



## Assembly

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**Letter dated 3 February 2017 from the Chair of the Committee established by the Assembly to carry out a periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea to the Secretary-General of the International Seabed Authority**

It is my honour to transmit to you herewith the final report of the Review Committee, established by the Assembly of the International Seabed Authority at its twenty-first session, regarding the periodic review of the Authority pursuant to article 154 of the United Nations Convention on the Law of the Sea (see annex). The report was today approved by the Review Committee by consensus.

The Review Committee wishes to express its sincere gratitude to you, Mr. Secretary-General, for providing excellent administrative and logistical support to its work and, in particular, for your most valuable input in the course of the drafting of the final report. Please convey this expression of gratitude also to all of your collaborators involved in the review process.

I may request you to present the final report of the Review Committee to States parties and observers of the Authority before 15 April 2017, as decided by the Assembly at its twenty-second session.

(Signed) Helmut **Tuerk**  
Ambassador  
Chair



**Annex to the letter dated 3 February 2017 from the Chair of the Committee established by the Assembly to carry out a periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea to the Secretary-General of the International Seabed Authority**

**Final report on the periodic review of the International Seabed Authority pursuant to article 154 of the United Nations Convention on the Law of the Sea**

**I. Introduction**

1. In its decision [ISBA/21/A/9/Rev.1](#) of 24 July 2015, 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 established in the Convention has operated in practice. The Assembly also decided that such a review should be carried out under the oversight of a review committee comprising the President and the Bureau of the Assembly and the President of the Council of the Authority, with the President of the twenty-first session of the Assembly remaining a member of the Review Committee until the completion of the review, and that the Chairs of the regional groups might also participate as observers in the Review Committee. The Assembly further decided that the review should be conducted by independent consultants appointed by the Review Committee on the basis of a short list of qualified consultants prepared by the Secretary-General of the Authority according to the established procurement procedures of the Authority.

2. In the same decision, the Assembly decided that an interim report, including comments by the secretariat, the Legal and Technical Commission and the Finance Committee of the Authority, should be submitted for consideration by the Assembly at its twenty-second session, in 2016, and that the final report, including any draft recommendations designed to improve the operation of the regime, should be presented by the Review Committee to the Assembly at its twenty-third session, in 2017. The Assembly requested the Secretary-General to 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 of the Authority at least three months in advance of the twenty-third session.

3. In accordance with its procurement procedures, the Authority undertook a procurement exercise consisting of sealed bid tenders following the issuance of an invitation to tender to pre-qualified consultants. The tenders were evaluated by the contracts review committee of the Authority according to the pre-announced technical and financial criteria, consistent with those set out in the procurement procedures of the United Nations. Following a full evaluation, the contract for the conduct of the review was awarded to Seascope Consultants Limited.

4. At its twenty-second session, the Assembly took note of the interim report by Seascope dated 15 May 2016, the comments of the Review Committee, the comments of the Legal and Technical Commission and the comments of the Finance

Committee, as well as the oral report by the Chair of the Review Committee and the deliberations of the Assembly under the respective agenda item (see decision [ISBA/22/A/11](#)). In the light of the aforementioned comments and deliberations, the Assembly decided to provide States parties, observers and stakeholders a further opportunity to submit written observations on the interim report, and the comments thereto, before 15 October 2016, including, if they had not done so, to reply to the questionnaire drawn up by Seascope. The Secretary-General was requested to transmit the draft final report, as approved by the Review Committee, to States parties and observers before 15 April 2017.

5. Pursuant to the aforementioned decision of the Assembly, the Review Committee entrusted Seascope with the production of a revised interim report before 15 January 2017, taking into account the observations and comments made in the Assembly at the twenty-second session of the Authority, as well as any other comments received. The revised interim report, or “final report”, which also includes an executive summary, was submitted by Seascope ahead of schedule on 30 December 2016. It draws on an analysis of additional observations and responses, together with comments and oral observations made at the twenty-second session of the Authority, and is available from <http://bit.ly/2kEywzL>.

6. At a meeting held in Kingston from 30 January to 3 February 2017, the Review Committee carefully studied the revised interim report. It noted that efforts had been made by Seascope to consolidate and reduce the number of recommendations contained in the interim report, some of which had also been reworded. The Committee would have hoped for a higher response rate to the questionnaire that had been transmitted by Seascope once again to all groups of stakeholders involved with the Authority. The relatively low number of responses made it more difficult for the Committee to evaluate how much support a recommendation contained in the revised interim report actually enjoyed. In a number of instances, the methodology employed did not make it sufficiently clear whether a recommendation sufficiently reflected the views of, if not the entire, at least the overwhelming majority of the members of the Authority. This is a matter of concern that will need to be addressed prior to engaging in the next article 154 periodic review. The data used by Seascope in preparing its report have been transmitted to the Secretary-General and are available on request.

7. Overall, the Review Committee considered that the revised interim report provided a useful basis for its discussions. Certain gaps in the report were largely filled in by the Secretary-General in his comments. The Committee has very carefully analysed each recommendation contained in the report, has substantially reduced their number and has endeavoured to add more precision to recommendations phrased in general terms. The Committee decided not to pursue some of the recommendations as it became evident during its deliberations that they were quite far removed from the practices that the Authority had developed over the past 20 years and were currently unlikely to be accepted by consensus. Some other recommendations were not taken up as they were considered premature at the current stage of evolution of the Authority, although they might be borne in mind in the future. The Committee, in drafting its recommendations, was also guided by the principle of not in any way going beyond the limits set in the Convention and related instruments.

8. The recommendations set forth in the final report of the Review Committee should thus, in the Committee's view, provide a good foundation for the Assembly to take further action. It should be noted that the numbering of the recommendations in the present report does not correspond to the numbering in the revised interim report by Seascope.

## II. Recommendations of the Review Committee

### A. Control of seabed activities

9. The question of the control of seabed activities by sponsoring States merits profound examination. Attention should be drawn to the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of Sea on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area ([ISBA/17/C/6-ISBA/17/LTC/5](#)). In the advisory opinion, the Seabed Disputes Chamber, inter alia, stated that under the Convention, sponsoring States have the obligation to ensure compliance by sponsored contractors with the terms of the contract and the obligations set out in the Convention and related instruments, as well as direct obligations with which they must comply independently of their obligation to ensure a certain conduct on the part of the sponsored contractors.

#### *Recommendation 1*

**Sponsoring States are invited, if they have not already done so, to review their respective national legislation to control activities by entities with whom they have entered into contracts for exploration, drawing on the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea.**

10. It should also be recalled that the Council of the Authority had requested the Secretary-General to update, on an annual basis, the study on the laws, regulations and administrative measures adopted by sponsoring States and other members of the Authority with respect to activities in the Area, and to invite, for that purpose, sponsoring States and other members of the Authority to provide texts of relevant national laws, regulations and administrative measures to the secretariat (see decision [ISBA/18/C/21](#)). At the twentieth session of the Council, a proposal was made for the secretariat to undertake a comparative study of existing national legislation with a view to deriving common elements.

#### *Recommendation 2*

**The Secretary-General should be requested to complete and continually update the compilation of the relevant national laws, regulations and administrative measures of sponsoring States with respect to activities in the Area.**

## **B. Data management**

11. There is a critical need to adopt a clear strategy and policy for data management and to establish the required database. Funding was provided in the budget of the Authority for the financial period 2017-2018 to develop and implement a database and to recruit a database manager, taking into account article 167 (2) of the Convention. The Secretary-General envisages a meeting to be held with all of the contractors in 2017 to launch the database and to fill gaps in data coverage.

### ***Recommendation 3***

**Continued investment in better data management and data-sharing mechanisms is needed, including a review of the quality and consistency of data gathered.**

## **C. Legal rights and responsibilities with respect to exploration and exploitation of deep-sea minerals**

12. The legal rights and responsibilities established by the Authority for seabed exploration are now needed for the next phase, exploitation. This is a matter to be considered by the Legal and Technical Commission and the Council in the context of the development of a regulatory framework for exploration and exploitation. The consideration of the legal rights and responsibilities should include the setting out of criteria for new contracts, in view of the current onerous process for their annual review.

### ***Recommendation 4***

**New contracts, including all extensions, should be prescriptive, with standard terms and conditions and detailed plans of work that set clear objectives and that can be monitored and enforced. The Assembly should be informed of the state of all contracts at least once every five years.**

## **D. Review of annual reports and plans of work**

13. The Review Committee recalls that in 2016, the Legal and Technical Commission adopted a revised reporting template for contractors, requiring the submission of raw data in a standardized format using Microsoft Excel, which could be entered directly into the Authority's database. Once the database is fully operational, contractors will be able to submit data directly through a web portal. This will significantly reduce the time necessary for secretariat staff to manually review data and will enable them to allocate more time for the analysis of data and trends therein. The same reporting template also requires contractors to submit an executive summary of their annual reports in a standardized format. If all contractors followed the template, this would relieve the secretariat of the need to compile a summary of the report for the Commission and reduce the amount of reading required by its members. Internal processes within the secretariat have been streamlined through the establishment of the Contracts Management Unit, which

will include the additional post of Training Coordinator. The Unit will act as the focal point for the submission of reports by contractors and will better manage the internal workflow for the review of annual reports. This will also reduce the time needed to review the annual reports internally.

14. In this connection, it should, in particular, be recognized that under the current system, members of the Council are not provided with sufficient time to thoroughly study the recommendations of the Legal and Technical Commission, much less to seek instructions from capitals, if necessary.

***Recommendation 5***

**Deficiencies of the current process lie in the area of reporting to the Council and providing meaningful feedback to contractors. The present schedule of meetings of the Legal and Technical Commission and the Council therefore needs to be revisited.**

**E. Protection and preservation of the marine environment**

15. As the beginning of commercial seabed mining approaches, progress should also be made regarding the protection and preservation of the marine environment. This raises questions on the level of expertise in both the Legal and Technical Commission and the secretariat, as well as on the lack of information. A later recommendation will deal with the Legal and Technical Commission. With regard to the secretariat, it should be noted that it is lacking in environmental expertise, since the current establishment makes provisions for only one environmental scientist (Marine Biologist) at the P-4 level. The issue of sharing and accessing environmental data collected by contractors is raising concerns about their compliance with their contractual obligations.

***Recommendation 6***

**The Secretary-General should be requested to consider adding expertise in the fields of environmental policy, management and planning in the secretariat as a matter of priority, taking into account budgetary implications. Furthermore, the sharing and accessing of environmental data collected by contractors seems to require improvement.**

**F. Promotion and encouragement of marine scientific research in the Area**

16. It is recognized that the Secretary-General attaches the highest importance to the implementation of the Authority's mandate to promote and encourage marine scientific research in the Area and to disseminate related knowledge for the benefit of all States parties, particularly the developing countries. In this regard, better engagement with the global scientific community and relevant deep-sea science projects and initiatives is indispensable. The promotion and encouragement of marine scientific research is the subject of programme 2.5 of the workplan and budget for 2017-2018, with a financial provision of \$224,300 over the biennium.

***Recommendation 7***

**The Secretary-General should be encouraged to consider how to engage more extensively with the scientific community and deep-sea science projects and initiatives related to the Area.**

**G. Development of marine technology**

17. It should be noted that 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 for the monitoring of technology as described in the annual reports of contractors.

***Recommendation 8***

**Although the primary responsibility for developing relevant marine technology should rest with the contractors, the Authority should place emphasis on the specification of the agreed performance standards in the context of the work on the exploitation regulations under the mining code.**

**H. Record of decisions of the Council**

18. In recent years, the Council has adopted the practice of recording in a decision any decisions taken after its consideration of the summary report of the Chair of the Legal and Technical Commission on the work of the Commission, highlighting the action to be taken by the Council itself, member States, contractors, the Commission and the secretariat, among others. These decisions, together with the report of the President of the Council, form a record of decisions adopted by the Council.

***Recommendation 9***

**The Secretary-General should be requested to produce a report for each session of the Council recalling the decisions that were adopted at the previous session and reporting on the implementation of those decisions as they relate to action required of the secretariat and/or subsidiary organs.**

**I. Frequency of Council meetings**

19. Under article 161 (5) of the Convention, the Council shall meet as often as the business of the Authority may require, but not less than three times a year. In practice, during the establishment phase of the Authority and the preparation of the first set of exploration regulations, the Council met twice a year. The move to one meeting a year took place when the workload of the Authority had declined. In recent years, however, the workload of the Authority has increased substantially.

***Recommendation 10***

**An increase in the number of meetings of the Council should be considered in the light of the relevant provision of the Convention and the development of the workload of the Council.**

**J. Resources and skills of the secretariat**

20. The question of the resources of the secretariat has to be assessed in the light of budgetary considerations. It should be noted that the budget for the financial period 2017-2018 represents a net increase of 8.81 per cent from the budget for the period 2015-2016. A further significant change for the budget for 2017-2018 is the introduction of programme expenditures, which will facilitate a transition towards results-based budgeting and improved accountability in financial and budgetary matters. The estimated income from contractor fees in 2017-2018 amounts to \$2.3 million, representing 13.8 per cent of the total approved budget. The remainder of the budget is financed from the assessed contributions of member States, in line with article 160 (2) (e) of the Convention. The required skills of the secretariat need to be reconsidered continually in the light of the evolution of the Authority.

***Recommendation 11***

**The Secretary-General should be requested to keep under review the required skills and available expertise within the secretariat and to make adjustments when necessary. These could include proposals for additional established posts, subject to the required justification, taking into account article 167 (2) of the Convention.**

**K. Establishment of the Enterprise and appointment of an Interim Director-General**

21. The question of establishing the Enterprise has been on the agenda of the Legal and Technical Commission since 2014. At its previous meeting, in July 2016, the Commission was provided by the secretariat with an update on the status of consideration of issues relating to the operation of the Enterprise. The Commission noted that other priorities had limited the progress made in relation to that issue, which involved complex questions such as the capitalization and value of joint ventures with the Enterprise. In that connection, it was also suggested that the current economic context must be taken into account. The Commission took note of the progress report and decided to keep the matter on its agenda for further consideration. Although the Convention and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea mandate the appointment of an Interim Director-General of the Enterprise from among the staff of the secretariat, no such appointment has been made since 2012. In view of the current low staffing level in the secretariat, there is the potential for conflicts of interest between the responsibilities of an Interim Director-General and senior staff of the Secretariat.

***Recommendation 12***

**The Legal and Technical Commission should be requested to continue to address the issue of the operationalization of the Enterprise as an important matter in the light of developments with respect to deep-sea mining. However, the appointment of an Interim Director-General of the Enterprise would not be advisable at this point in time.**

**L. Structure of and coordination within the secretariat**

22. It should be noted that as of 1 January 2017, the secretariat consists of the following major organizational units, each headed by an official accountable to the Secretary-General (see [ISBA/ST/SGB/2017/01](#)): the Executive Office of the Secretary-General, the Office for Administrative Services, the Office of Legal Affairs and the Office for Environmental Management and Mineral Resources. Mechanisms have been put in place aimed at enhancing corporate communication and facilitating collective management. Such measures include the establishment of a senior management group, chaired by the Secretary-General, assisting him in ensuring strategic coherence and direction in the work of the secretariat.

***Recommendation 13***

**The Secretary-General should be requested to make every possible use of the new mechanisms available for enhancing communication and coordination within the secretariat.**

**M. Working groups of the Legal and Technical Commission**

23. It should be noted that the Legal and Technical Commission is the master of its own internal procedures. Thus far, it already has a practice of establishing working groups when necessary. In view of the growing importance of environmental issues in relation to deep-sea mining, it would be highly useful if the Commission could focus on these issues in greater detail, for example, by establishing a working group.

***Recommendation 14***

**The Legal and Technical Commission should be encouraged to continue its practice of setting up working groups dealing with particular areas of expertise. In this context, the establishment of a working group dealing with environmental issues should be considered.**

**N. Future meeting schedule of the Authority**

24. The current meeting schedule of the various organs of the Authority does not meet the needs of an international organization faced with an increasing workload and a growing number of highly complex issues. The current scheduling of the meetings of the Finance Committee, the Legal and Technical Commission, the Council and the Assembly is giving rise to various difficulties. The Council does not

have sufficient time to thoroughly study the results of the work of the Legal and Technical Commission, neither is it in a position to present annual reports to the Assembly as required under article 162 (2) (h) of the Convention. Neither the Council nor the Assembly are able to devote themselves sufficiently to examining the report of the Finance Committee, and there is no possibility of delegations seeking instructions in relation thereto from capitals, if necessary.

25. The system of embedding the meetings of the Council in the time frame allotted to the Assembly may also contribute to insufficient attendance at the meetings of this supreme organ of the Authority, as delegates do not have sufficient substantial work to justify their presence in Kingston for two weeks. In line with the practice of other international organizations, the meetings of these two major organs of the Authority should be clearly separated, and the meetings of the Assembly should not coincide with those of the Council. Both the Legal and Technical Commission and the Finance Committee should meet well ahead of the meetings of the Council and the Assembly in order to allow for appropriate consideration of their work. In a budget year, the Finance Committee may also need to meet twice; one of the meetings might be held by videoconference.

#### ***Recommendation 15***

**The meeting schedule of the various organs of the Authority should be revised if possible, as of 2018, also in the light of budgetary considerations, on the basis of a proposal by the Secretary-General to be submitted in 2017. The meetings of the Legal and Technical Commission and the Finance Committee should thus be convened early in the year so that their reports can be dealt with by the Council and the Assembly at the meetings of these organs at a later date.**

### **O. Role, composition and workload of the Legal and Technical Commission**

26. The role, composition and workload of the Legal and Technical Commission require in-depth scrutiny, as this organ of the Authority is undoubtedly overburdened by its manifold tasks. It should be recalled that at present the Legal and Technical Commission is also carrying out, in accordance with the 1994 Agreement, annex, section 1, paragraph 4, the functions of the Economic Planning Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation. The Legal and Technical Commission occupies a central place within the structure of the Authority that engenders particular interest in its work, not only by member States, but by all stakeholders. Although confidentiality is a central tenet of the deliberations of the Commission, greater attention should be paid to the issue of transparency in its work. The holding by the Commission of an open meeting in July 2016 was met with unanimous acclaim.

27. In nominating candidates to the Legal and Technical Commission, it is crucial to ensure that its members have the appropriate qualifications set forth in article 165 (1) of the Convention, such as those relevant to the exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment or economic or legal matters relating to ocean mining and

related fields of expertise. That provision of the Convention also entrusts the Council to endeavour to ensure that the membership of the Commission reflects all appropriate qualifications. Concerns have been expressed about the balance of expertise in the Commission, and a potential lack of sufficient expertise in economic and subsea technical operations has been noted. These imbalances in the composition of the Commission do not only relate to expertise, but also to equitable geographical representation. In view of the increasing workload of the Commission, consideration should be given to extending the duration of its meetings or to provide for one additional meeting per year.

***Recommendation 16***

**The Legal and Technical Commission should be encouraged to hold more open meetings in order to allow for greater transparency in its work. To improve the balance of expertise of the Commission, details on the required areas of specialities should be provided in the letter from the Secretary-General to member States inviting the nomination of candidates. In order to enable the Commission to cope with its increasing workload, the current meeting schedule should be re-examined.**

**P. Strategic plan for the Authority**

28. The adoption of a long-term plan defining the strategic direction and aims of the Authority would be of major importance. It would also facilitate the production of a programme of work for the secretariat, with clear milestones and deliverables. The budget of the Authority could then be prepared on the basis of the agreed programme of work. A draft strategic plan for consideration by the Council and subsequently by the Assembly should be prepared by the Secretary-General and could include issues in respect of which the Authority must come to some conclusion, such as monopolization, common heritage, benefit-sharing, effective control and dominant position, as well as the establishment of appropriate mechanisms for directing and supervising a staff of inspectors to monitor compliance, as required under article 162 (2) (z) of the Convention.

***Recommendation 17***

**The Secretary-General should be requested to submit a draft strategic plan to the Assembly, if possible at its twenty-fourth session, in 2018.**

**Q. Confidentiality**

29. It should be noted that data and information relating to the protection and preservation of the marine environment, in particular those from environmental monitoring programmes, are not to be considered confidential (see also regulation 7, paragraph 1, of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ([ISBA/19/C/17](#), annex), regulation 7, paragraph 1, of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area ([ISBA/16/A/12/Rev.1](#), annex), and regulation 7, paragraph 1, of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area

(ISBA/18/A/11, annex)). With regard to access to non-confidential data and information held by the secretariat, any deficiencies are being addressed through the database development and management project as part of programme 2.4 of the budget of the Authority for the period 2017-2018.

***Recommendation 18***

**Non-confidential information, such as that relating to the protection and preservation of the marine environment, should be shared widely and be readily accessible.**

**R. Transparency of finance provisions**

30. Under article 140 (2) of the Convention, the Authority is to provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160 (2) (f) (i).

***Recommendation 19***

**Attention should be paid to transparency as the finance provisions in the rules and regulations of the Authority in connection with the regime of benefit-sharing are developed, which will have an impact on the ability of the Authority to act on behalf of mankind, with special consideration given to the needs of developing States.**

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