



**International Seabed Authority (ISA)  
Workshop for the Southern African States on the  
Promotion of Sustainable Development of Africa's  
Blue Economy**

**“Contribution of the African Group to the  
development of ISA's Mining Code”**

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**Pretoria, 17 May 2019**

- I. The African Group and the principle of Common Heritage Mankind
- II. ISA's distinctive features compared to other multilateral forums
- III. ISA's mining code
- IV. Path towards the ISA's exploitation mining code
- V. Contribution of the African Group

# I. The African Group and the principle of Common Heritage Mankind

1. Origin and definition
2. Third United Nations Conference on the Law of the Sea (1973-1982)
3. Preparatory Commission for the ISA [and ITLOS] (1983-1994)
4. Agreement on the Implementation of Part XI of the United Nations Convention on the Law of the Sea (1990-1994)

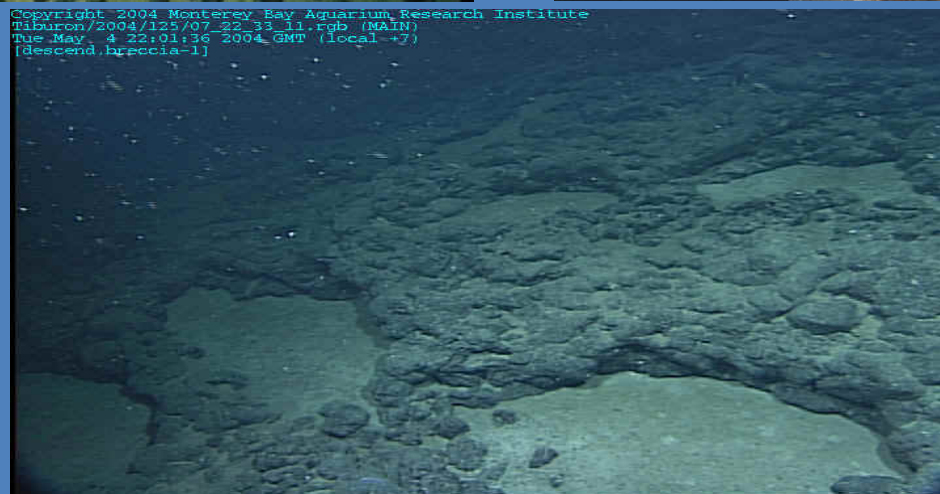
## II. ISA's distinctive features compared to other multilateral forums

1. Common Heritage of Mankind
2. Composition of the Council of the Authority
3. Private sector
4. Possibility for States to sponsor contractors
5. ISA seat in Jamaica
6. 47 out of the 55 member States of the African Union are member of the ISA

# III. ISA's mining code

1. The set of rules, regulations and procedures developed by the ISA to regulate the prospection, exploration and exploitation of seabed minerals in the Area
2. The mining code is part of a legal framework established by the UNCLOS and the 1994 Implementing Agreement
3. Resources: polymetallic nodules, polymetallic sulphides and cobalt-rich crusts
4. The code is not yet complete

# III. ISA's mining code



# IV. Path towards the ISA's exploitation mining code

- 2015 (ISA21): Assembly decision on first periodic review under Article 154 of UNCLOS
- 2016 (ISA22): interim report
- 2017 (ISA23):
  - final report and adoption of a decision of the Assembly of the ISA regarding the final report from the first periodic review of the international regime of the Zone, conducted pursuant to Article 154 of UNCLOS
  - publication by the secretariat of the ISA of a zero draft regulations on the exploitation of mineral resources in the Area

# V. Contribution of the African Group

- **August 2017:** publication of a zero draft exploitation regulations during the 23th ISA session
- **December 2017:** first written submission of the African Group
- **March 2018:** first meeting of the Council for the 24<sup>th</sup> ISA session
- **July 2018:** Second meeting of the Council for the 24<sup>th</sup> session of the ISA (two submissions by the African Group)
- **September 2018:** fourth written submission
- **February 2019:** first meeting of the Council for the 25<sup>th</sup> ISA session (comments delivered + proposal of a draft decision to extend and expand the mandate of the SG's Special Representative on the Enterprise)



# V. Contribution of the African Group

## December 2017

- Workshop held in New York in early December 2017, in collaboration with the African Center for Minerals Development
- End of December 2017, written submission of the African Group:  
[www.isa.org.jm/files/documents/EN/Regs/2017/MS/Algeria.pdf](http://www.isa.org.jm/files/documents/EN/Regs/2017/MS/Algeria.pdf)

## **African Group's comments and inputs on the Draft Regulations on Exploitation of Mineral Resources in the Area of the International Seabed Authority**

**December 2017**

### **Introduction**

After adopting and operationalising the various Regulations on Prospecting and Exploration of Polymetallic Nodules, Polymetallic Sulphides and Cobalt-rich Ferromanganese Crusts in the Area, the International Seabed Authority (ISA) has begun to develop the Exploitation Regulation, which has been described as the 'ultimate regulatory phase in developing the Common Heritage of Mankind.'<sup>1</sup> In August 2017 the Legal and Technical Commission (LTC) considered the "Draft Regulations on Exploitation of Mineral Resources in the Area", which had been prepared by the Secretariat building on the LTC's response to stakeholders comments on the working draft Exploitation Regulations issued in July 2016 and the outcomes of several technical workshops and seminars which were held between March to July 2017.<sup>2</sup>

The process of consideration of the draft Exploitation Regulations by the LTC is still ongoing and stakeholders have been invited to provide comments to the current version of the Draft Regulations, especially in response to six (6) general questions and seven (7) specific questions indicated in the Annex to Document ISBA/23/C/12.<sup>3</sup> At the ISA 23rd Annual Session, the African group had indicated that it needed some time to provide considered responses to the general and specific questions and other issues relevant to the current version Draft Exploitation Regulations to help the Secretariat and the LTC to determine whether the structure and content of the current draft Exploitation Regulations are adequate.

In framing the below responses to the questions in the Annex to Document ISBA/23/C/12 and additional comments regarding the draft regulations, the African group is guided by the United Nations Convention on the Law of the Sea (UNCLOS) 1982 and the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Agreement), especially the core principle of the Common Heritage of Mankind. Also, the African group in putting across its responses and comments is guided by its African Mining

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<sup>1</sup> <https://www.isa.org.jm/legal-instruments/ongoing-development-regulations->

# V. Contribution of the African Group

## December 2017

1. Structure of the draft exploitation regulations
2. Common Heritage of Mankind
3. Role of the Council of the Authority
4. Balance of powers between Member States and Secretariat
5. Respective responsibilities between ISA and the sponsoring states
6. Balance between transparency and confidentiality
7. Strengthening environmental aspects

# V. Contribution of the African Group

## March 2018

Council meeting at the **first part** of the ISA 24th session:

1. Payment mechanism
2. Role of sponsoring States
3. Environmental protection
4. Roles of the Council, the Secretary General and the Legal and Technical Commission of the ISA in the Exploitation Regulations
5. Role and legal status of standards, recommendations and guidelines

# V. Contribution of the African Group

## July 2018

Council meeting at the **second part** of the ISA  
24th session:

- Deliberations
- Written submission concerning the operationalization of the Enterprise
- Written submission regarding the economic model



الجمهورية الجزائرية الديمقراطية الشعبية  
PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

Permanent Mission of Algeria  
to the International Seabed Authority

البعثة الدبلوماسية الجزائرية  
لدى السلطة الدولية لاقاع البحار

MPANY/N° 04 /MR/18

The Permanent Mission of the People's Democratic Republic of Algeria to the International Seabed Authority presents its compliments to the Secretariat of the International Seabed Authority and, in its capacity as coordinator of the African Group, has the honor to request the submission of the paper, attached, to the Council for its consideration during the 24<sup>th</sup> session of the International Seabed Authority, in connection with the discussions under the Council's provisional agenda item 11 relating to the "Draft regulations for exploitation of mineral resources in the Area".

The Permanent Mission kindly requests that this note and its attachment be made available to the Member States of International Seabed Authority in advance of next meeting of the Council.

The Permanent Mission of the People's Democratic Republic of Algeria to the International Seabed Authority avails itself of this opportunity to renew the assurances of its highest consideration to the Secretariat of the International Seabed Authority.

New York, 6<sup>th</sup> July 2018



Secretariat of the International  
Seabed Authority  
Kingston (Jamaica)

326 East 48<sup>th</sup> street, New York, NY 10017 - Tel: 212 750 1960 Fax: 212 759 9538

(1) /Executive Summary

1. The African Group, representing 47 member States of the International Seabed Authority (the ISA), recognises the Enterprise as an essential component of the regime for seabed mineral activities in the Area envisioned by the UN Convention on the Law of the Sea (the Convention).
2. The African Group is concerned at the lack of progress made to date towards the commencement of the Enterprise as an independently functioning organ of the ISA, able directly to carry out activities in the Area.
3. The African Group finds that the convergence of four separate factors, elaborated below, make it timely for the Enterprise to be launched into a formal existence independent of the ISA's Secretariat, and requests the Council now to take action to operationalise the Enterprise.

(2) Status of the Enterprise

4. Article 170 and Annex IV of the Convention established the Enterprise as the organ of the ISA which, subject to the directives and control of the Council, is to carry out activities in the Area. The Enterprise is to be autonomous in the conduct of its operations, which are to be directed by a Governing Board composed of fifteen members acting in an independent, personal capacity, elected by the Assembly. The Enterprise will also have a Director-General as its Chief Executive Officer and legal representative.
5. The 1994 Agreement, adopting an 'evolutionary approach'<sup>1</sup>, provided for delayed commencement of the Enterprise stipulating that, in the immediate term:
  - a. the functions of the Enterprise are to be performed by the Secretariat of the ISA until such time as it begins to operate independently;
  - b. the Secretary-General will appoint an Interim Director-General from the staff of the ISA, to oversee specified functions listed in section 2(1) of the Annex to the 1994 Agreement;
  - c. the Enterprise shall conduct its initial deep seabed mining operations through joint ventures;
  - d. the Council must 'take up the issue of' the functioning of the Enterprise independently of the Secretariat of the ISA in the event of:
    - i. the approval of a plan of work for exploitation for an entity other than the Enterprise, or
    - ii. upon receipt by the Council of an application for a joint-venture operation with the Enterprise; and
  - e. if joint venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive providing for the Enterprise's independent functioning.



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Permanent Mission of Algeria  
to the International Seabed Authority

البعثة الجزائرية الدائمة  
لدى السلطة الدولية لاجاز البحر

MPANY/N° 05 /MR/18

The Permanent Mission of the People's Democratic Republic of Algeria to the International Seabed Authority presents its compliments to the Secretariat of the International Seabed Authority and, in its capacity as coordinator of the African Group, has the honor to request the submission of the paper, attached, dealing with the payment regime and other financial matters, to the Council for its consideration during the 24<sup>th</sup> session of the International Seabed Authority, in connection with the discussions under the Council's provisional agenda item 11 relating to the "Draft regulations for exploitation of mineral resources in the Area".

The Permanent Mission kindly requests that this note and its attachment be made available to the Member States of the Authority in advance of next meeting of the Council.

The Permanent Mission of the People's Democratic Republic of Algeria to the International Seabed Authority avails itself of this opportunity to renew the assurances of its highest consideration to the Secretariat of the International Seabed Authority.



New York, 9<sup>th</sup> July 2018

Secretariat of the International  
Seabed Authority  
Kingston (Jamaica)

326 East 48<sup>th</sup> street, New York, NY 10017 - Tel: 212 750 1960 Fax: 212 759 9538

## Request for consideration by the Council of the African Group's proposal on the Economic Model/Payment Regime and Other Financial Matters in the Draft Exploitation Regulations under review

### Acronyms

| Acronym                                | Definition   |
|--|--|
| Area                                   | The seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction   |
| Comments on the 2017 Draft Regulations | African Group's comments and inputs on the Draft Regulations on Exploitation of Mineral Resources in the Area of the International Seabed Authority, December 2017 |
| Commission                             | The Legal and Technical Commission of the Authority  |
| 2017 Draft Regulations                 | Draft Regulations on Exploitation of Mineral Resources in the Area, 8th August 2017  |
| Implementing Agreement                 | Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982                                     |
| ISA                                    | International Seabed Authority   |
| MIT                                    | Massachusetts Institute of Technology  |
| Regulations                            | Draft Regulations on Exploitation of Mineral Resources in the Area, 29 <sup>th</sup> May 2018  |
| Singapore Workshop                     | Deep Seabed Mining – Payment Regime Workshop (PRW) #3 Singapore, April 19-21, 2017   |
| UNCLOS                                 | United Nations Convention on the Law of the Sea  |

### Introduction

The African Group is committed to ensuring that deep-sea mining in the Area only occurs if it is demonstrably beneficial to mankind. Deep-sea mining will involve a process through which resources which are currently commonly owned by mankind are transferred through mining, transportation and metallurgical processing to private ownership. Mankind must be fairly compensated for the loss of resources to private ownership from the commencement of mining. The payment regime<sup>3</sup> is the mechanism for ensuring that the ISA fairly shares in the revenues and profits from deep-sea mining.

The ISA published the most recent draft of the Regulations in May 2018. The African Group would like to compliment the ISA on these Regulations, which are clearly drafted and represent a significant improvement on the 2017 Draft Regulations. The current draft of the Regulations also address some of the comments made by the African Group in its earlier Comments on the 2017 Draft Regulations.

The African Group is committed to providing further comments to strengthen the payment regime and ensure that deep-sea mining in the Area only occurs if it is beneficial to mankind. With this aim in mind, this Submission reviews the Regulations through three parts.

# V. Contribution of the African Group

## September 2018

African Group sub... x



### **African Group's submission to the International Seabed Authority**

#### **Comments on the revised draft regulations on exploitation of mineral resources in the Area**

**September 2018**

Algeria, on behalf of the African Group, refers to paragraph 8 of the statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session of the International Seabed Authority, contained in document ISBA/24/C/8/Add.1, regarding the agreement reached by Council members inviting Members and Observers of the Authority as well as other Stakeholders to submit their comments on the revised draft regulations on exploitation of mineral resources in the Area (ISBA/24/LTC/WP.1/Rev.1 and ISBA/24/C/20).

The African Group is pleased to respond to this invitation and hereby submit its comments on the revised draft regulations.

This submission is articulated around two sections. The first one deals with African Group's comments covering different parts of the revised draft regulations, and the second one focuses on transboundary harm to the marine environment of national jurisdiction.

#### **Section I**

This section deals with African Group's comments covering different parts of the revised draft regulations (DR). We have avoided getting into a drafting exercise.



# V. Contribution of the African Group

## February 2019

Council meeting at the **first part** of the ISA 24th session:

- Comments on the MIT comparative report and the report of the informal working group on the financial model
- Comments on the draft exploitation regulations
- Submission of a draft decision to extend and expand the mandate of the SG's Special Representative on the Enterprise

I have the honour to deliver this statement on behalf of the African Group.

As this is the first time the African Group is taking the floor under your presidency, we would like to express our pride to see you presiding over the Council in this historical 25<sup>th</sup> session of the International Seabed Authority (ISA). This session marks the quarter century anniversary of the ISA.

Like in 2018, this year, meetings of the Council will take place in two parts. This is happening while the Authority is at a milestone step as we move ahead with the development of the exploitation regulations. Needless to say that you will have the full support of the African Group in order to steer the Council towards a successful session.

**Madam President,**

Let me turn to the item under consideration. Before getting into the substance of the comparative report of MIT and the report of the informal open-ended working, the African Group would like to thank MIT for their work. We also thank your predecessor, Ambassador Olav Myklebust of Norway, both for the work he has done last year as Council President, and for having chaired last week the two-day meeting of the open-ended informal working group to discuss the financial model.

Like the chair of the informal working group stated in its briefing note dated 3 December 2018, we also believe that holding such a meeting was not an ideal scenario, and we add, especially for representatives from developing countries. Moreover, we wish to register our concern on the fact that the meeting was called relatively late, which prevented some of us to attend. However, we understand that it was for reasons beyond the chair's control. We believe that the idea of an informal working group was to work inter-sessionally; if it was to meet as late as last week, we think that it would have been more appropriate to meet in the course of this week. The whole

Link to statement on the Financial Model (1<sup>st</sup> part of ISA25): <http://bit.do/eSx4u>



# Council

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**Twenty-fifth session**  
**Council session, part I**  
**Kingston, 25 February–1 March 2019**  
**Agenda item 14**  
**Report on matters relating to the Enterprise**

## **Decision of the Council of the International Seabed Authority relating to the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise**

*The Council of the International Seabed Authority,*

*Recalling* the statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session,<sup>1</sup>

1. *Takes note* of the report of the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise on the proposal by the Government of Poland for a joint venture with the Enterprise;<sup>2</sup>

2. *Requests* the Secretary-General to extend the time frame for the negotiation of the draft proposal to form a joint venture and the development of a business proposal to facilitate the operation of the venture, parts of which have been agreed upon *ad referendum*, with a view to the finalization of the proposal in a timely manner and taking into consideration the expectation of the Council to have a full proposal on its agenda in 2019;

Link to decision: <http://bit.do/eSyp4>

# V. Contribution of the African Group

## The Way forward

- Next Africa Group's coordination: a two day workshop, on 3 and 4 June 2019, in New York
- Upcoming African Group's engagement in the ISA: second part of the 25<sup>th</sup> session, 15-26 July 2019, in Kingston

# Conclusion



**Thank you**  
**Dankie/Siyabonga/Reyalebuha**  
**Obrigado**

