

LEAST DEVELOPED COUNTRIES AND THE LAW OF THE SEA: AN OCEAN OF OPPORTUNITY



2021 United Nations Decade
2030 of Ocean Science
for Sustainable Development



**LEAST
DEVELOPED
COUNTRIES
AND THE LAW
OF THE SEA:
AN OCEAN OF
OPPORTUNITY**

Acknowledgments

Copyright © International Seabed Authority 2021

First Edition 2021

Publications of the International Seabed Authority enjoy copyright. Nevertheless, short excerpts may be reproduced without authorization, on condition that the source is indicated.

For rights of reproduction or translation, request should be sent to the ISA Communications Unit, International Seabed Authority

14-20 Port Royal Street

Kingston, Jamaica

E-mail: news@isa.org.jm

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose.

This publication was produced by the International Seabed Authority (ISA), with the contribution of H.E. Helmut Tuerk and under the overall supervision of Dr. Marie Bourrel-McKinnon of the Executive Office of the Secretary-General (EOSG).

All information and data are current as of July 2021.

For additional information or feedback on this publication, write to us at news@isa.org.jm.

ISBN 978-976-8313-00-3

ISBN 978-976-8313-03-4

Disclaimer

The designations employed in ISA publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of ISA concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

Table of Contents

Abbreviations and acronyms	4
Foreword by the Secretary-General	5
I. Introduction	6
II. Development of a global regime for the ocean and its resources	7
III. The United Nations Convention on the Law of the Sea - an overview	11
A. Within national jurisdiction	11
B. Beyond national jurisdiction	13
1. Freedom of the high seas and the regime of the Area	13
2. The International Seabed Authority	14
3. Protection and preservation of the marine environment	18
C. Peaceful settlement of disputes	18
IV. Rights and benefits of least developed countries (LDCs) under UNCLOS	20
A. Recognition of the special situation of LDCs	20
B. Right to participate in the exploitation of living resources	21
C. The continental shelf regime	21
D. The situation of landlocked developing countries (LLDCs)	21
E. Protection and preservation of the marine environment	22
F. Marine scientific research and technology transfer	22
G. Participation in the work of ISA	23
H. Capacity-building and training	24
1. Role and mandate of ISA in building the capacities of its members	24
2. Implementing a programmatic approach to respond to the needs identified by developing States	25
3. Advancing women's empowerment and leadership in deep-sea research, particularly women from developing States including LDCs, LLDCs and SIDS	27
V. Equitable sharing of financial and other economic benefits	28
VI. Conclusion	29
Further reading	31
List of boxes and figures	32

Abbreviations and acronyms

CDP	Committee for Development Policy
CLCS	Commission on the Limits of the Continental Shelf
ECOSOC	Economic and Social Council
EEZ	Exclusive economic zone
EVI	Economic and environmental vulnerability index
GGGI	Global Green Growth Institute
HAI	Human assets index
ICJ	International Court of Justice
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
LDC	Least developed country
LLDC	Landlocked developing country
LLGDS	Group of Landlocked and Geographically Disadvantaged States
SDG	Sustainable Development Goal
SIDS	Small Island Developing States
UN	United Nations
UNDP	United Nations Development Programme
UN ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UN-OHRLLS	United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNOSSC	United Nations Conference on South-South Cooperation
WGEO	World Green Economy Organization



Foreword by the Secretary-General



Mr. Michael W. Lodge
Secretary-General, ISA

I am pleased to introduce this short study on the relevance of the 1982 United Nations Convention on the Law of the Sea to the least developed countries. Since 2017, the International Seabed Authority has been actively collaborating with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) to support the efforts of that office to facilitate the coordinated implementation of the programmes developed through the United Nations system to benefit those groups of countries.

This study is one of three similar studies prepared by the International Seabed Authority for the groups of landlocked developing countries, least developed countries and Small Island Developing States, aimed at informing them of the benefits of the Convention. In light of the upcoming Fifth UN Conference on Least Developed Countries, scheduled to be held in Doha in January 2022, this publication is even more timely and is offered as a contribution to that conference.

The Authority is tasked under the Convention to manage deep sea mineral exploration and exploitation, protect the deep-sea marine environment and its biodiversity, and promote marine scientific research for the benefit of all humanity. The interests of all humanity in the ocean and the conservation and sustainable use of its resources make it imperative that the global governance regime reflects the maritime interests of all States, whether coastal or landlocked.

The Authority is therefore under a positive obligation to promote the effective participation of all developing States in any regime based on the Convention and in particular its Part XI, which deals with the Area beyond national jurisdiction, and to recognize the special needs of the least developed countries.

Meeting these needs is also fundamental to achieving the outcomes of the Istanbul Programme of Action, to which the Authority is fully committed. I express the hope that this publication will be of assistance to the least developed countries and will encourage those which are not yet party to the Convention to become parties as soon as possible and take full advantage of the provisions of the Convention that have been designed for their benefit.

1 Introduction

The oceans and their marginal seas, covering almost 71 per cent of the surface of the Earth, have since early times played a significant role in the development of humanity. They provide food and minerals, generate oxygen and ensure communication and trade. The dependence of the world population on the ocean economy has steadily increased over the past 100 years to satisfy the ever-growing needs of humanity.

Thanks to ongoing technological progress and innovation, access to different maritime areas and their resources, whether living or non-living, has reached new frontiers and opened new prospects.

This presents new challenges and imperatives such as the need to peacefully manage global commons resources and to ensure equity in access to, and the distribution of benefits from, such resources.

These imperatives are also central to Sustainable Development Goal 14 under the 2030 Agenda for Sustainable Development, which urges all States to conserve and sustainably use the oceans, seas and marine resources for sustainable development. This includes the application of rigorous and adaptive measures for the protection and preservation of the marine environment.



SDG 14 urges all States to conserve and sustainably use the oceans, seas and marine resources for sustainable development.
Photo: Industrial trawl net fishing. Getty Images



2 Development of a global legal regime for the ocean and its resources

Ever since humankind managed to venture out on the seas, the freedom of this seemingly limitless space has been challenged by domination from land, often leading to conflict among seafaring nations. During the twentieth century, the situation called for the codification of the customary law of the sea for the benefit of all nations. These efforts led to the adoption in 1958 of the four Geneva Conventions, soon largely to be overtaken by State practice, culminating in 1982 in the adoption of the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994.



The Convention on the Law of the Sea was adopted at the United Nations Headquarters on 30 April 1982 during the Third UN Conference on the Law of the Sea. Photo: United Nations

Box 1

The four Geneva Conventions on the Law of the Sea

On 29 April 1958, the United Nations Conference on the Law of the Sea opened¹ four conventions for signature:

Convention	Entry into force	Parties
Convention on the High Seas	30 September 1962	63
Convention on the Continental Shelf	10 June 1964	58
Convention on the Territorial Sea and the Contiguous Zone	10 September 1964	52
Convention on Fishing and Conservation of the Living Resources of the High Seas	20 March 1966	39

¹ Final Act A/CONF.13/L.58, 1958, UNCLOS, Off. Rec. vol. 2, 146

Box 2 | The United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the Convention

UNCLOS was opened for signature on 10 December 1982 in Montego Bay, Jamaica, after more than 14 years of negotiations involving more than 150 countries from all regions of the world and representing all legal and political systems as well as reflecting the whole spectrum of socio-economic development. UNCLOS² entered into force on 16 November 1994.



T.T.B. Koh, Permanent Representative of Singapore to the UN introduces the draft resolution on the Convention on Law of the Sea at the UN General Assembly. Photo: United Nations, 3 December 1982



Third United Nations Conference on the Law of the Sea, informal meeting of the Drafting Committee, United Nations Headquarters, New York. Photo: United Nations, 27 February 1981

To address certain difficulties with the seabed mining provisions contained in Part XI of UNLOS, which had been raised, primarily by the industrialized countries, the UN Secretary-General convened in July 1990 a series of informal consultations which culminated in the adoption, on 28 July 1994, of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Agreement).

The 1994 Agreement entered into force on 28 July 1996. In the event of an inconsistency between the Agreement and Part XI, the provisions of the Agreement shall prevail.

UNCLOS is based on the premise that the problems of ocean space are interrelated. It provides a comprehensive framework for the entire international community, regulating all ocean space, its uses and resources, and laying down clear and universal rules for coastal States' maritime jurisdiction. It also represents a common denominator for the different maritime interests of all States, whether coastal or landlocked, balancing their respective rights and duties over a space that represents more than half of the planet and the resources it contains.

At present, UNCLOS has almost achieved universality. As of July 2021 it has been ratified by 168 parties, which includes 167 States (164 United Nations member States plus the UN Observer State Palestine, as well as the Cook Islands and Niue) and the European Union. An additional 14 UN Member States have signed it, but not ratified it.

² Full text: https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm

The law of the sea, as enshrined in UNCLOS, is essentially based on the following core elements:

- 🌊 The division of ocean space into maritime zones where different rights and obligations apply.
- 🌊 The recognition of different legitimate uses of and activities in the ocean.
- 🌊 The duty of all States to ensure, through proper conservation and management measures, the long-term sustainable use of living and non-living resources.
- 🌊 The designation of a common space beyond national jurisdiction and its resources as the common heritage of humankind and the establishment of a unique global organization mandated to manage this area and its resources on behalf of humankind.
- 🌊 The peaceful settlement of disputes.
- 🌊 The right of access to and from the sea for landlocked States.

In UNCLOS there is no definition of the terms “developing country” and “least developed country” (LDC). The distinction of this latter group of countries from other developing countries is based on a classification by the United Nations according to a combination of geographical and structural criteria, as described below.³ The small island LDCs that are geographically in Africa or Asia are grouped with those in the Pacific to form an island LDCs group, due to their structural similarities. Haiti and Madagascar, which are regarded as large island States, are grouped together with the African LDCs. The resulting **groups are therefore the African LDCs and Haiti, the Asian LDCs, and the island LDCs.**

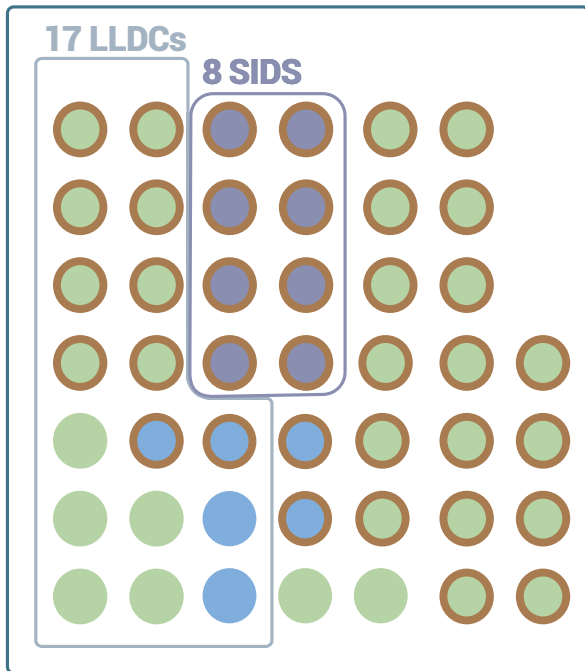
The UN classification of a country as an LDC is based on three criteria: per capita income, a human assets index (HAI) and an economic and environmental vulnerability index (EVI). For all three criteria, different thresholds are used to identify additions to the list of LDCs and graduation from LDC status. A country qualifies for the list if it meets the thresholds on all three criteria and does not have a population greater than 75 million. A country can only be added to the list, however, if its government accepts LDC status. The list of LDCs is reviewed every three years by the Committee for Development Policy (CDP), a group of independent experts that report to the Economic and Social Council (ECOSOC) of the United Nations. The CDP may recommend countries for addition to the list or graduation from LDC status in its report. As of 2020, **forty-six countries are designated by the UN as LDCs. Nine of them, mainly landlocked States, have so far not become parties to UNCLOS** (see **Figure 1**).

According to the Least Developed Countries Report 2020 issued by the United Nations Conference on Trade and Development (UNCTAD), the LDCs are among the world’s most vulnerable economies, as reflected in the EVI, which indicates that they are 30 per cent more vulnerable than other developing countries and face the risk of being left further behind as the technological gap widens between them and more technologically-advanced countries. There are, however, key differences between the three groups of LDCs. Asian LDCs as a group are undergoing what resembles a classic process of industrialization, experiencing falling levels of vulnerability since the early 2000s, whereas African LDCs continue to face challenges in diversifying their economies and developing high-productivity economic activities. The most vulnerable are the island LDCs, largely due to geographical challenges including long distances from major economic centres, difficulties in diversifying their economies and high exposure to natural disasters.

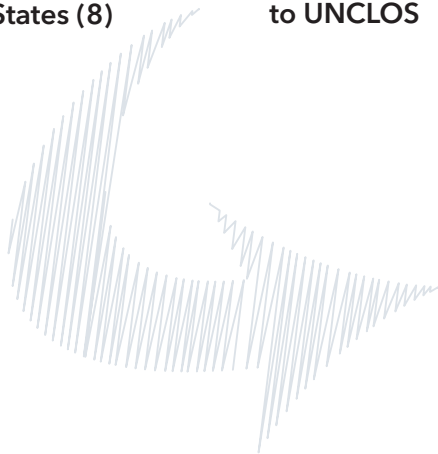
³ For more detail, see the Least Developed Countries Report 2020: https://unctad.org/system/files/official-document/ldcr2020_en.pdf

Figure 1. Participation of least developed countries in UNCLOS

46 LDCs



- Africa (32)
 - Asia (6)
 - Island States (8)
 - Party to UNCLOS
- 9 LDCs are not party to UNCLOS



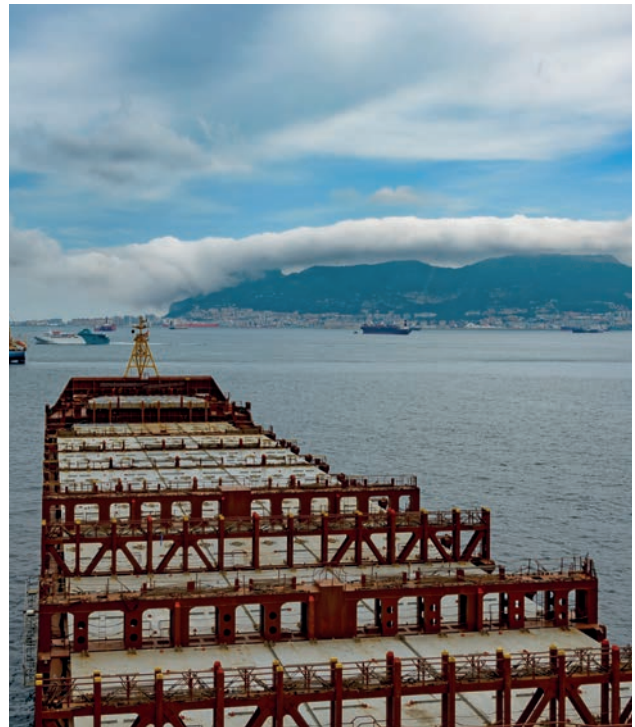
46 LDCs	17 LLDCs	8 SIDS	37 parties to UNCLOS
Afghanistan	●		
Angola			●
Bangladesh			●
Benin			●
Buthan	●		
Burkina Faso	●		●
Burundi	●		
Cambodia			
Central African Republic	●		
Chad	●		●
Comoros		●	●
DR Congo			●
Djibouti			●
Eritrea			
Ethiopia	●		
Gambia			●
Guinea			●
Guinea-Bissau		●	●
Haiti		●	●
Kiribati		●	●
Lao PDR	●		●
Lesotho	●		●
Liberia			●
Madagascar			●
Malawi	●		●
Mali	●		●
Mauritania			●
Mozambique			●
Myanmar			●
Nepal	●		●
Niger	●		●
Rwanda	●		
Sao Tome and Principe		●	●
Senegal			●
Sierra Leone			●
Solomon Islands		●	●
Somalia			●
South Sudan	●		
Sudan			●
Timor-Leste		●	●
Togo			●
Tuvalu		●	●
Uganda	●		●
Tanzania			●
Yemen			●
Zambia	●		●



3 The United Nations Convention on the Law of the Sea – an overview

A. Within national jurisdiction

UNCLOS grants every coastal State the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles measured from determined baselines (Art. 3), generally the low-water mark. The sovereignty of the coastal State extends to the airspace over the territorial sea as well as to its bed and subsoil (Art. 2) (see **Figure 2**). At the same time, the right of “innocent passage”, defined as passage “not prejudicial to the peace, good order or security of a coastal State”, was confirmed for ships of all States, whether coastal or landlocked (Arts. 17-19). Coastal States have, furthermore, the possibility to declare a contiguous zone up to a maximum of 24 nautical miles from the baseline. In that zone, a coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea (Art. 33).



UNCLOS introduced the novel concept of “transit passage” with respect to straits which are used for international navigation. Photo: Container ship enters the Strait of Gibraltar. Getty Images.

As a corollary to the extension of the limits of the territorial sea, UNCLOS introduced the novel concept of “transit passage”, maintaining the right to unimpeded navigation and overflight with respect to straits which are used for international navigation. Ships and aircraft in transit passage must, however, observe international regulations on navigational safety, civilian air-traffic control and prohibition of vessel-source pollution, proceed without delay through or over the strait without stopping, except in distress situations, and refrain from any threat or use of force against the coastal States. A further new concept is that of the “archipelagic State” – a State that is constituted wholly by one or more archipelagos, meaning groups of closely-spaced islands (Art. 46). The waters between the islands are declared archipelagic waters, which are under national sovereignty. All ships and aircraft, however, enjoy the right of “archipelagic sea lanes passage”, akin to transit passage in sea lanes and air routes designated by an archipelagic State (Art. 53).

An entirely new concept introduced by UNCLOS is the exclusive economic zone (EEZ), which has a sui generis legal status constituting a compromise between sovereignty of the coastal State and freedom for all States.

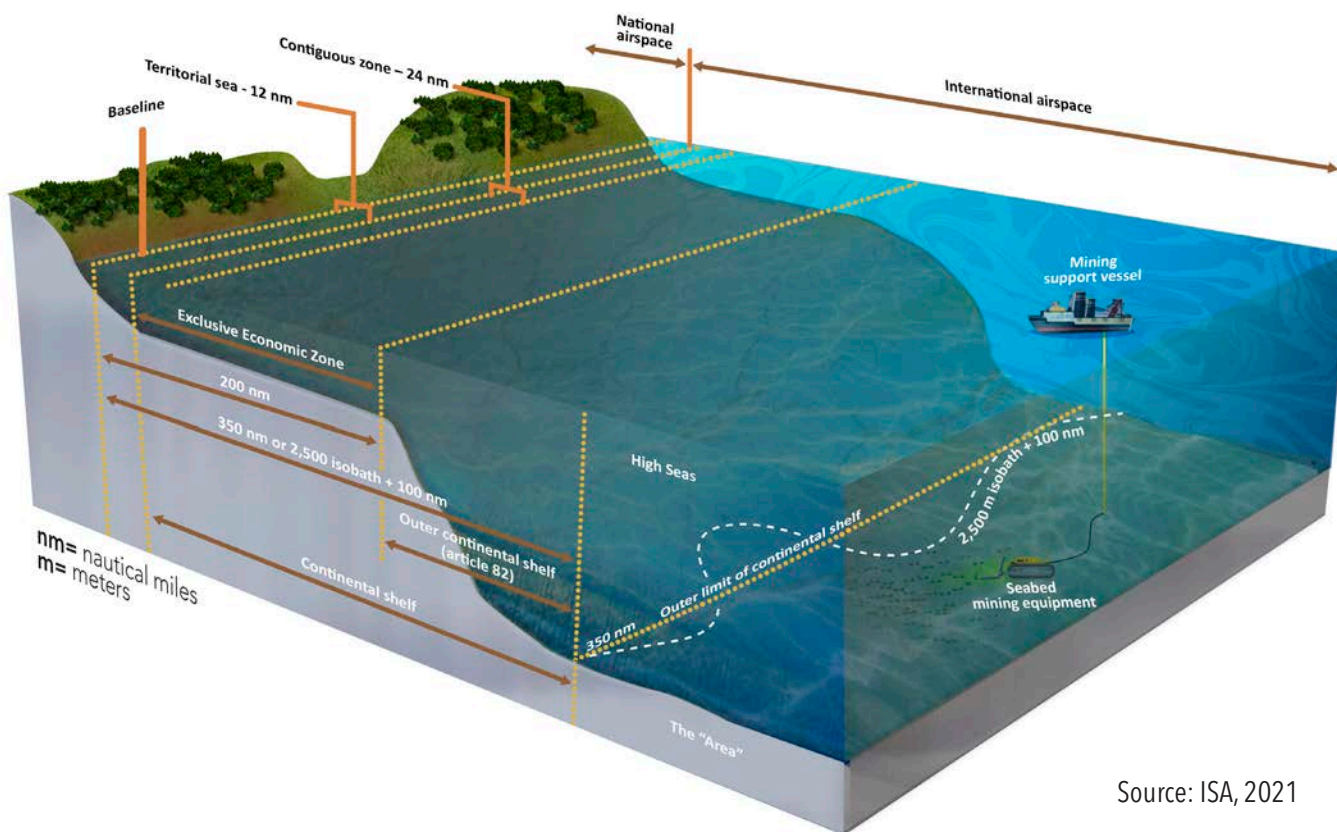
In the EEZ, with a maximum limit of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing all natural resources, as well as other economic activities. Moreover, it has jurisdiction regarding the establishment and use of artificial islands,

installations and structures, marine scientific research, and the protection and preservation of the marine environment (Art. 56). These rights of the coastal State are counterbalanced by the fact that the provisions of UNCLOS relating to the high seas and other pertinent rules of international law continue to apply to the EEZ insofar as they are not incompatible with it. All States, whether coastal or landlocked, thus enjoy the high seas freedoms of navigation and overflight and of laying submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms (Art. 58(1)).

UNCLOS substantially broadened the concept of the continental shelf. The continental shelf now encompasses the entire continental margin, comprising the shelf, the slope and the rise, or the seabed up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial seas is measured, even where no geological shelf exists. There is now, however, a more precise delineation of the outer limits of the continental shelf beyond 200 nautical miles, which may be set at a maximum distance of 350 nautical miles from the baselines or up to 100 nautical miles from the 2,500 m isobath (Art. 76(1), (5)). Such limits become "final and binding" if adopted by the coastal State on the basis of recommendations by the Commission on the Limits of the Continental Shelf (CLCS) (Art. 76(8)), a body consisting of 21 experts in the field of geology, geophysics and hydrology, elected by the States parties to UNCLOS (Annex II, Art. 2(1)).

To obtain recognition of continental shelf rights beyond 200 nautical miles, the coastal States with a continental margin extending beyond 200 nautical miles had to agree to a system of revenue-sharing in respect to the exploitation of non-living resources of the continental shelf beyond that distance. This system is described further below (see **Section 5**).

Figure 2. Maritime zones and the "Area" under UNCLOS



Source: ISA, 2021

B. Beyond national jurisdiction

1. Freedom of the high seas and the regime of the Area

The high seas are open to all States, whether coastal or landlocked. Freedom of the high seas is exercised under the conditions laid down by UNCLOS and by other rules of international law. Besides freedom of navigation and overflight, it stipulates also, subject to certain conditions, the freedom to lay submarine cables and pipelines, to construct artificial islands and other installations, to fish, and to engage in marine scientific research, both for coastal and landlocked States (Art. 87). Every State, whether coastal or landlocked, has the right to sail ships flying its flag on the high seas (Art. 90).

The provisions of UNCLOS relating to the Area constitute a central feature of the entire Convention, operationalizing the concept of common heritage of humankind. These are enshrined in its Part XI and Annex III, together with the 1994 Agreement Relating to the Implementation of Part XI, which was adopted to bring the regime of the deep seabed closer in line with political and economic realities. The Area is defined as “the seabed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction” (Art. 1(1)) (see **Figure 2**). The precise extent of the Area will only be determined when all coastal States have established the outer limits of their continental shelves in accordance with the provisions of the Convention but is estimated to cover more than 50 per cent of the global sea floor. In view of the tremendous workload of the CLCS, this will still take quite a long time.

The Area and its resources are declared the “common heritage of mankind” (Art. 136) in order to preserve the greater part of ocean space as a commons open to use by the entire international community. No claim or exercise of sovereignty or sovereign rights over any part of the Area or its resources nor appropriation by any State - not just States parties - natural or juridical person is to be recognized. All rights in these resources, defined as all solid, liquid or gaseous mineral resources in situ in the Area or beneath the seabed, including polymetallic nodules (Art. 133(a)), are vested in humankind as a whole, on whose behalf ISA is to act (Art. 137).

Activities in the Area, defined as all activities of exploration for, and exploitation of, its resources (Art. 1(3)), are to be carried out for the benefit of humankind as a whole irrespective of the geographical location of States, whether coastal or landlocked, taking into particular consideration the interests and needs of developing States and of peoples who have not obtained full independence or other self-governing status recognized by the United Nations (Art. 140(1)). The Area is open to use exclusively for peaceful purposes for all States, whether coastal or landlocked, without discrimination (Art. 141).



Under UNCLOS, all rights in the resources in situ in the Area or beneath the seabed are vested in humankind as a whole.
Photo: Polymetallic nodules, Deep Ocean Resources Development (DORD)

2. The International Seabed Authority

The International Seabed Authority (ISA), based in Kingston, Jamaica, is the organization through which the States parties organize and control activities in the Area, particularly with a view to administering its resources (Arts. 156, 157(1)). All States parties to UNCLOS are ipso facto Members of ISA. Although the core function of ISA is to manage deep-seabed mining, it has been entrusted by UNCLOS with other important tasks. These include promoting and encouraging marine scientific research (Art. 143), the transfer to developing States of technology and scientific knowledge (Art. 144) and the effective protection of the marine environment and conservation of the natural resources of the Area (Art. 145).



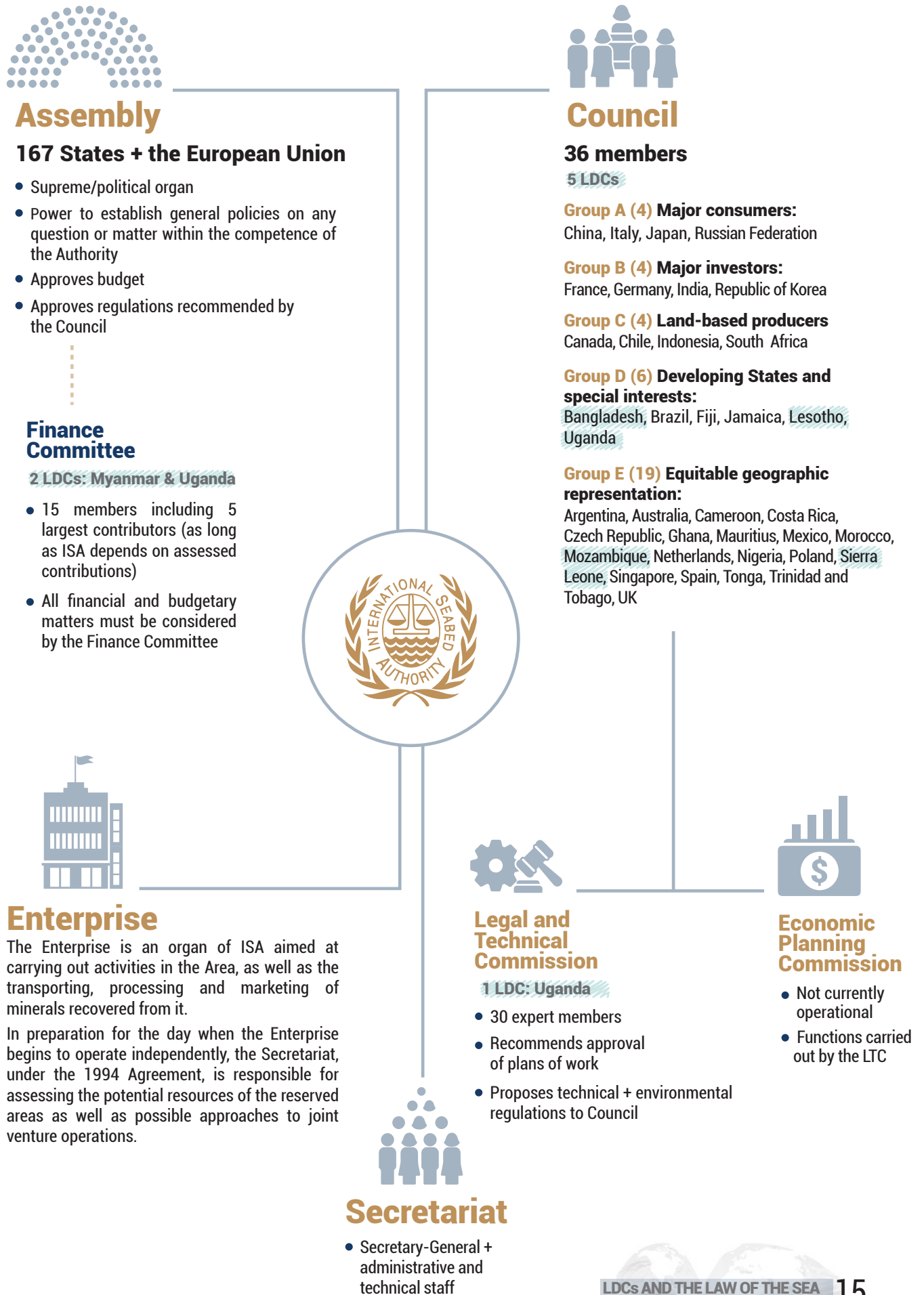
ISA has its headquarters in Kingston, Jamaica. Photo: ISA

The main organs of ISA are the **Assembly**, consisting of all the Members and considered the supreme organ, the **Council**, which is the executive organ, and the **Secretariat**, headed by a Secretary-General. The Assembly elects the 36 members of the Council from five groups of States parties representing different interests and ensuring an equitable geographical distribution (Art. 161(1)). The Secretary-General is elected by the Assembly from among the candidates proposed by the Council (Art. 166(2)(c)).

It is the task of the Assembly to establish the general policies of the Authority in collaboration with the Council (Art. 160(1)), while the Council is entrusted to establish specific policies (Art. 162(1)). The Assembly also approves the budget of the Authority, including the scale of assessment for contributions by States parties, as submitted by the Council (Art. 160(2)(e) (h)), and must finally approve the rules, regulations and procedures relating to prospecting, exploration and exploitation in the Area (Art. 161(2)(f)(ii)). The primary function of the Council, which has an extensive range of powers, is to supervise and control the implementation of Part XI of the Convention on all matters within the competence of ISA (Art. 162 (2)(a)).

Important subsidiary organs, consisting of individual experts, are the **Legal and Technical Commission** (Art. 163) and the **Finance Committee** (Art. 162(2)(y)). Many of the decisions of the Council and the Assembly must be based on the recommendations of these bodies. The members of the Legal and Technical Commission are elected by the Council, and those of the Finance Committee by the Assembly. The **Enterprise** is established as an organ of ISA to carry out activities in the Area directly, on behalf of all Members, subject to the directives and control of the Council (Art. 170). Under the 1994 Implementation Agreement, certain limited functions of the Enterprise are to be carried out by the Secretariat until such time as the Council decides that the Enterprise should function independently. Since 2019, the Secretary-General has appointed a Special Representative for the Enterprise.

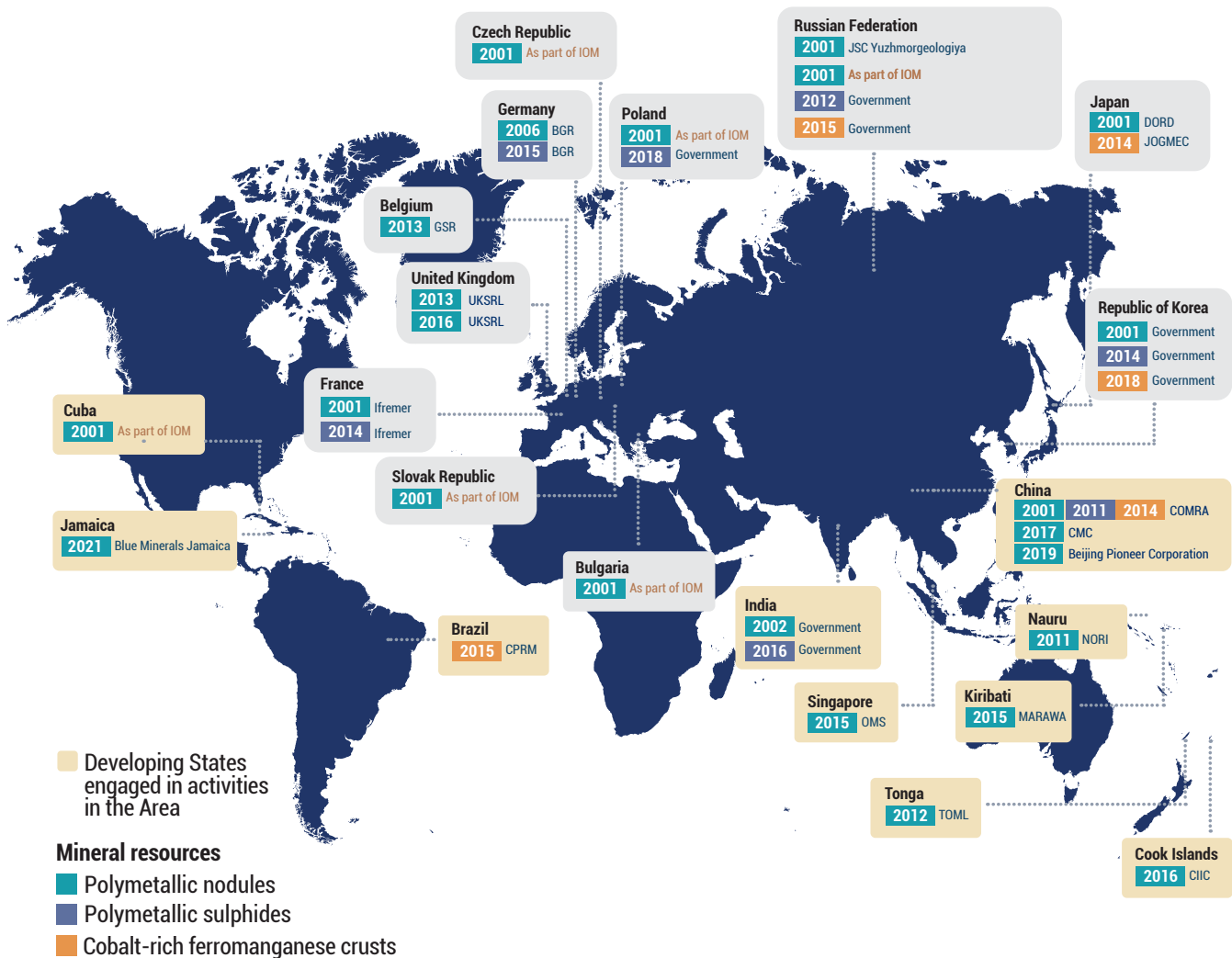
Figure 3. Structure of ISA and participation of LDCs in its different organs



Activities in the Area are to be carried out either by the Enterprise, or in association with ISA by States parties or State enterprises or “natural or juridical persons” which possess the nationality of States parties or are effectively controlled by them or their nationals (Art. 153(2)). Natural or juridical persons must be sponsored by one or more States parties (Annex III, Art. 4(3)), and sponsoring States have the responsibility to ensure within their legal system that a sponsored contractor is carrying out activities in the Area in conformity with its contract and its obligations under the Convention (Art. 139 and Annex III, Art. 4(4)).

A plan of work submitted to ISA by an applicant sponsored by a developed State party requesting an authorization for exploration must divide it into two parts “of equal estimated commercial value” to allow two mining operations (Annex III, Art. 8(1)). One of these sites is granted to the applicant, while the other is held in a site bank for future development by the Enterprise either by itself or in association with developing States. In case of polymetallic sulphides and cobalt-rich crusts, applicants have been given the option to either contribute a reserved area or to offer a future equity interest in a joint venture with the Enterprise, which has proven to be by far the preferred option.

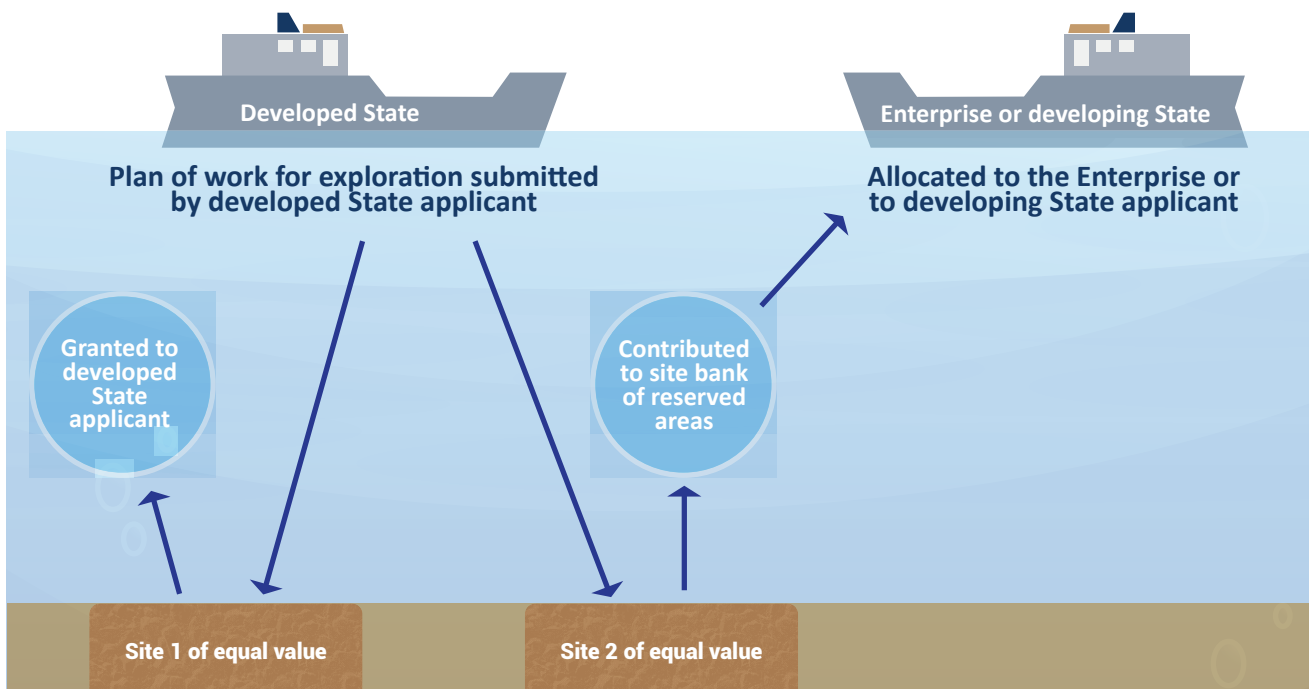
Figure 4. States sponsoring activities in the Area



Any developing State or a qualified entity sponsored by it may notify ISA that it wishes to submit a plan of work which will be considered if the Enterprise does not intend to carry out activities in that area (Annex III, Art. 9(4)). This mechanism of so-called “reserved areas” is a key component of the system of access to the Area and one of the means by which UNCLOS ensures that developing countries can access deep-sea mineral resources. It is one of the tasks of the ISA Secretariat to carry out resource assessment of these reserved areas.

Several developing countries have already taken advantage of provisions of the Convention to sponsor exploration activities in reserved areas. These include Cook Islands, China, Kiribati, Jamaica, Nauru, Tonga and Singapore (see **Figure 4**), to which reserved areas of 502,411 km² have been allocated in total. At present, **a total of 887,485 km² remains available in the reserved-area site bank for polymetallic nodules and 3,000 km² for cobalt-rich crusts.**

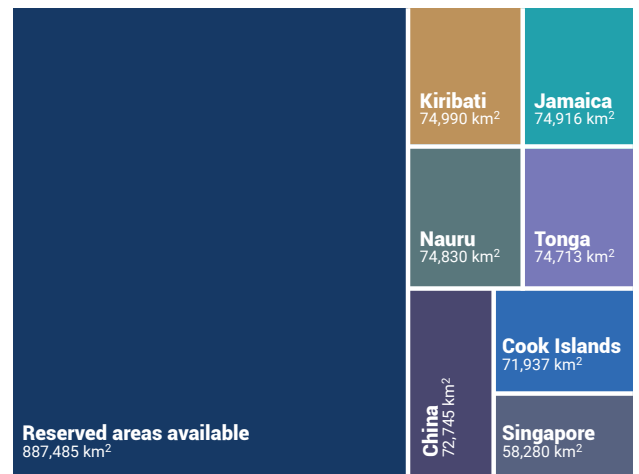
Figure 5. Understanding the "reserved areas" mechanism



5.1 Creation of a site bank of reserved areas for the Enterprise and developing States



5.2 Amount of reserved areas contributed by contractors as of August 2021



5.3 Amount of reserved areas allocated to developing States and areas still available

3. Protection and preservation of the marine environment

UNCLOS provides that “States have the obligation to protect and preserve the marine environment” (Art. 192). There is, further, the requirement to balance their sovereign rights to exploit their national resources pursuant to their environmental policy with that basic duty (Art. 193). **States thus must individually or jointly take all measures that are necessary to prevent, reduce and control pollution of the marine environment from any source** as well as ensure that activities under their jurisdiction or control do not cause damage by pollution to other States and their environment (Art. 194(1)(2)). They are also obliged to cooperate on a global and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices, for the protection and preservation of the marine environment (Art. 197).

The duty to prevent, reduce and control pollution of the marine environment not only relates to seabed activities subject to national jurisdiction and to activities in the Area - by dumping or from vessels - but also to pollution from land-based sources, including rivers and pipelines. States are under an obligation to adopt laws and regulations in this respect and to enforce them.



Under UNCLOS, States must take all measures that are necessary to prevent, reduce and control pollution of the marine environment.
Photo: Oil spill barrier around offshore support vessel at port. Getty Images.

C. Peaceful settlement of disputes

States parties to UNCLOS are under the **obligation to settle any dispute concerning the interpretation and application of the Convention by peaceful means** in accordance with the Charter of the United Nations (Art. 279). They have the right to settle such disputes by any peaceful means of their own choice (Art. 280). First, they are obliged to proceed expeditiously to an exchange of views regarding settlement by negotiation or other peaceful means (Art. 283), which may include conciliation (Art. 284).

Where no settlement has been reached, a State is free to choose, by written declaration to the Secretary-General of the United Nations one or more of the following means: The International Tribunal for the Law of the Sea (ITLOS) (Annex VI), the International Court of Justice (ICJ), an arbitral tribunal (Annex VII) or a special arbitral tribunal (Annex VIII) for certain categories of disputes (Art. 287). In the absence of such a declaration or if the parties have not accepted the same procedure, they are deemed to have accepted arbitration under Annex VII. There are, however, certain limitations and exceptions to the application of compulsory procedures entailing binding decisions. The limitations relate to the exercise of certain discretionary powers by a coastal State, in particular as regards its sovereign rights in respect of fisheries in the EEZ (Art. 297(1)(2)). Exceptions to the compulsory procedures may also be made by virtue of written declarations, including with respect to sea boundary delimitations, historic bays or titles, or to military activities (Art. 298 (1)).

ITLOS, newly established by UNCLOS and based in Hamburg, Germany, consists of 21 judges elected by the States parties for a term of nine years (Annex VI, Art. 2(1), Art. 5). Its composition must ensure adequate representation of the principal legal systems of the world and an equitable geographical distribution (Annex VI, Art.2(2)). Its Statute also provides for the establishment of a Seabed Disputes Chamber, consisting of 11 members (Annex VI Art. 15, Art. 35), which has been granted exclusive and compulsory jurisdiction over disputes arising out of the exploration and exploitation of the Area. Such disputes comprise those between a State party and ISA or between ISA and a prospective contractor (Art. 187). The Seabed Disputes Chamber may also give advisory opinions at the request of the Assembly or the Council of ISA (Art. 191), which has so far happened once at the request of the Council.

Box 3 | **Advisory Opinion of the Seabed Disputes Chamber of ITLOS on the “responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area”**



Seabed Disputes Chamber of ITLOS. Photo: ITLOS

On February 1, 2011, the Seabed Disputes Chamber of ITLOS unanimously adopted a historic advisory opinion in response to a request made by the Council of ISA to clarify the legal responsibilities and obligations of sponsoring States. The Advisory Opinion was the first decision of the Seabed Disputes Chamber of the Tribunal and the first advisory opinion submitted to it.⁴

⁴ Source: https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_161_E.pdf



Photo: Getty Images

4 Rights and benefits of least developed countries under UNCLOS

A. Recognition of the special situation of LDCs

The States parties to UNCLOS have recognized the desirability of establishing through it a legal order for the oceans and seas which will facilitate international communication and promote their peaceful use, the equitable and efficient utilization of their resources, the sustainable development of their living resources, and the study, protection and preservation of the marine environment. They have also borne in mind that the achievement of these goals will contribute to the realization of a **just and equitable international economic order** which takes into account the interests and needs of humankind as a whole and, in particular, the special needs and interests of developing countries, whether coastal or landlocked.

It is to be noted that the interests of different LDCs regarding their rights and benefits under UNCLOS vary widely depending on their geographical location. The majority of LDCs are coastal States, while 17 are landlocked. Some are large coastal States and eight are small island States (see **Figure 1**). The adoption of UNCLOS in its entirety, after difficult and protracted negotiations from 1974 to 1982, constituted a major step forward in the attempt to level, at least to some extent, the playing field between developing and developed countries with respect to the law of the sea and to strike a balance between the interests and needs of all segments of the international community. Divergent interests of different categories of LDCs are thus reflected in the provisions of the Convention.



B. Right to participate in the exploitation of living resources

The creation of the 200 nautical mile EEZ in Part V of UNCLOS was a major gain for coastal States. In these zones, which account for around 90 per cent of fisheries, coastal States have sovereign rights over resources and jurisdictional rights related to exploration, exploitation and protection of resources. The economic interests of developing States, and of coastal fishing communities in particular, have thus been safeguarded by allowing them exclusive and **undisputed access to the living resources within their EEZs**. They have the right to determine the allowable catch of these resources (Art. 61(1)), with the obligation to promote the objective of their optimum utilization (Art. 62(1)).

In exchange for their agreement to the EEZ, landlocked States have been granted the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of coastal States of the same subregion or region. In this context, the relevant economic and geographical circumstances of all the States concerned are to be taken into account (Art. 69(1)). The terms and modalities of participation are to be agreed between the States involved through bilateral, subregional or regional agreements taking into account, among others, the need to avoid effects detrimental to fishing communities or the fishing industries of the coastal State (Art. 69(2)(a)). In practice, this right to participate in the exploitation of such resources is quite limited in view of constantly-diminishing yields owing to overexploitation of fish stocks as well as a globally-rising demand for fish.

C. The continental shelf regime

Another important gain for coastal States was the recognition of their sovereign rights over the continental shelf, to the outer edge of the continental margin, for the purposes of exploring it and exploiting its natural resources (Art. 77). In defining the continental shelf, UNCLOS provides that the continental margin comprises the submerged prolongation of the land mass of the coastal State (Art. 76(3)). By using the expression "land mass" rather than "continental land mass", **UNCLOS makes it clear that island States have the same rights over the continental shelf as coastal States on the continents**. This equal treatment of island and continental States is also found in the regime of islands making up Part VIII of the Convention, which provides that the maritime zones of an island are determined in accordance with UNCLOS provisions applicable to other land territory (Art. 121(2)). The only exception is rocks which cannot sustain human habitation or economic life of their own and therefore have no EEZ or continental shelf (Art. 121(3)).

D. The situation of landlocked developing countries (LLDCs)

The situation of landlocked States has been taken into account by Part X of UNCLOS, which is devoted to the problem of their access to and from the sea and freedom of transit. These States are granted a right to such access for the purpose of exercising the rights provided for in the Convention, including those relating to the high seas and the common heritage of humankind. To this end, **landlocked States enjoy freedom of transit through the territory of transit States by all means of transport** (Art. 125(1)). The terms and modalities for exercising freedom of transit must be agreed between the landlocked States and transit States concerned through bilateral, subregional or regional agreements (Art. 125(2)). This issue is discussed in greater detail in a separate study in this series aimed at LLDCs.

E. Protection and preservation of the marine environment

With respect to the protection and preservation of the marine environment, including the prevention, reduction and control of marine pollution, UNCLOS provides for **scientific and technical assistance to developing States**, directly or through competent international organizations. Such assistance comprises the promotion of scientific, educational, technical and other assistance, such as training of scientific and technical personnel, supplying these States with necessary facilities and equipment, and providing assistance for the minimization of the effects of major incidents which may cause serious pollution of the marine environment and the preparation of environmental assessments (Art. 202). For the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, developing States are to be granted preference by international organizations in the allocation of appropriate funds and technical assistance (Art. 203(a)).

F. Marine scientific research and technology transfer

UNCLOS provides that **all States**, irrespective of their geographic location, **have the right to conduct marine scientific research, subject to the rights and duties of other States** (Art. 238). The Convention also provides for the duty of States and competent international organizations to actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as to strengthen their autonomous marine scientific research capabilities (Art. 244(2)). States and competent international organizations planning to undertake marine scientific research must give notice of a proposed research project to the neighbouring landlocked and geographically disadvantaged States (Art. 254(1)).

After the coastal State concerned has given its consent for the marine scientific research project, the neighbouring landlocked and geographically disadvantaged States must, at their request, be given the opportunity to participate in the project (Art. 254(3)).

States, directly or through competent international organizations, are also under an **obligation to cooperate** in accordance with their capabilities **to promote actively the development and transfer of marine science and marine technology** on fair and reasonable terms and conditions (Art. 266(1)). In this context, they must promote the development of the marine scientific and technological capacity, particularly of developing States, including landlocked and geographically disadvantaged States, regarding the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment and marine scientific research (Art. 266(2)).

There is, further, an obligation to establish programmes of **technical cooperation** for the effective transfer of marine technology to developing, landlocked and geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology (Art. 269(a)).

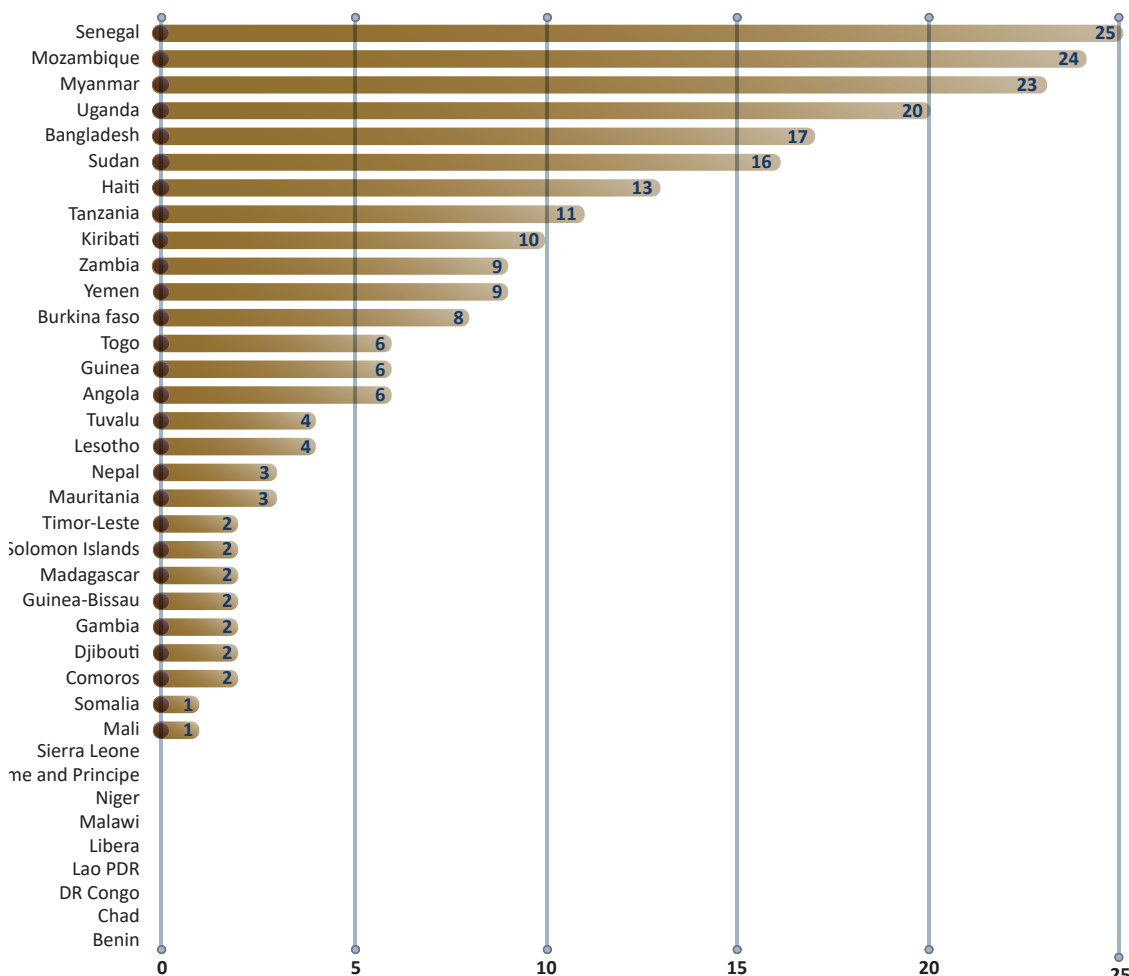


G. Participation in the work of ISA

With respect to activities in the Area, according to UNCLOS the effective participation of developing States must be promoted, having due regard to their special interests and needs, and in particular to the special need of the landlocked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it (Art. 148). ISA is also under the **obligation to take measures to promote and encourage the transfer to developing States of technology and scientific knowledge** relating to activities in the Area, so that all States parties benefit therefrom (Art. 144(1)(b)). While it is stipulated that ISA must avoid discrimination in the exercise of its powers and functions, special consideration is nevertheless permitted for developing States, including particular consideration for the landlocked and geographically disadvantaged among them (Art. 152).

The ISA Assembly has the power to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities in the Area that are due to their geographical location, particularly for landlocked and geographically disadvantaged States (Art. 160(2)(k)). Six members of the ISA Council must be elected from among developing States parties representing special interests, and these interests must include, inter alia, States which are landlocked or geographically disadvantaged, island States and LDCs (Art. 161(1)(d), Implementation Agreement, Section 3(15)(d)) (see **Figure 3**).

Figure 6. Number of times a State was represented at the annual session of ISA out of 25 sessions.



H. Capacity-building and training

1. Role and mandate of ISA in building the capacities of its members

The entry into force of UNCLOS created the enabling conditions for the operationalization of the regime of the Area. A critical element of this regime lies in the establishment of ISA as a dedicated intergovernmental organization to regulate and manage access to and use of deep-seabed mineral resources whilst ensuring the protection of the marine environment. As part of this mandate, ISA is also entrusted with the responsibility to **ensure equitable sharing of benefits derived from the conduct of activities in the Area**. One important stream of benefits is the development of programmes aimed at strengthening the capacities of developing States and technologically less developed States (Art. 143(3)(b), Art. 144, Art. 273, Art. 274).

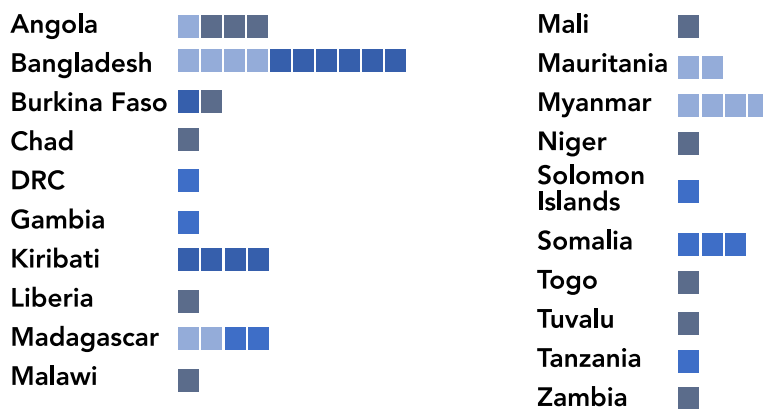
Since 2000, three main programmes have been implemented by ISA to strengthen the capacities of developing and technologically less developed States. These are the Contractor Training Programme (CTP), the Endowment Fund for Marine Scientific Research in the Area (EFMSR), and an internship programme. In addition, since 2017, a series of activities have been undertaken to reinforce the actions of ISA in building the capacities of its Members.⁵ Amongst LDCs, 47 individuals from 20 countries have benefited from ISA training programmes (see **Figure 7**).

Figure 7. Capacity-building at ISA

7a. Current capacity-building programmes and initiatives



7b. Participation of individuals from LDCs in the different programmes



⁵ See <https://www.isa.org.jm/training>

2. Implementing a programmatic approach to respond to the needs identified by developing States

The duty of ISA to design and implement mechanisms to build capacity for developing States in accordance with its mandate under UNCLOS is recognized in the Strategic Plan of ISA for the period 2019-2023 (ISBA/24/A/10, Annex). Such mechanisms should aim not only at promoting and encouraging the transfer of technology to developing States (UNCLOS Art. 144, Art. 273, Art. 274) but also at ensuring the expansion of opportunities for participation in activities in the Area (Art. 148).



ISA convened an international workshop on capacity development, resources and needs assessment in Kingston, Jamaica in February 2020. Photo: ISA.

Members of ISA have identified that one of the key challenges for ISA lies in the development of mechanisms, including capacity-building programmes, that ensure the fully integrated participation of developing States in activities in the Area at all levels. Strategic Direction 5 (*Build capacity for developing States*) and Strategic Direction 6 (*Ensure fully integrated participation by developing States*) of the ISA Strategic Plan are aimed at accomplishing this objective (see **Box 4**).

To better understand the specific needs of developing States, in particular LDCs, LLDCs and Small Island Developing States (SIDS), in relation to capacity development, ISA convened an international workshop on capacity development, resources and needs assessment in Kingston, Jamaica, in February 2020.⁶ As preparation for the workshop, the ISA Secretariat prepared a comprehensive review of all capacity-building programmes and initiatives implemented by ISA between 1994 and 2019.⁷ Both the review and the workshop were informed by an advisory committee established by the Secretary-General to provide expert input and strategic advice. The review was further revised in light of comments from the advisory committee, the training subgroup of the Legal and Technical Commission, participants in the workshop and input received from Member States during a public consultation held between April and June 2020. In addition, the Secretariat conducted a survey of all members of ISA between April and June 2020, in which Members were invited to identify their priority capacity-development needs relating to the role and mandate given to ISA under UNCLOS. One of the key outcomes of the survey was that, out of those States that were not currently sponsoring activities in the Area, 89 percent indicated that their country had aspirations to engage in activities in the Area in the future and wished to develop capacity to do so.

The outcomes of the above process were reported to the ISA Assembly in 2020. In December 2020, the Assembly adopted a decision on capacity development (ISBA/26/A/18), in which it requested the Secretary-General to develop and implement a dedicated **strategy for capacity development** and explore options to mobilize additional resources to provide financial support for capacity development. The Assembly also invited Members of ISA to identify **national focal points for capacity development**.

⁶ ISA, International workshop on capacity development, resources and needs assessment, 2020. Accessible at: <https://bit.ly/3ymBez2>

⁷ ISA, Review of capacity-building programmes and initiatives implemented by the International Seabed Authority 1994-2019, 2020. Accessible at: <https://bit.ly/3yqinDf>

ISA Strategic Directions 5 and 6 on building the capacity for developing States and ensuring their fully integrated participation in the work of ISA



3. Advancing women's empowerment and leadership in deep-sea research, particularly women from developing States including LDCs, LLDCs and SIDS



ISA is committed to promote the participation and leadership of women in deep-sea research. Photo: ISA

According to the 2020 Global Ocean Science Report,⁸ women continue to remain underrepresented in ocean science, especially in highly technical categories. This is even more prominent in emerging sectors such as deep-sea research and in developing States, particularly in LDCs, LLDCs and SIDS. This is notably the case because of a general lack of financial resources to access the deep sea and insufficient academic training in deep-sea related disciplines.

To address these challenges, ISA, together with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), has developed a series of activities and initiatives aimed at improving the conditions needed to promote women's empowerment and access to leadership positions in deep-sea research for those from developing States, with a particular focus on women scientists from LDCs, LLDCs and SIDS. One of these initiatives, the **Women in Deep-Sea Research (WIDSR) project**, was launched on International Women's Day 2021 and will focus on policy development, advocacy, communications and outreach.⁹

⁸ IOC-UNESCO (2020). Global Ocean Science Report 2020—Charting Capacity for Ocean Sustainability. K. Isensee (ed.), Paris, UNESCO Publishing. <https://unesdoc.unesco.org/ark:/48223/pf0000375147>

⁹ <https://www.isa.org/jm/vc/enhancing-role-women-msr/WIDSR-project>

5 Equitable sharing of financial and other economic benefits

To obtain recognition by the international community of continental shelf rights beyond 200 nautical miles, the coastal States with a continental margin extending further had to agree to a system of revenue-sharing. Article 82 of UNCLOS thus provides that these coastal States are to make payments or contributions in kind in respect to the exploitation of the non-living resources of the continental shelf beyond that distance (Art. 82(1)). Payments and contributions must be made annually after the first five years of production at a site. The rate of payment or contribution increases by 1 per cent for each subsequent year and is to remain at 7 per cent as of the twelfth year (Art. 82(2)). An exemption has been made for making such payments and contributions in respect of a mineral resource of which a developing State is a net importer (Art. 82(3)). The payments or contributions are to be made through ISA, which must distribute them to States parties, on the basis of **equitable sharing criteria**, taking into account the **interests and needs of developing States, particularly the least developed and the landlocked among them** (Art. 82(4)).



Photo: Nodule sorting. Nauru Ocean Resources Inc.

An important task of ISA is to provide for the **equitable sharing of financial and other economic benefits derived from activities in the Area** on a non-discriminatory basis, stipulated in Article 140 of UNCLOS (Art. 140 (2)).

The Assembly has the competence to consider and approve, upon the recommendation of the Council, rules, regulations and procedures on the equitable sharing of such benefits and payments and contributions made pursuant to Article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status (Art. 160(2)(f)(i)).

Criteria for the equitable sharing of benefits are still under consideration by ISA, as commercial exploitation of the Area as well as of the continental shelf beyond 200 nautical miles is yet to begin. There is also a difference between the cases of Articles 82 and 140, as proceeds derived from activities in the Area belong to ISA according to Article 140, with the Assembly having to decide upon equitable sharing (Art. 160(2)(g)), while payments accrued under Article 82 from the continental shelf must be distributed directly to the States parties, with ISA serving as a conduit.

6 Conclusion

The LDCs represent the poorest and, in some ways, the most vulnerable segment of the international community. Various provisions of UNCLOS aim to make an important contribution towards addressing their economic challenges by providing exclusive access to ocean resources to the coastal States among them and by clarifying the legal situation of landlocked States regarding access to and from the sea. **Besides specific rights and benefits enshrined in the Convention for each of these groups of LDCs, there is also the prospect of economic benefits from deep-seabed mining and from contributions by coastal States that exploit resources of the continental shelf beyond the 200 nautical mile EEZ, in which case the Convention expressly asserts that the interests and needs of LDCs must be taken into account.** It may be presumed that LDCs will be at the top of the list of beneficiaries once ISA is in a position to distribute these benefits on the basis of equitable sharing criteria.

The rights and benefits conferred by UNCLOS on the different groups of LDCs are only part of the international efforts to reverse their increasing marginalization in the global economy and put them on a path to sustainable and accelerated development. The UN has been paying special attention to the LDCs for several decades, with a view to attracting further international support.

UN conferences on LDCs were held in Paris in 1981 and 1990 and in Brussels in 2001. The Fourth United Nations Conference on the Least Developed Countries (LDC-IV) in 2011 adopted the **Istanbul Programme of Action for the Decade 2011-2021**¹⁰ and the **Istanbul Declaration**, with the overarching goal of overcoming the structural challenges faced by LDCs to eradicate poverty, achieve internationally-agreed development goals and enable graduation from the LDC category. The Fifth United Nations Conference on the Least Developed Countries (LDC5) is scheduled to be held in Doha, Qatar in January 2022 (A/RES/74/232 B).

In the context of these efforts by the UN, ISA is in a position to provide valuable **assistance and support to these highly vulnerable States and to help increase their participation in activities in the Area**, including deep-sea exploration, exploitation of seabed resources and marine scientific research. ISA is also making LDCs increasingly aware of the benefits of the blue economy, including through the establishment of a benefit-sharing mechanism for economic and non-financial benefits derived from activities in the Area. ISA is further promoting the **development of the necessary capacities in LDCs for marine scientific research**, where the role and participation of women scientists is being enhanced, as well as organizing and facilitating **technology transfer**. Measures are also being identified to increase the participation of these countries in the implementation of the regime of the Area and in the work of ISA.

¹⁰ <https://www.un.org/ohrls/content/istanbul-programme-action>

Further reading

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, New York, 28 July 1994, United Nations Treaty Series, Vol. 1836, p. 42.

Bello, Emmanuel G, 1980. "International Equity and the Law of the Sea: New Perspectives for Developing Countries", *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* Vol. 13, No. 3, pp. 201-212, *Nomos*. <https://www.jstor.org/stable/43108919>.

ISA Document ISBA/26/A/7, 26 August 2020: Implementing a programmatic approach to capacity development: Report of the Secretary-General, https://isa.org.jm/files/files/documents/ISBA_26_A_7-2011093E.pdf.

ISA Policy Brief 2019/1: Current Status of the Reserved Areas with the International Seabed Authority. https://isa.org.jm/files/files/documents/statusofreservedareas-01-2019-a_1.pdf.

ISA Policy Brief 2021/1: National Capacity Development Priorities Identified by Members of the International Seabed Authority in 2020. https://isa.org.jm/files/files/documents/Capacity_Development_Policy_Brief_01-2021_rev.pdf.

ISA Report, July 2020: Review of Capacity-building Programmes and Initiatives Implemented by the International Seabed Authority 1994–2019. <https://isa.org.jm/files/files/documents/Review%20Of%20Capacity-Building%20Programmes%20And%20Initiatives%20By%20ISA.pdf>.

ITLOS, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, Advisory Opinion, 1 February 2011.

Kateka, James L, 2014. "Landlocked and Geographically Disadvantaged States", in Attard, D.J., Fitzmaurice, M. and Martínez Gutiérrez, N.A. (eds.) *IMLI Manual of International Maritime Law*, Oxford University Press, p. 431.

Tuerk, Helmut, 2010. "The Landlocked States and the Law of the Sea", United Nations Audiovisual Library of International Law. https://legal.un.org/avl/ls/Tuerk_LOS.html#.

United Nations Convention on the Law of the Sea, United Nations Treaty Series, Vol. 1833, p. 397.



List of boxes and figures

Box 1	The four Geneva Conventions on the Law of the Sea	7
Box 2	The United Nations Convention on the Law of the Sea	8
Box 3	Advisory Opinion of the Seabed Disputes Chamber of ITLOS on the “responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area”	19
Box 4	ISA strategic directions 5 and 6 on building the capacity for developing States and ensuring their fully integrated participation in the work of ISA	26
Figure 1	Participation of least developed countries in UNCLOS	10
Figure 2	Maritime zones and the Area under UNCLOS	12
Figure 3	Structure and functions of ISA	15
Figure 4	States sponsoring activities in the Area	16
Figure 5	Understanding the “reserved areas” mechanism	17
Figure 6	Number of times a State was represented at the annual session of ISA out of 25 sessions	23
Figure 7	Capacity-building at ISA	24





International Seabed Authority

14 - 20 Port Royal Street, Kingston, Jamaica

Phone: +1 (876) 922-9105

Fax: +1 (876) 922-0195

www.isa.org.jm

