



**PERMANENT MISSION
OF THE KINGDOM OF TONGA TO
THE UNITED NATIONS**

**Statement of Dr. T. Suka Mangisi
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Head of Delegation to the 23rd Session of the International Seabed Authority
On Agenda Item 9 of the Assembly: Consideration of the final report 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**

Kingston, Wednesday, 16th August 2017

Check Against Delivery

Mr. President,

Thank you for giving Tonga the floor and allow me, through you, to thank the Chair, H.E Ambassador Helmut Tuerk and members of the Review Committee for the “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”, presented before us.

We congratulate you Chair and members of the Committee on the completion of the first ever review of the Authority in accordance with Article 154 of the Convention. Allow me also to thank the Secretary General and his staff and the Seascope consultants for the collaborative work in providing the requisite support, including administrative and logistical throughout the sessions of the Review Committee.

Mr. President,

At the 21st Session of the Authority, Tonga joined state parties in adopting the decision of the Assembly to undertake the first ever Article 154 review. In doing so, the decision set out the terms of reference which would guide the work of the Committee.¹ We recognize the immensity of the task and once again acknowledge the hard work and dedication put in by the Committee.

Mr. President,

The review, as we know, was centered on determining the effectiveness and efficiency of the Authority in performing its functions as stipulated in the Convention and paragraph 5 of section 1 of the annex to the 1994 Agreement. In undertaking the Review, the Committee was tasked with providing recommendations on areas in which the Authority could improve the operation of the regime.

In so saying, we are pleased with the twelve-page report before us, which we see as concise and reader friendly. The report sets out an overview of the work and the methodology used to ensure

¹ ISBA/21/A/9/Rev.1

all were engaged and presents a number of recommendations which will approve the operation of the regime. Overall, Tonga would like to convey its support for the Recommendations provided and will make a few comments and observations on such.

Recommendation 1

On the first recommendation, Tonga supports this. Tonga places great importance on its role as a Sponsoring state. We take note of the need to review laws in accordance with the Advisory opinion of the Seabed Disputes Chamber of ITLOS number 17 of 2011, in particular, the “direct obligations of states” as set out in paragraphs 122 to 150 of the Advisory opinion. Tonga recognizes that the advisory opinion is the benchmark and should not be the sole standard upon which a national review is to take place, considering the Convention and Mining Code, and the Exploitation regulations currently under development which may have specific provisions on the role of the Sponsoring State.

Tonga is pleased to say that its Seabed Minerals Act 2014 incorporates a number of good practices including the need to ensure, in conjunction with the Authority, that persons engaged in seabed mining in the Area are conducting the activity in conformity with the Convention, the Part XI Agreement and the Mining Code, the application of the precautionary approach, and the need to employ best environmental practices.

We do recognize that, as my friend the distinguished Ambassador of Uganda mentioned yesterday, the best room in the house is the room for improvement, and improvement can be carried out to enhance our domestic regulatory framework into a robust legal framework. As such, collaboration through genuine and durable partnerships, with other Sponsoring States and member states and partners alike, together with the Authority, should be made to determine appropriate standards and best practices in ensuring that exploitation of seabed minerals is carried out in an environmentally responsible manner. The need to strike that balance between conservation and sustainable use is of the highest importance for my delegation. In this regard, we reiterate again with interest the proposal raised by Indonesia in the Council last week on the possibility of a model framework, that may go some way toward providing a solution to this recommendation.

Mr. President,

Recommendation 2

Tonga welcomes Recommendation 2 and sees the study of national laws as vital and connected to national reviews on domestic legislation as proposed under Recommendation 1. We appreciate the response provided by the Secretary-General mentioning that the study was on the Agenda of the Authority and that a study can be provided by the end of 2018, which we welcome. We see the study as useful and important. We understand that a proper and comprehensive study of national laws would be best informed once the exploitation regulations are in place in order to complete the Mining Code and to allow member states to review their own domestic legislations in that regard together with the possible model that may be proposed in line with a completed Mining Code, for member states.

Mr. President,

Recommendation 3

The continued investment in better data management and data-sharing mechanisms is necessary in informing the requisite decisions of the Authority and allowing it to dispense its mandate to administer the Area and ensure the protection of the marine environment. We recognize that a review of the quality and consistency of data gathered is important. Tonga supports the proposed recommendation of the Review Committee to establish and implement a database for data management. We see that the adoption of a clear strategy and policy for data management will assist the Authority and its members, including Tonga, with the gaps in data collection carried out by contractors in the Area. In this regard, we thank the Secretary-General for his comments as set out in the document ISBA/23/A/5. Rev.1, on the engagement of external consultants to design and construct a database for data management.

Tonga would also like to acknowledge existing data management systems that has been developed with known capabilities and strength. These database systems are accessible through an online interface. An example of such a system is that developed by Geoscience Australia known as the Australian Marine Spatial Information System or AMSIS.

Mr. President,

Recommendation 6

Tonga is supportive of this recommendation. We believe that expanding the expertise in the fields of environmental policy, management, and planning, would lead to increased transparency and accountability in areas of protection and preservation of the marine environment – we concur and align ourselves with the statement by CANZ delivered yesterday by my friend and distinguished delegate from Canada, on the importance of ensuring a secure mechanism for the protection and preservation of the marine environment. We also support the comments of the Secretary General highlighting that the issue of sharing of environmental data should be resolved with the implementation of a new database.²

Mr. President,

Recommendation 8

Tonga supports this recommendation, in particular, the agreed performance standards, not only in the context of the work on the exploitation regulations under the mining code, but also on exploration, the agreed performance standards should include the need for environmentally sound technologies, which would protect and preserve the marine environment and its biodiversity and reduce risks of incurring liabilities.

² ISBA/23/A/5.Rev 1

Mr. President,

Recommendation 10

With the increase of the work of the Legal and Technical Commission in order to appropriately fulfill its mandate and instructions given to it from time to time by the Council, the Council's work will correspondingly increase and therefore should be increased and we agree with the recommendation put forward and the Secretary-General's positive consideration thereof. Having said that, my delegation would associate with the distinguished Ambassador of Singapore and her pronouncements on point, and align with the views expressed by the distinguished delegation of Algeria on behalf of the African Group, that the Secretariat must ensure that appropriate facilitation of all members of the Council, particularly developing states, are made to enable full participation in this extra meeting. We echo also the sentiments expressed by the Kingdom of the Netherlands in looking forward to any views of the Finance Committee.

Mr. President,

Recommendation 12

In 2015, Tonga, on behalf of the 14 members of the Pacific Small Island Developing States as its Chair at the time, had provided our Group's support for the Review Committee to consider the operationalization of the Enterprise pursuant to Article 158 and 170 of the Convention. The final report of the Review Committee under paragraph 21, mentioned that priorities had limited the progress made by the Legal and Technical Commission on the issue and that the appointment of an interim Director-General was not advisable at the time. Whilst it is understandable that in light of priorities, work on this very important issue could not be carried out, my delegation finds a measure of difficulty in this regard. Tonga is of the view, that this issue should remain on the work of the Legal and Technical Commission, whilst recognizing that other issues will take priority, such as the exploitation regulations. The need to operationalize the various provisions and organs of the Authority is vital for progress, so that the Authority will move from its current infancy stage, to attain the final stage that is envisioned. The review is timely and pertinent in ensuring 20 years on, the Authority is evolving and maturing appropriately to ensure its mandate in totality is realized.

Mr. President,

Recommendation 16

Tonga recognizes that this recommendation touches upon the need to hold more open meetings, the need for balance of expertise in relation to the composition of the Commission, and the need to revisit the number of meetings of the Commission to ensure it can implement its mandate and directions given to it by the Council. The review however does not mention an appropriate size and composition of the Legal and Technical Commission that would best operationalize Article 163 of the Convention -- an issue which is an ongoing subject of debate in the Council. We take

note of the recommendation of the Secretary-General in his report to the Council under document ISBA/23/C/2, to reflect in his invitation for nomination, the areas of expertise needed. Until then, we note that the issue of the composition of the Legal and Technical Commission will be addressed by the Council prior to the 25th Session of the Authority and in so saying would like to see the requisite support provided to the Council to do so.

Mr. President,

Recommendation 17

Tonga reiterates its support for this recommendation and would suggest, that the strategic plan needs to be results-oriented, and be complemented by an appropriate monitoring and evaluation mechanism for effective follow-up of deliverables. Having such a strategic plan, would greatly assist sound budgetary planning, and proper allocation of resources to work programmes, and improve accountability and transparent resource allocation efforts, as recognized in the Secretary-General's comments on the Review Report.

Mr. President,

Recommendation 18

Tonga is supportive of this recommendation. The ISA needs data and information that is necessary for the formulation by the Authority of rules, regulations, and procedures concerning protection and preservation of the marine environment and safety data, excluding proprietary information. Tonga also supports the comment made by the Secretary-General that non-confidential information, particularly those relating to the responsibility to protect the Marine environment be made available through the new database in a user-friendly format.³ We believe that all information should be held by the secretariat and any deficiencies should be 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.

Mr. President,

Recommendation 19

Tonga wishes to lend its support for this recommendation. It is of high importance for my delegation that there should be greater transparency on the finances of the Authority, particularly as we move towards exploitation, and given the considerable amounts of money that an expected royalty structure payment may generate. Therefore, due regard should be given to transparency, and equally important, to the accountability aspect of finance provisions, including that of the benefit-sharing regime – which will have an impact on the ability of the Authority to act on behalf of mankind, with special consideration for the needs of developing States, such as small island developing States and special interest, such as ours. Tonga would take this opportunity to

³ ISBA/23/A/5.Rev 1

commend the efforts undertaken in the restructuring of the Secretariat, including its cost-saving measures, that was noted to have had no additional negative financial and budgetary implications.

Finally Mr. President,

Annex I

Tonga wishes to state for the record that we welcome the revised meeting schedule for 2018 and 2019 proposed in Annex I for the reasons contained therein. For reasons of effectiveness, efficiency, and economy, the schedule is an effective initiative by the Secretary-General to ensure the mandate of the Authority in the coming years are completed as appropriate and we fully endorse this approach.

I thank you Mr. President.