. However, the review considers that the strategic plan is fundamental and an essential prerequisite before the Authority can move forward with exploitation.

### 11.1 Strategic Plan and 5-year Work Programme

Lack of a vision for the Authority is a major gap and impediment to future success. Many delegations are disappointed in the lack of real progression year on year. Any long-term master plan should be driven by the Assembly but based on a clear strategic overview of its mission. A consequence of not having such a document is that priorities within the technical work lack sufficient impetus and their execution is not sufficiently signalled or pre-planned. Consequently tight deadlines and extra work becomes an imposition on 'unpaid' nominees (e.g. LTC) who then lack sufficient time to tackle complex and difficult tasks.

A thorough review is required because deep-sea mining represents a 'new maritime industry' that must meet all modern standards. These standards have developed rapidly over the last 20 years especially since the hydrocarbon industry has begun to exploit on the continental margins to water depths in excess of 2000 metres. For example, regulations and standards developed rapidly in the light of marine disasters such as the Deepwater Horizon oil spill in the Gulf of Mexico in 2010 on the BP-operated Macondo Prospect. Today, companies are familiar with working inside a regulatory framework and being assessed on their performance. Indeed they require knowledge of these requirements and other costs, such as commitments to any liability fund, before they can calculate their investment options. There seems to be some frustration amongst the newer contractors that the Authority is being slow to set the fiscal and regulatory framework and this may be due to the lack of a strategic plan over the last 15 years, which would have set a timetable for such a framework to be developed.

*"However the licence holders (those who have had licences for 15 years+) have generally not run their programs as "business investments" - rather they have been largely run as research programs, and as a result have not achieved clear objects (especially around the commercialisation of the licences). The result has seen many of them effectively "sit" on the ground for long periods." (Contractor comment)*

*"We believe that the Authority could improve its regulatory oversight and enforcement capabilities. This will be critical as it transitions to regulating exploitation, rather than exploration. To date, the Authority has been challenged in finding means to enforce its regulations, in part due to the need for an independent regulatory structure to be created within the ISA, reporting perhaps to the Secretariat, not a political body". (Contractor comment)*

Many Observers are also frustrated by the lack of a Strategic Plan, which they expect to set out how the Authority will deal with environmental protection measures including regional (strategic) environmental plans, details of environmental baseline requirements, and mechanisms for monitoring and control of contractor's activities.

*"The ISA has to date primarily been effective at issuing exploration licences. Apart from this it is hard to see other aspects of the ISA's responsibilities and functions being discharged effectively - including strategic management of the resources (both living and non-living) of the Area, or any noticeable stringent monitoring and control of the activities of contractors, once the contract has been issued."* (Observer comment)

A strategic plan sets the bar against which to judge future performance and encapsulates the level of ambition of the organisation. The strategic plan may therefore need to address the following issues:

- 1) **Setting a vision for the Authority** over 10-year and 25-year periods. It is generally accepted that a 10-year strategic plan (with a mid-term review) is sufficient to allow for adaptive management, but this may include, for example, a 25-year vision statement. Overarching issues should be explained including the role of the Authority (its unique responsibility under the Convention; its duty to collect revenue and distribute it amongst Member States, etc.), guiding principles (e.g. Common Heritage of Mankind) and an objectives hierarchy. Most strategic plans contain a series of strategies or themes. For the Authority this could comprise: seabed mining, economic development (including ABS considerations), environmental protection.
- 2) **The programme of work** needed to put in place all aspects of that vision (including a timeline for the progress of each) including:
  - a. The exploitation code
  - b. Requirements for environmental protection
  - c. Mechanisms for regulation and enforcement
  - d. Mechanisms for adaptive management
  - e. The fiscal regime including the process for benefit sharing, a financial liability regime, a sustainability fund
  - f. Mechanisms for addressing the Common Heritage of Mankind
  - g. Developing a communications strategy
  - h. Developing policies for addressing transparency and conflicts of interest and revising Regulations regarding confidentiality
  - i. Setting up the Economic Planning Commission
- 3) **The structure of the organisation** that needs to be in place to manage the new phase of the Authority – namely the exploitation phase. The Authority currently has the structure to manage long-term exploration and this structure is rapidly becoming outdated. Best practice from other offshore industries needs to be followed in setting up the new structure e.g. the clear separation of licensing from regulation.
- 4) **The budget** that will be required to pay for the programme of work and pay for the required structure. There will undoubtedly be extra costs but these may be offset against future earnings when exploitation becomes a reality. *A UN affiliated body that makes a profit is not the norm among the UN family and may need to be treated differently* (quote from one interviewee).

Without such a plan it is hard to see how a wider operation role (e.g. BBNJ, SDGs) could be envisaged. Indeed, several comments given to the review indicate little confidence in any wider role at present.

**Recommendation 31:** The Secretary-General (with support from ‘Friends of the S-G’ e.g. Presidents of both the Assembly and the Council) should present an initial draft Strategic Plan to the Council as soon as possible. The Council could then refine a first draft.

**Recommendation 32:** Rather than adopting a budget which then drives the work programme, the Strategic Plan should determine a Programme of Work and the Authority should then agree how to finance the work.

**Recommendation 33:** As part of the Plan the Council should seek advisory opinions to address higher-level legal issues that the Authority must come to some conclusion about on going forward (developing States definition, monopolization, common heritage, effective control, dominant position).

## 11.2 Structure to match mandate

The current structure of the Authority reflects what was negotiated in the Convention rather than current priorities. It has worked reasonably well during the exploration phase but is coming under increasing pressure as the Authority begins to contemplate exploitation activities. The Authority is in danger of conflating the roles of licensing body and regulatory body with, by comparison to other offshore activities, potential negative consequences. At present the same body - namely the LTC - is tasked with approving contracts, monitoring, contractors’ activities, overseeing the protection of the marine environment and developing the exploitation code. The review received strong support for the setting up of a separate regulatory body and devolving the setting of regulations (including those relating to environmental protection) and monitoring of compliance to that body. To ensure its independence, such a body should be at an ‘arm’s length’ from the Authority’s operation in Jamaica, independently led, based at a separate venue and should not come under the influence of the Council. This view was elaborated by a Contractor: *“First, the ISA does not have an independent regulatory structure within which to perform regulatory oversight and enforcement of exploration contract terms/conditions. It is unreasonable to expect the LTC, reporting to Council (a political body) to function as an independent regulator, which is critical with the majority of the contractors either being state entities or state-owned. Second, the ISA has not been able to effectively require contractors to share publicly their collected environmental data. As a result, the international environmental community has lost over a decade of much needed knowledge to assess environmental baselines”*. This view is also supported by many Observers.

Furthermore, the functions of the Economic Planning Commission are currently undertaken by the Legal and Technical Commission, and the Enterprise (the creation of a company or joint enterprise operated by the Authority on behalf of all nations) has yet to be established (or may now be unworkable as a concept). Consideration by the Assembly of the appropriateness of establishing the Economic Planning Commission and the Enterprise, and how they might function, in advance of any unforeseen external pressure is recommended.

The review also clearly highlighted that the LTC is currently overburdened and that this burden is unlikely to decrease with the current format and workload. The performance of the LTC is highly dependent on the majority of its members being fully functional but this cannot be guaranteed if their workload becomes excessive. This issue needs to be addressed urgently though preferably in the light of other recommendations made here. Respondents to the review had various suggestions including sub-dividing the work of LTC and/or forming new Commissions. However, responses from the Council and LTC members highlighted advantages of continuing to integrate legal and technical work.

The Council has the mandate to review the current structure of the Authority and to form new appropriate subsidiary organs. This should be in line with any Strategic Plan. It may be helpful to consider the structure of the International Atomic Energy Agency (see Annex V) as a model of the type of structure into which the Authority might evolve.

**Recommendation 34:** Attention should be given to the formation of a regulatory body or Inspectorate.

**Recommendation 35:** The Council should consider the timeliness of establishing the Economic Planning Commission as a subsidiary organ independent of the LTC.

**Recommendation 36:** Solutions to reduce the workload and possibly the mandate of the LTC need investigation.

### 11.3 Secretariat fit to serve structure

The Secretariat currently does not have the most appropriate structure to deal with future responsibilities. Whilst outwardly the Secretariat gives an impression of coping despite increasing demands, internally the Secretariat is challenged. This is in part due to having maintained a historical structure without making the case to adapt to increasing and different demands (e.g. data repository), but also due to a mismatch of skills to new tasks. As a result morale is low and needs addressing through inspirational leadership and improved management communication.

Several respondents to the review considered that the Secretariat currently functions as an administrative 'conference service', preparing for meetings and facilitating communication with contractors. The Deputy Secretary-General has been very active in 'selling' the Authority and engaging with academic debate but many see the Secretariat as having potential to be more proactive in future, interacting more closely with UN ocean bodies and providing an outreach and communication service.

The profile of the Authority and its visibility to the 'outside world' is lacking. The Secretariat has the required platform (website) and has commissioned a study on developing a communications and engagement strategy to ensure active stakeholder participation in the development of a minerals exploitation code (2016<sup>8</sup>), but has no specialist in-house expertise. A Communications Strategy is needed covering vision, objectives, key messages, audiences and use of different communication tools.

Article 156, paragraph 5, states that the Authority may establish such regional centres or offices as it deems necessary for the exercise of its functions. One response to the review suggested the merits of the Authority having a regional presence in the Pacific. The New York office is also an under-utilised asset.

<sup>8</sup> Internal report prepared for the Secretariat of the International Seabed Authority by Kristian Teleki, formerly Director of Global Engagement for the Global Ocean Commission

**Recommendation 37:** The Secretariat should be re-organised to properly reflect strategic priorities and any new structure determined by the Council. An Environmental Division as well as a Legal Division and a Technical Division could be envisaged.

**Recommendation 38:** Subject to development of a strategic plan and confirmation of future priorities by the Council, and allocation of appropriate resources, restructure and strengthen the Secretariat skill base.

**Recommendation 39:** Internally place the Secretariat on a proper business footing to encourage and motivate teamwork, ensure efficient internal communications and raise transparency. Consider opportunities to attract external project funding.

**Recommendation 40:** Implement a communications strategy and employ a dedicated communications professional to enhance visibility and outreach.

**Recommendation 41:** Utilise the New York office, which should be staffed with a senior staff member charged with engaging with other bodies.

#### 11.4 Meeting cycle and representation

The Assembly is consistently under-represented and fails to reach quorum. At some stage quoracy may be challenged. If and when this happens it has commercial implications and may stall mining.

The current meeting cycle, with its emphasis on different organs meeting at the same time or sequentially in July, hampers efficient operation of the Authority and is an underlying cause of under-representation. This is an historical and inefficient system, established to suit the needs of the Preparatory Commission. No other international organisation serving the needs of States Parties operates its specific and general decision-making organs in parallel.

The international meeting calendar is far more congested now than when the Authority was conceived. In addition, many delegations have problems with Jamaica as the seat of the Authority (access, security, expense). Article 156, paragraph 4, determines that the seat of the Authority shall be in Jamaica. However Rule 6 of the Rules and Procedure of the Assembly permits the Assembly to decide to meet elsewhere. To some extent the UN calendar dictates the meeting cycle. The meeting cycle is also unduly influenced by the cost and availability of interpretation.

The duration of the Assembly meetings, covering a 2-week period, is too long and could be reduced to 3-5 days. This may have the benefit of increasing attendance as the costs would be considerably reduced. Another option would be to reduce the frequency of meetings of the Assembly to one every two years following the model of the IMO. This also has budgetary implications: it could reduce fixed costs, making more resources available for delivery.

There is no reason why the Council has to meet at the same time as the Assembly, other than economies of scale for those representatives who sit on more than one body and input from Observers, as previously stated. The Council could meet more than once per year and may need to in order to establish the Mining Code and other policies in the future.

It makes little sense to hold the Finance Committee ahead of determining a relevant work programme and there should be sufficient time for due consideration and scrutiny of the budget.

Technical meetings should take place before political decision-making meetings. There is a rationale for LTC to meet in the autumn and spring, promoting more intersessional work and timely presentation of results and recommendations to the Council. Whilst organs of the Council shall normally function at the seat of the Authority (Article 163, paragraph 12) the venue for intersessional technical meetings does not need to be restricted to the seat of the Authority and these could be hosted on a rotational basis by the regions or at different venues in other parts of Jamaica.

**Recommendation 42:** Consider whether the Assembly could meet less frequently (e.g. biennial) and/or for a shorter period or at a different location for some of its meetings.

**Recommendation 43:** Initiate high-level negotiations within the UN to reposition the timing of the annual meeting cycle.

**Recommendation 44:** The President of the Assembly, President of the Council and the Secretary-General should work with the Government of Jamaica to resolve hosting issues. Possible options include:

- 1) varying technical meeting locations
- 2) varying timings of meetings
- 3) use of video conferencing

**Recommendation 45:** The Authority should also review its interpretation arrangements including, for example, those established by other international organisations such as the Food and Agriculture Organisation.

## 11.5 Transparency

Many respondents to the review were critical of a lack of transparency in the work of the Authority and highlighted potential for conflict of interest. Some respondents commented that this undermines confidence in the ability of the Authority to ensure that activities are carried out in accordance with the Common Heritage of Mankind principle. These respondents questioned the compatibility of the different elements of the Authority's mandate - encouraging exploitation, protecting and preserving the environment, sharing benefits - suggesting that lack of transparency undermined confidence that an appropriate balance is being achieved.

The review also concluded there is some doubt whether State companies are effectively controlled. Based on the ITLOS Seabed Disputes Chamber Advisory Opinion on the duties of sponsoring States, more information needs to be publically available. Currently no contract information (applications or contracts) is published and LTC does not report on contractor annual reports which makes it difficult to determine whether the Authority has effectively monitored contractors' compliance or whether the reports are a fair representation of activities and compliance. Concerns were also raised by Council members about the problem of overlapping applications due to lack of transparency.

While some respondents credited the Council and the Assembly for having made significant gains in transparency in recent years and continuing to draw attention to the issue (e.g. ISBA/20/C/32, paragraph 16), concerns about transparency were particularly focused on the LTC. The LTC is not open to Observers and LTC members operate under strict rules of confidentiality and non-disclosure.

The LTC should consider opening up its meetings more often in accordance with Rule 6 of the Rules of Procedure of the Legal and Technical Commission.

Some respondents also commented that the Authority does not appear to have any published written policies and procedures specifically promoting transparency and accountability for its organs, subsidiary organs and contractors. Several respondents were of the view that greater attention should be given to the development of transparency standards and the promotion of transparency (including what transparency means with specific objectives defined).

It is clear from responses to the review that greater transparency is needed if the Authority wishes to retain the confidence of States Parties, Observers and civil society that it is effectively administering seabed mining for the benefit of all mankind. Transparency is essential to building public trust: secrecy and confidentiality is likely to result in suspicion, mistrust and an assumption that contractors' compliance is not being monitored and controlled. The increasing interest that will come with the move from exploration to exploitation necessitates better engagement with civil society and more transparency.

Concerns were widely raised in the review about the sharing and accessing of information and data. In particular, respondents were concerned that the contractor-collected environmental data is not publically available through the Authority's Central Data Repository, which raised concerns about confidence in the data and compliance of contractors with their data sharing obligations. Many respondents encouraged the Authority to make accessible through a public register more non-commercially sensitive information, in particular environmental baseline data but also contract applications, contracts, EIAs, licensing decisions, and annual reports.

Many respondents complained about the confidential treatment of contracts and suggested that the burden of proof should be reversed (i.e. all information is publicly available while allowing information shown to be confidential under agreed standards to be confidential). The Authority should consider revising its Regulations to set standards for what is considered to be confidential information.

There is also an issue relating to greater transparency on the finances of the Authority moving towards exploitation given the considerable amounts of money that an expected royalty structure payments will generate. This includes use of funds by the Secretariat. One respondent to the review suggested the Finance Committee could be empowered to give more direction to the Secretariat and provide greater transparency into the Secretariat's use of funds. Policies and procedures to promote transparency could draw on Extractive Industry Transparency Initiative principles.

**Recommendation 46:** The Authority should develop a policy on transparency and conflicts of interest and should consider revising the Regulations to set standards for confidentiality.

**Recommendation 47:** Non-confidential information should be shared widely and should be readily accessible.

**Recommendation 48:** Transparency in the LTC needs to be addressed with urgency, and consideration should be given to opening up the LTC meetings more often.



**Recommendation 49:** Investment is needed in better data management and data sharing mechanisms.

**Recommendation 50:** Attention should be given to transparency as the finance provisions in the regulations and the benefits sharing regime are developed, which will have an impact on the ability of the Authority to act on behalf of mankind with special consideration for the needs of developing States.

## 12. ISA Article 154 review: Summary of recommendations

The following list of recommendations is transcribed from relevant sections of the review.

### Section 4: The regime

1. A study on the adequacy of sponsoring States legislation to control entities with whom they enter into contracts for exploration, drawing on the Seabed Disputes Chamber Advisory Opinion, should be commissioned.
2. Whilst contractors have been provided with a standard reporting template as of 2014 attention should be given to internal policies and procedures to enforce its use and review the quality and consistency of data gathered.
3. Future contracts should be prescriptive with standard terms and conditions and detailed plans of work that set clear objectives, which can be monitored and enforced
4. Clarification of the definition of 'developing State' as applied by the Authority would be helpful to satisfy Articles 148 and 150.
5. Carry out the study of relevant issues relating to the operation of the Enterprise requested in 2013 by Council of the Secretary-General, including the failure to reappoint a new Director-General and extend any such study to include an analysis of operation of the reserved area.
6. An independent review of enforcement and oversight capabilities of the Authority is needed to inform the setting up of an independent regulatory body (Inspectorate).
7. The system of reviewing annual reports and approved plans of work made by contractors should be reviewed in the context of LTC workload and the feasibility of alternatives considered, such as requiring alternate short and long reports in alternate years, with 50% of contractors producing short reports each year. Consideration should be given to maximum report length or page limits for annual reports. The review of contractors' reports could be assigned to an independent regulatory body.
8. Consideration should be given to establishing the Economic Planning Commission sufficiently ahead of the advent of commercial seabed mining and/or identifying economic issues of common concern that require further study.
9. The levels of expertise in both the LTC and the Secretariat required to incorporate applicable standards for the protection and preservation of the marine environment should be increased as appropriate.
10. Consider how to seriously engage with the scientific community and relevant deep-sea science projects and initiatives.
11. Whilst the onus to develop relevant marine technology should rest with the contractors the Authority should accelerate the specification of agreed performance standards.
12. The Authority should be proactive in an emerging discussion about transparency, including a review of the confidentiality clause in contractors' contracts, and should consider revising the Regulations regarding confidentiality.

## Section 5: Representation and attendance at the Authority's annual sessions

13. The Authority should consider setting up a Standing Committee between the Secretary-General and the host Government (see also 11.4) with a structured meeting schedule.

## Section 6: Performance of the Assembly

14. Consider extending the period of office for the President of the Assembly to two or three years.
15. Consider options to improve quorum of the Assembly, including the option of meeting biennially or at a different location.

## Section 7: Performance of the Council

16. The Council should consider producing a record of decisions taken at each session with a timetable for them to be carried out.
17. Consider making the work of LTC more transparent, limiting closed sessions to commercial in-confidence matters only.
18. As the workload increases, the Council should consider meeting twice per year. This should recognise the value of synergy between LTC and the Council (as well as the value of opportunities for non-members of the Council to observe and make interventions concerning the Council's business) and therefore relate any additional meetings of the Council to appropriate meetings of LTC.
19. Consider the establishment of an independent regulatory body or inspectorate.

## Section 8: Performance of the Secretariat

20. Discussions should be held with the member States with a view to increasing financial support for the Secretariat. This could include allowing the Authority to ring fence the additional fees levied on contractors, with the aim of employing more professional staff to administer their increasing workload rather than offsetting member States' contributions.
21. A review of required skills and available staff expertise should be carried out for current and future predicted activities. Any identified skills gaps should lead to the creation of new posts for which funding should be sought through the normal channels or fees imposed on the contractors. Forward planning should identify additional new skills and further posts that will be required. Secondments should also be investigated. The GESAMP model of consultative scientific advice would also be worth investigating.
22. A consultation process on how the Secretariat should perform the functions of the Enterprise going forward should be encouraged with all Member States, including appointment of a Director-General.
23. Examine ways of reducing the burden on the Secretariat such as by adjusting the reporting requirements on contractors (see Section 4) and making additional appointments such as a dedicated training officer.

24. Mechanisms should be put in place to enhance corporate communication and facilitate collective management. These should include monthly senior management team meetings, weekly or bi-weekly meetings of each group. The senior management team meeting should be minuted.
25. The new budgeting system proposed by the Finance Committee and adopted by the Assembly (ISBA/21/A/6 section VIII) requiring a devolvement of budget planning to the four offices of the Secretariat, requiring both a general budget and six programme budgets needs to be monitored to assess its effectiveness. Budgetary issues including monitoring of spend should be a standing item on the monthly management meetings.

## Section 9: Performance of subsidiary organs

26. States Parties nominating experts for LTC should be informed by a strategic plan for the Authority that identifies a roadmap of when key activities will be undertaken and highlights expertise priorities. It may also be appropriate to review membership rules to maintain an appropriate expertise mix.
27. Review the Rules of Procedure for rotation of LTC members to avoid situations where up to half the Commission is replaced at any one time.
28. Consideration should be given to restricting and re-focusing the remit of LTC. Alternative ways of working (e.g. more frequent meetings) should be considered as part of this exercise as well as the practicality of creating sub-committees, working groups or other Commissions and the setting up of an independent Inspectorate or enforcement body that could relieve the LTC of part of its work relating to regulation and enforcement.

## Section 10: Performance of the Finance Committee

29. Review the timing of the Finance Committee meeting within the Annual Session cycle and publish the proposed budget as well as a final proposal to the Assembly to ensure transparency.
30. Consideration should be given to any implications for the sustainability of the Voluntary Trust Fund if and when the increasing workload of the Authority results in more meetings and an increased requirement for voluntary contributions.

## Section 11: Forward look

31. The Secretary-General (with support from 'Friends of the S-G' e.g. Presidents of both the Assembly and the Council) should present an initial draft Strategic Plan to the Council as soon as possible. The Council could then refine a first draft.
32. Rather than adopting a budget which then drives the work programme, the Strategic Plan should determine a Programme of Work and the Authority should then agree how to finance the work.
33. As part of the Plan the Council should seek advisory opinions to address higher-level legal issues that the Authority must come to some conclusion about on going forward (developing States definition, monopolization, common heritage, effective control, dominant position).
34. Attention should be given to the formation of a regulatory body or Inspectorate.

35. The Council should consider the timeliness of establishing the Economic Planning Commission as a subsidiary organ independent of the LTC.
36. Solutions to reduce the workload and possibly the mandate of the LTC need investigation.
37. The Secretariat should be re-organised to properly reflect strategic priorities and any new structure determined by the Council. An Environmental Division as well as a Legal Division and a Technical Division could be envisaged.
38. Subject to development of a strategic plan and confirmation of future priorities by the Council, and allocation of appropriate resources, restructure and strengthen the Secretariat skill base.
39. Internally place the Secretariat on a proper business footing to encourage and motivate teamwork, ensure efficient internal communications and raise transparency. Consider opportunities to attract external project funding.
40. Implement a communications strategy and employ a dedicated communications professional to enhance visibility and outreach.
41. Utilise the New York office, which should be staffed with a senior staff member charged with engaging with other bodies.
42. Consider whether the Assembly could meet less frequently (e.g. biennial) and/or for a shorter period or at a different location for some of its meetings.
43. Initiate high-level negotiations within the UN to reposition the timing of the annual meeting cycle.
44. The President of the Assembly, President of the Council and the Secretary-General should work with the Government of Jamaica to resolve hosting issues. Possible options include:
  - i. varying technical meeting locations
  - ii. varying timings of meetings
  - iii. use of video conferencing
45. The Authority should also review its interpretation arrangements including, for example, those established by other international organisations such as the Food and Agriculture Organisation.
46. The Authority should develop a policy on transparency and conflicts of interest and should consider revising the Regulations to set standards for confidentiality.
47. Non confidential information should be shared widely and should be readily accessible
48. Transparency in the LTC needs to be addressed with urgency, and consideration should be given to opening up the LTC meetings more often.
49. Investment is needed in better data management and data sharing mechanisms.
50. Attention should be given to transparency as the finance provisions in the regulations and the benefits sharing regime are developed, which will have an impact on the ability of the Authority to act on behalf of mankind with special consideration for the needs of developing States.

## Annex I: ISA Article 154 Review Inception Report

### 1. Introduction

In its decision dated 24 July 2015 (ISBA/21/A/9), the Assembly of the Authority decided to undertake, pursuant to Article 154 of the Convention, a general and systematic review of the manner in which the international regime of the Area has operated in practice. The Assembly also decided that such a review be carried out under the oversight of a Review Committee comprising the President and the Bureau of the Assembly, the President of the Council, with the current President of the Assembly remaining a member of the Committee until the completion of the review, and that the Chairs of the regional groups may also participate as observers in the Review Committee. The Assembly further decided that the review be conducted by consultants appointed by the Review Committee, based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the Authority.

### 2. Meeting of the Review Committee and the Observers with the Consultants, 12 and 13 January 2015

The meeting was attended by:

**Committee Members:** Ambassador Helmut Tuerk (Chair of the Review and President of the Assembly), Ambassador Eduardo Bonilla and Ms Montserrat Carrillo (Chile), Ambassador Lim Jong Seon (Korea), and Mr Sergey Konstantinovich Tarasov (Russian Federation). Ambassador Peter Thomson (Fiji and President of the Council) and Professor Georgy Cherkashov (Russian Federation) joined remotely via video conference link.

**Observers:** Ambassador Ariel Fernandez (Argentina), Ms Carmen Rives (Spain), Mr Philip Riley (South Africa), Mr Jongikhaya Rabe (South Africa).

**Secretariat Representatives:** Mr Nii Allotey Odunton (Secretary-General), Mr Michael Lodge (Legal Counsel and Deputy to the Secretary General), Mr Sandor Muslow (Head of the Office of Resources and Environment Monitoring) and Mr Sainivalati Navoti (Senior Legal Officer).

**Consultants:** Professor David Johnson, Professor Phil Weaver, Dr Vikki Gunn, Mr Wylie Spicer QC, Ms Sara Mahaney

Ambassador Helmut Tuerk, in his capacity as President of the Assembly and Chair of the Review Committee, welcomed Committee Members, Observers and Consultants. He congratulated the Consultants on their successful bid and presented a formal letter of appointment. He recalled the origins of proposals for regular reviews of the Authority and, in particular, the decision at the sixth session of the Assembly, which concluded that at that time (in 2000) any review would be premature. The Decision of the Assembly in 2015 regarding the first periodic review of the International regime of the Area pursuant to Article 154 of the United Nations Convention on the Law of the Sea (ISBA/21/A/9) set out a broad provision. Ambassador Tuerk noted the Authority is the sole mechanism for management and development of mineral resources in Area Beyond National Jurisdiction as recognised by all investors, and that current drafting of the Mining Code was taking into account protection of the environment, sharing of benefits and the need for oversight of operations. He stated that the review should go beyond a mere management audit; it should identify future challenges and set out recommendations for future operation of the Authority.

## **2.1 Context and methodology of the Review**

The Consultants presented a Powerpoint summary of their technical proposal. This included an introduction to the team, their qualifications and experience and included the regional representatives not present at the inception meeting. The context and objectives of the review were reiterated. The strategy for the review was explained as being based on a standard institutional and organisational assessment model combined with a series of steps to be taken by the review process over two phases. Key inputs will comprise a desk review, benchmarking, workshops, questionnaire, interviews and synthesis. A Gantt chart set out this methodology against the timeline specified for the review. A summary of tasks, activities and outputs was then followed by a series of questions for clarification covering scope, process, control and ethics and quality assurance of the review.

The Review Committee thanked the Consultants for their presentation and requested time to discuss points raised before providing a response.

## **2.2 Response to presentation and questions for clarification**

Further to more detailed consideration the Review Committee made the following observations:

- a) The strategy for the review as proposed by the Consultants was supported.
- b) In terms of the key inputs the Consultants clarified that benchmarking in this context meant consideration of reviews undertaken by other intergovernmental organisations. The Consultants explained that as part of their preparation for this meeting they had noted reviews undertaken of the Convention on Biological Diversity, the International Maritime Organization and a selection of Regional Fisheries Management Organisations (see FAO Fisheries and Aquaculture Circular No. 1072). The Review Committee agreed it was logical to note international practice of this nature and confirmed that for the review in hand the views of selected independent experts would be welcome.
- c) The Consultants clarified that 'workshops' as referred to in their proposal was a term describing opportunities to conduct meetings with Secretariat staff in Kingston.
- d) The Consultants proposal to discuss a draft initial review report with the Secretary-General and his senior team in May 2016 to check factual accuracy was agreed. The Consultants confirmed that provision for this meeting was included within their costings.
- e) The review timeline was clarified. An initial review report is required for the 22<sup>nd</sup> session of the Authority. This interim report should be considered and commented upon by the Secretariat, the Legal and Technical Commission, the Finance Committee and the Review Committee. It should therefore be presented to the Authority on or before 15 May 2016.
- f) Clarification questions on scope:
  - i) The review should reflect the evolution of the Authority over the past 15 years, becoming more detailed in recent years;
  - ii) The recent stakeholder surveys should be considered by the consultants;
  - iii) The Review Committee considered it important to include a future look and associated recommendations (as suggested by 4(e) in the Terms of Reference).

g) Clarification questions on process:

- i) The Review Committee collectively had no views or specific suggestions for individuals or organisations whose response would be essential for the review;
- ii) The views of other UN bodies were considered pertinent;
- iii) The Review Committee took no position on the relative weight of views of different commentators;
- iv) The Chair of the Review Committee will present the interim report to the Assembly at ISA22. It was suggested that the consultants may find it advantageous to follow any discussion by the Assembly.

h) Clarification questions on control:

- i) The Review Committee did not wish to formally approve the questionnaire or interview questions. The consultants should use their expert judgment;
- ii) The questionnaire should be issued to respondents by the Secretary-General on behalf of the Consultants.

i) Clarification questions on ethics and quality assurance of process:

- i) The Consultants should take note of the Authority's procedures on information sensitivity, classification and handling (ISBA/ST/SGB/2011/03);
- ii) Following ISA23 the review becomes the property of the Authority.

## **2.3 Questionnaire**

The Review Committee provided advice on legal and linguistic details relating to a draft questionnaire circulated by the Consultants.

## **2.4 Bilateral meetings with members of the Review Committee and Observers**

Bilateral meetings with members of the Review Committee and Observers were held as follows:

### **Review Committee**

- Ambassador Tuerk (13 January 2016)
- Ambassador Bonilla and Ms Gonzalez Carrillo (14 January 2016)

### **Observers**

- Mr Philip Riley (13 January 2016)
- Ambassador Fernandez (14 January 2016)

## **3. Review of confidential documentation held by the Secretariat**

The Consultants were provided with access to relevant confidential information held by the Secretariat and not available on ISA servers.



#### 4. Meetings with Secretariat staff

Prior to meeting with the Review Committee the Consultants held separate informal meetings with the Secretary-General and Mr Sainivalati Navoti (Senior Legal Officer), who was appointed as the focal point for the Review within the Secretariat.

The Consultants then met with the Secretary-General and his senior management team, individual professional staff of the Secretariat and all other staff members based on a schedule of short meetings and interviews that took place on 14 and 15 January 2016.

#### 5. Conclusions

Outcomes of the inception meeting were as follows:

- a) Letter of appointment and contract signed;
- b) Methodology and approach approved by the Review Committee;
- c) Consultants' questions clarified by the Review Committee;
- d) Bilateral meetings with members of the Review Committee and Observers held with those available;
- e) Questionnaire refined and presented to Secretariat for translation and dissemination;
- f) Confidential documents reviewed and other documents requested; and
- g) Interviews held with Secretariat staff.

Seascope Consultants Ltd

22 January 2016

## Annex II: Questionnaire

### Introduction

#### Context

In its decision dated 24 July 2015 (ISBA/21/A/9), the Assembly of the International Seabed Authority decided to undertake, pursuant to Article 154 of the United Nations Convention on the Law of the Sea, a general and systematic review of the manner in which the international regime of the Area has operated in practice.

The Assembly also decided that such a review be carried out under the oversight of a Review Committee and that the review be conducted by independent consultants appointed by the Review Committee, according to the established procurement procedures of the Authority. In January 2016, Seascope Consultants Ltd were appointed to undertake this review, and this questionnaire forms an important element of the review process, as agreed with the Review Committee.

#### About this questionnaire

This questionnaire is designed to solicit views and opinions from a wide range of stakeholders about the performance of the Authority. The questions reflect the core elements of the Authority's mandate, and are designed in such a way that the responses can be quantitatively analysed. The survey comprises 55 questions, and will take approximately 30-40 minutes to complete. Space is also provided for more detailed comments on each question. You can save progress part-way through the questionnaire and come back to it at a later time if you wish. Many questions in this survey refer to Articles and other components of the UNCLOS Agreement. You can find the full text of the Agreement and its amendments [here](#).

#### Data protection

Information supplied by respondents to this questionnaire will be treated in confidence, and will only be used in relation to this review exercise. Respondents' personal information (names and email addresses), will be kept securely by the review team at Seascope Consultants Ltd and in line with the ISA's policy on data handling. The data will only be used in connection with any follow-up or clarification arising from responses given in this survey. All responses will be anonymised in the reporting arising from this questionnaire.

#### Participation

Participation in this questionnaire is voluntary. By taking part in this questionnaire, you agree that the review team may contact you for further input to the review process. If you do not wish to be contacted for further input, please email us at [isa-review@seascopeconsultants.co.uk](mailto:isa-review@seascopeconsultants.co.uk).

#### Questions?

If you have any questions relating to this questionnaire, please contact us at [isa-review@seascopeconsultants.co.uk](mailto:isa-review@seascopeconsultants.co.uk)

#### Translation

Responses to this questionnaire should be submitted in English. However, the questions are available to download for reference in the following languages: Arabic, Chinese, English, French, Russian, Spanish.

## Part 1: About you

### Information about you, and the level and nature of your engagement with the International Seabed Authority

#### Your details

Title		
Value	Count	Percent
Mr	27	38.0%
Mrs	2	2.8%
Ms	11	15.5%
Miss	1	1.4%
Dr	24	33.8%
Prof.	6	8.5%

First name: \_\_\_\_\_

Last name: \_\_\_\_\_

#### Gender

Value	Count	Percent
Male	49	69.0%
Female	22	31.0%

#### In which geographic region are you based?

Value	Count	Percent
Africa	3	4.2%
Asia	19	26.8%
Eastern Europe	2	2.8%
Latin America and Caribbean	7	9.9%
Western Europe and other	40	56.3%

#### Are you responding to this questionnaire...

Value	Count	Percent
In a personal capacity?	34	47.9%
On behalf of a Member State?	10	14.1%
On behalf of an organisation?	27	38.0%

Please enter the name of the organisation you represent: \_\_\_\_\_

### Your contact details

Please provide a valid contact email address (this will only be used in relation to this questionnaire - we will not share this information with anyone else): \_\_\_\_\_

Please indicate your relationship to the ISA:

Value	Count	Percent
Member of Council	12	13.0%
Member of Assembly	13	14.1%
Member of LTC	13	14.1%
Member of Finance Committee	3	3.3%
Member of Secretariat	5	7.0%
ISA Contractor	15	16.3%
ISA Observer	10	10.9%
Other	21	22.8%

If you have no formal relationship with the ISA, please indicate your affiliation:

Value	Count	Percent
Non-governmental organisation	5	33.3%
Scientist	4	26.7%
Industry	1	6.7%
Other	8	53.3%

How long have you been directly engaged with the Authority?

Value	Count	Percent
Less than one year	3	6.0%
More than one year but less than three years	11	22.0%
More than three years but less than five years	11	22.0%
More than five years but less than seven years	3	6.0%
More than seven years	22	44.0%

**Aside from your current relationship with the ISA, have you had any other engagement with the Authority in a work-related capacity in the past?**

Value	Count	Percent
Yes - please describe	19	26.8%
No	52	73.2%

( ) If yes, please briefly describe: \_\_\_\_\_

**Over the past 15 years, which of the ISA annual sessions have you participated in?**  
Please check all that apply

Value	Count	Percent
7th Session (July 2001)	12	16.9%
8th Session (July 2002)	13	18.3%
9th Session (July 2003)	14	19.7%
10th Session (July 2004)	14	19.7%
11th Session (July 2005)	14	19.7%
12th Session (July 2006)	16	22.5%
13th Session (July 2007)	16	22.5%
14th Session (July 2008)	20	28.2%
15th Session (July 2009)	20	28.2%
16th Session (July 2010)	22	31.0%
17th Session (July 2011)	22	31.0%
18th Session (July 2012)	27	38.0%
19th Session (July 2013)	31	43.7%
20th Session (July 2014)	37	52.1%
21st Session (July 2015)	49	69.0%
I have not attended any annual sessions	22	31.0%

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## Part 2: The regime for exploration for and exploitation of deep-sea minerals in the Area

**In this section we pose a series of statements about the Authority. Please use the check boxes to indicate whether you agree or disagree with these statements. There is space under each question to add any further comments you may have.**

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
1. The Authority effectively organises and controls activities in the Area, particularly with a view to administering the resources of the Area	12.7%	50.7%	18.3%	11.3%	4.2%	2.8%
2. State Parties effectively control entities with whom they enter into contracts for exploration	4.2%	29.6%	29.6%	12.7%	2.8%	21.1%
3. The Authority has fully elaborated the regime (rules, regulations and procedures) for the exploration for polymetallic nodules, cobalt crusts and seafloor massive sulphides	8.5%	53.5%	12.7%	16.9%	4.2%	4.2%
4. The legal rights and responsibilities established by the Authority for stakeholders are clear and unambiguous	2.8%	33.8%	28.2%	22.5%	0.0%	12.7%
5. The Authority has effectively implemented the regime established by the Convention to promote and regulate exploration for deep-sea minerals	5.6%	57.8%	14.1%	18.3%	1.4%	2.8%
6. a) The Authority, in developing policies for the Area, is ensuring the enhancement of opportunities for all States Parties to participate in the development of the resources of the Area irrespective of their social and economic systems or geographical location	11.3%	46.5%	23.9%	8.5%	1.4%	8.5%
6. b) The Authority, in developing policies for the Area, is ensuring that monopolisation of activities in the Area is prevented	1.4%	43.7%	28.2%	14.1%	4.2%	8.5%
6. c) The Authority, in developing policies for the Area, is ensuring the development of a common heritage for the betterment of mankind as a whole	9.9%	52.1%	14.1%	15.5%	5.6%	2.8%
7. a) The Authority is fulfilling its obligations to ensure that activities in the Area are carried out for the benefit of mankind	5.6%	53.5%	12.7%	21.1%	2.8%	4.2%

7. b) In fulfilling these obligations the Authority is taking into particular consideration the interests and needs of developing States	8.5%	62.0%	19.7%	4.2%	2.8%	2.8%
7. c) In fulfilling these obligations, the Authority is taking into account the interests of peoples who have not obtained full independence or other self-government status recognised by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions	0.0%	16.9%	31.0%	5.6%	4.2%	42.3%
8. In exercising its powers in the Area (Article 152) the Authority has avoided discrimination, including in the granting of opportunities for activities in the Area	11.3%	67.6%	8.5%	0.0%	0.0%	12.7%
9. The Authority has effectively dealt with the 15-year contract applications and associated ongoing plans of work for mineral exploration in the Area in an expeditious manner	2.8%	57.8%	16.9%	12.7%	7.0%	2.8%
10. The Authority has effectively managed the annual reporting process for Contractors	7.0%	35.2%	19.7%	14.1%	7.0%	16.9%
11. The Authority has effectively monitored Contractors' compliance with approved plans of work	7.0%	38.0%	22.5%	5.6%	7.0%	19.7%
12. The Authority has effectively monitored and reviewed trends and developments related to seabed mining activities, including regular analysis of world metal market conditions and metals prices, trends and prospects	2.8%	29.6%	25.4%	9.9%	4.2%	28.2%
13. The Authority has studied the potential impact of mineral production from the Area on the economies of developing land-based producers	1.4%	5.6%	26.8%	18.3%	4.2%	43.7%
14. The regime in the Area incorporates applicable standards for the protection and preservation of the marine environment	11.3%	53.5%	11.3%	9.9%	9.9%	4.2%

15. a) The Authority has promoted and encouraged marine scientific research with respect to activities in the Area with an emphasis on marine environmental impact	15.5%	54.9%	5.6%	11.3%	1.4%	11.3%
15. b) The Authority has effectively used the Endowment Fund for Marine Scientific Research in the Area to facilitate marine scientific research in the Area, including the facilitation of production and sharing of data	5.6%	40.9%	14.1%	8.5%	1.4%	29.6%
16. The Authority has effectively monitored the development of marine technology relevant to activities in the Area, in particular technology related to protection and preservation of the marine environment	0.0%	26.8%	29.6%	8.5%	2.8%	32.4%
17. The Authority is conducting timely elaboration of rules regulations and procedures for exploitation	9.9%	43.7%	15.5%	19.7%	7.0%	4.2%
18. The Authority has developed efficient and effective means of enforcing conditions of exploration contracts	4.2%	26.8%	21.1%	25.4%	1.4%	21.1%
19. The current governance processes of the Authority are sufficiently transparent, allowing access to information and sharing of data as appropriate	5.6%	35.2%	12.7%	15.5%	16.9%	14.1%
20. In general the level of representation and attendance at the Authority's annual sessions is effective	2.9%	32.9%	18.6%	20.0%	10.0%	15.7%
21. The Authority's annual sessions benefit from continuity of representation and attendance, creating institutional memory	11.4%	48.6%	11.4%	5.7%	2.9%	20.0%
22. There are adequate opportunities for observer organisations to make contributions to the annual sessions	15.7%	48.6%	5.7%	14.3%	1.4%	14.3%
23. Representation and attendance is strongly influenced by financial	18.6%	34.3%	18.6%	5.7%	1.4%	21.4%



constraints in Member States and Observer organisations						
24. Quorum rules are effectively applied	4.3%	32.9%	25.7%	8.6%	1.4%	27.1%
25. The remit of the Assembly is clearly defined	8.6%	65.7%	8.6%	2.9%	0.0%	14.3%
26. The functioning of the Assembly corresponds to its role as the supreme organ of the Authority (Article 160)	2.9%	65.7%	5.7%	10.0%	1.4%	14.3%
27. The Assembly as the supreme organ of the Authority has been effective in establishing general policies for activities in the Area	1.4%	51.4%	21.4%	11.4%	2.9%	11.4%
28. The Assembly has efficiently exercised its additional powers and functions pursuant to Article 160 paragraph 2 of the Convention on the Law of the Sea	1.4%	42.9%	17.1%	12.9%	2.9%	22.9%
29. The Assembly exercises strategic leadership on behalf of the Authority	1.4%	40.0%	20.0%	15.7%	2.9%	20.0%
30. The remit of the Council is clearly defined	14.3%	68.6%	5.7%	1.4%	0.0%	10.0%
31. The Council as the executive organ of the Authority has been effective in establishing specific policies for activities in the Area	7.1%	61.4%	8.6%	8.6%	2.9%	11.4%
32. The Council has efficiently exercised its additional powers and functions pursuant to Article 162 paragraph 2 of the Convention on the Law of the Sea	5.7%	41.4%	17.1%	12.9%	0.0%	22.9%
33. The Council effectively supervises and coordinates implementation of the regime established by the Convention to promote and regulate exploration for and exploitation of deep-sea minerals	5.7%	52.9%	15.7%	15.7%	1.4%	8.6%
34. The structure of the Secretariat is appropriate to perform its functions	4.3%	44.3%	18.6%	18.6%	4.3%	10.0%

(as described in Subsection D of Section 4 of Part 11 of the Convention on the Law of the Sea)						
35. The Secretariat efficiently provides the necessary support to the organs of the Authority	12.9%	60.0%	7.1%	4.3%	0.0%	15.7%
36. The Secretariat has satisfactorily performed the functions of the Enterprise (as described in the Agreement, Annex, Section 2)	0.0%	18.6%	35.7%	10.0%	4.3%	31.4%
37. In the performance of their duties, the Secretary-General and their staff do not seek or receive instructions from any government or any other sources external to the Authority	10.0%	47.1%	5.7%	0.0%	0.0%	37.1%
38. The Secretariat is adequately funded	1.4%	27.1%	11.4%	27.1%	11.4%	21.4%
39. The Secretariat has adequate levels of staff and expertise	0.0%	24.3%	24.3%	35.7%	5.7%	10.0%
40. The Authority's website provides adequate information for States and Observers, as well as sufficient outreach capability(note that the ISA website underwent a significant revision in 2015, so please ensure your response is based on the content of the new site)	11.4%	37.1%	18.6%	20.0%	5.7%	7.1%
41. The mandate for the LTC is clear and well defined	8.7%	68.1%	8.7%	8.7%	0.0%	5.8%
42. The distribution of expertise within the members of the LTC is appropriate for its mandate	1.5%	34.8%	14.5%	30.4%	8.7%	10.1%
43. Membership of the LTC is strongly influenced by the funding capability of nominating Member States	5.8%	30.4%	14.5%	18.8%	1.5%	29.0%
44. The LTC has appropriate and effective levels of interaction with the Council and the Assembly	8.7%	50.7%	8.7%	11.6%	5.8%	14.5%
45. The current and projected workload of the LTC is manageable	0.0%	15.9%	20.3%	26.1%	21.7%	15.9%

46. The LTC was originally conceived as an advisory body but has gradually transformed into a "preparatory committee" for the Council and the Assembly	7.3%	39.1%	26.1%	10.1%	4.4%	13.0%
47. Current membership renewal rules hinder sufficient continuity of experience and expertise of members of the LTC	1.5%	18.8%	29.0%	24.6%	1.5%	24.6%
48. The impartiality of the LTC is at risk of being compromised by some members' dual roles	10.1%	37.7%	13.0%	15.9%	4.4%	18.8%
49. The Finance Committee's mandate is clear and well defined	13.0%	59.4%	5.8%	1.5%	0.0%	20.3%
50. The Finance Committee has satisfactorily overseen the financing and financial management of the Authority	4.4%	59.4%	8.7%	2.9%	1.5%	23.2%
51. Current membership renewal rules hinder sufficient continuity of experience and expertise of members of the Finance Committee	0.0%	13.0%	21.7%	15.9%	1.5%	47.8%
52. The current and projected workload of the Finance Committee is manageable	1.5%	37.7%	13.0%	10.1%	0.0%	37.7%
53. The impartiality of the Finance Committee is at risk of being compromised by some members' dual roles	0.0%	20.3%	15.9%	15.9%	7.3%	40.6%

### Future directions and final comments

**54)** Please use the box below to record any final comments about the operation of the International Seabed Authority over the past 5 years

**55)** Please use the box below to make suggestions or recommendations for the future direction and operation of the International Seabed Authority

## **Annex III: Interview protocol**

### ***Instructions for recording and setting up the interview.***

*You may use Skype or equivalent if the interviewee has the technology. Alternatively charge your Skype account and telephone them from your Skype account.*

### ***Recording procedure***

*We have been testing this and a freeware application called Audacity (<http://www.audacityteam.org/>) seems to work on all computer platforms. If you do use this you can export the files and save them as mp2. This takes up less file space but they will still be very large files. You may need to purchase an external storage system e.g. a large USB stick. Please back them up so you have 2 copies of each recording. If you wish, you can arrange to Skype us so you can practice the procedure once you have a recording package loaded.*

### ***The Interview***

*At the start of the interview please establish the following ground rules. If an interviewee is not prepared to allow recording please end the interview politely.*

### ***Pre interview conversation with interviewees***

1. Explain briefly the Article 154 process, which will provide a draft report to the Assembly in July 2016
2. Comments will not be attributable to individuals and the report is subject to the ISA code of ethics
3. Ask interviewee “Are you content to give your permission to be recorded?” Recordings will be kept securely up to the period when the report is finalised (May 2017).
4. This interview will last for 20 to 30 minutes

*Your questions should mirror the structure of the questionnaire. You do not need to follow all these lines of questioning if the interviewee has expertise limited to one area or seems uncertain of any particular section. We have attached the questionnaire in a variety of languages, so you can use it as a guide.*

*Please thank the interviewee on behalf of the review team.*

*Please then write a short account of the interview including name of interviewee, affiliation of interviewee date and time, plus a short summary of key points/issues raised – no more than one page per interview.*

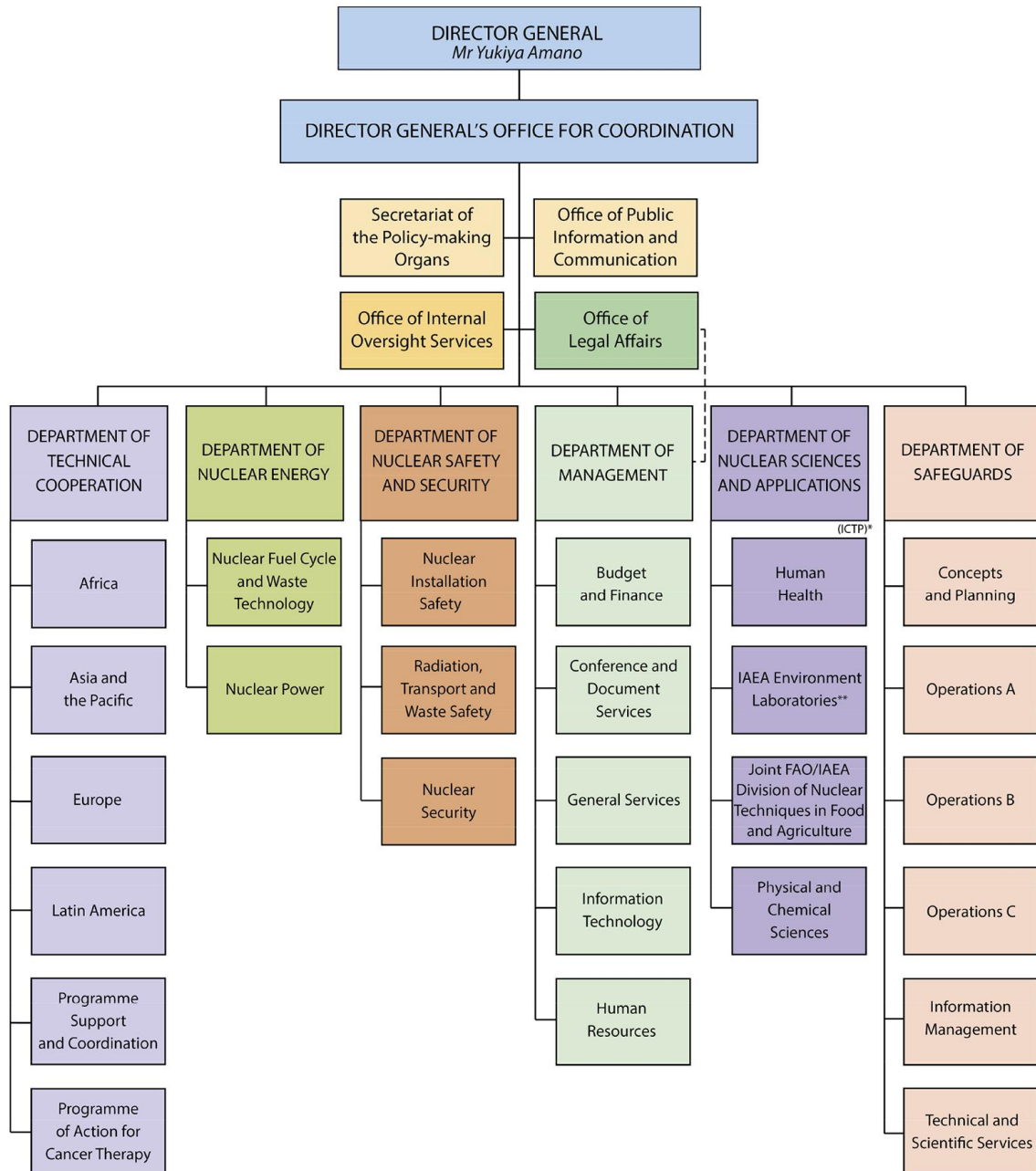
## **Annex IV: Letter from DOALOS**

(See following pages)

[DOALOS letter]

[DOALOS letter]

## Annex V: International Atomic Energy Agency structure (as of December 2014)



\* The Abdus Salam International Centre for Theoretical Physics (ICTP), legally referred to as the "International Centre for Theoretical Physics", is operated as a joint programme by UNESCO and the Agency. Administration is carried out by UNESCO on behalf of both organizations.

\*\* With the participation of UNEP and IOC.