

**INFORMATION NOTE BY THE SECRETARIAT OF THE INTERNATIONAL  
SEABED AUTHORITY ON THE RELEVANCE OF THE ROLE AND MANDATE  
OF THE AUTHORITY UNDER UNCLOS AND THE 1994 AGREEMENT IN THE  
CONTEXT OF THE REVISED DRAFT OF AN IMPLEMENTING AGREEMENT  
UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF  
MARINE BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL  
JURISDICTION**

**RESUMED FIFTH SESSION OF THE INTERGOVERNMENTAL CONFERENCE**

**20 FEBRUARY - 3 MARCH 2023**

**Introduction**

1. In its [resolution 72/249 of 24 December 2017](#), the UNGA decided to convene an Intergovernmental Conference (IGC) to conclude an international legally binding instrument (ILBI) under the United Nations Convention on the Law of Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The implementing agreement shall address, together and as a whole, four elements of a package deal agreed in 2011, namely marine genetic resources (MGRs), including questions on the sharing of benefits (BS); measures such as area-based management tools (AMBTs), including marine protected areas (MPAs); environmental impact assessments (EIAs); and capacity-building and the transfer of marine technology (CB&TT). The UNGA resolution explicitly states that the ILBI and the outcome of the IGC must not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

2. The International Seabed Authority (ISA) was established under UNCLOS and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (the 1994 Agreement) as the organization through which States parties to UNCLOS organize and control all mineral-resources-related activities in the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area) for the benefit of humankind as a whole. The mandate of ISA under UNCLOS and the 1994 Agreement, particularly with respect to regulation of all activities in the Area, is exclusive and universal. No activity in the Area shall be permitted except in accordance with UNCLOS, the 1994 Agreement and the rules, regulations and procedures of ISA.

[At its 24<sup>th</sup> Session](#), the Assembly of ISA expressed support for the involvement of ISA in the negotiation of ILBI with a view to ensure that the perspective of ISA and its mandate are taken duly into account in the negotiations. [At the 25<sup>th</sup> session of the Assembly](#), having expressed appreciation for the ISA participation in the IGC, several delegations also emphasised that the mandate of ISA should not be undermined by the negotiations, and encourage ISA to continue its engagement in forthcoming sessions of IGC.

3. Based on the further refreshed draft text (FRDT) [A/CONF.232/2023/2](#) issued by the President of the IGC – the aim of this brief is to highlight the relevance of its key provisions for ISA, the possible contribution of ISA to their implementation, and their potential overlaps or conflicts with ISA’s role and mandate.

## **Cross-cutting issues**

4. As for cross cutting issues, neither Article 1(7) on the use of terms nor Article 4 on the relationship between the FRDT, UNCLOS and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, include any reference to the 1994 Agreement. Without such a reference, it is possible that the ILBI could be misinterpreted. According to the Agreement, Part XI of UNCLOS and the 1994 Agreement are to be interpreted and applied as a single instrument. In the event of any inconsistency between the 1994 Agreement and Part XI, the provisions of the 1994 Agreement shall prevail. Even though, by necessity, the provisions of Article 2(1) of the 1994 Agreement are binding upon those 151 States that are party to it (as well as any States that may become party in the future), it is suggested that a specific reference to the 1994 Agreement in Article 1(7) of the FRDT would support the objective of universal participation in the single regime created by Part XI of UNCLOS and the 1994 Agreement and avoid any possibility of lack of legal certainty in the interpretation and application of the ILBI.

5. There are two possible opportunities to achieve this objective

(a) By adding in article 4(1) a reference to the 1994 Agreement in the following terms: “This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, without prejudice to the rights, jurisdiction and duties of States under the Convention, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles.”

(b) Alternatively, within the text of the definition of UNCLOS found in article 1, as follows: “‘Convention’ means the United Nations Convention on the Law of the Sea of 10 December 1982 and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982”.

This will ensure that the ILBI is interpreted and applied in a manner that is fully consistent with UNCLOS, including its Part XI relating to the Area. Such legal consistency not only avoids undermining ISA’s mandate, processes and work, but also respects the rights of States in relation to the Area and its resources, as set out in Part XI, since those rights are to be exercised only in accordance with Part XI of UNCLOS and the 1994 Agreement.

## **Marine Genetic Resources & Benefit Sharing**

6. With respect to Part II of the FRDT on MGR&BS, Article 11 (Fair and equitable sharing of benefits) of the draft was widely discussed by delegations in the last meeting of the IGC, with divergences along developing/developed country lines. While the inclusion of paragraph 2 on non-monetary benefits gained traction, paragraph 5 on non-monetary benefits remains still open for discussion.

7. For its part, ISA shall provide for the equitable sharing of both monetary and non-monetary benefits (referred to as other economic benefits) derived from activities in the Area through any appropriate mechanism. A number of non-monetary benefits are recognized already and are being provided through ISA even during the exploration phase, including the fact that the regime ensures the protection and preservation of the marine environment, capacity building activities, increased knowledge of the marine environment and increased availability

of marine technology. Many of these are also mentioned in the non-exhaustive list contained in Article 11 of the FRDT .

8. With a view to implementing its mandate under UNCLOS and the 1994 Agreement, since 2019, ISA has taken up the matter of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area. In this context, the Secretariat issued a [report](#), a [technical study](#), and a [briefing note for policymakers](#). The Finance Committee issued reports on the matter in 2019, 2020 and 2021, which were considered by the Assembly, and has this matter on its agenda for 2023 and 2024.

9. The work done by ISA in these years is relevant for the discussions on Article 11 and could help in advancing the negotiations by offering practical suggestions and solutions. In particular, ISA has developed alternative approaches and formulae for the fair and equitable allocation of revenues from future activities in the Area, as well as a proposal to establish a Seabed Sustainability Fund (SSF), the objective of which would be to invest in knowledge, study of the deep ocean and its environment, protection of marine biodiversity, and capacity development.

10. Biodiversity conservation and sustainable use in marine areas beyond national jurisdiction (ABNJ) is well known to be underprovided. The SSF under consideration by ISA, could provide a vehicle for achieving the objectives of Part V of the FRDT on Capacity Building and could also allow for financing projects to meet the specific needs of developing countries and for co-financing projects proposed by the actors involved in the sustainable use of the oceans for the benefit of the present and future generations.

11. Moreover, as ISA is the global repository of data and information relating to the Area and its environment, it could be designated as a catalyst for the collaborative research which is among the objectives of Part II of the FRDT.

12. During IGC-5, on Article 11 bis (Access and benefit sharing mechanism), there was general support for the establishment of a BS mechanism, but opinions diverged on its functions. While ISA is not competent to regulate access to MGRs, it is nonetheless worth recalling that the collection of genetic material is also carried out by contractors in their exploration activities pursuant to the obligations set out in the [ISA exploration regulations](#) and the associated [Recommendations for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area](#). Through the Sustainable Sea Knowledge Initiative, ISA is increasing the knowledge on deep-sea biodiversity and production of biogeographic and phylogeographic maps to assess evolutionary history, connectivity, and resilience of deep-sea ecosystems, and plans the goal of describing one thousand new species from our oceans.

13. This should be considered when negotiating the relevant BBNJ provisions, especially because it is sometimes hard, if not practically impossible, to distinguish between marine scientific research, including bioprospecting, and prospecting and exploration for minerals.

14. ISA could well contribute to the attainment of most of the objectives referred to in Article 7 of the FRDT, including the generation of knowledge of, and the development and transfer of marine technology relevant to the conservation and sustainable use of biological diversity in areas beyond national jurisdiction.

## **Area-Based Management Tools including Marine Protected Areas**

15. Part III of the FRDT deals with ABMTs, including MPAs in ABNJ. The objectives set out in Part III are already part of ISA's mandate with respect to the Area. The experience of ISA over more than 20 years has shown that ABMTs are best developed by the body that has the specialized competence for this purpose, which – as far as the Area is concerned – is ISA. Measures that duplicate, overlap or conflict with those taken pursuant to Part XI and the 1994 Agreement could undermine the careful balance of competences prescribed by UNCLOS.

16. With peculiar regard to Article 17, in 2012, using the competences assigned to it under article 162 of UNCLOS, the ISA Council adopted the [first regional-scale environmental management plan for the Clarion-Clipperton Zone](#) and identified 9 Areas of Particular Environmental Interest (APEIs), on the basis of a science-based process that led to a recommendation by the Legal and Technical Commission of ISA, as the body empowered to make such a recommendation. In December 2021, following a comprehensive and transparent science-based review process, [four additional APEIs were approved](#). The APEIs represent the largest network of ABMTs established in ABNJ and are a significant contribution to the objectives as set out in Article 14 of the draft text. Other REMPs and related ABMTs in other key regions are under development for [other priority areas identified by the Council](#). The priority regions identified for the development of additional REMPs are the Mid-Atlantic Ridge, Northwest Pacific, and Indian Ocean.

17. The Legal and Technical Commission has also been requested by the Council to develop standardized approaches to REMP development, approval and review, including a standardized procedure for the development of REMPs.

18. In summary, ISA has a vast experience in developing, implementing and reviewing REMPs and putting in place networks of APEIs through regional-scale environmental planning and management. The scientific knowledge and data gathered through the REMP process constitute a valuable source of information that could support evidence-based decision making and monitoring of ABMTs.

19. ISA's experiences with REMPs also demonstrate that to establish ABMTs and manage them effectively, there is a need for highly specialised knowledge on the marine environment as well as the potential impacts that may arise from activities and technologies at local, regional and global scales. Competent international organizations are best placed to acquire and apply that knowledge. Indeed, ISA is equipped with its own procedures for the creation of ABMTs which – depending on the degree of coordination resulting from the provisions contained in Article 19 under negotiation – might overlap or conflict with those foreseen under the BBNJ agreement.

20. Therefore, it is important that the future BBNJ agreement, in particular the coordination mechanism envisaged for ABMTs under Article 19 of the draft text, complement existing collective efforts to establish and manage AMBTs in the Area, rather than duplicating or undermining such efforts.

## Environmental Impact Assessments

21. Part IV of the FRDT lays down the general objectives and procedures for the conduct of EIAs in marine areas beyond national jurisdiction; as well as aims at supporting the assessments made by States in areas within national jurisdiction.

22. These objectives touch upon two relevant sections of UNCLOS. For one part, provisions aimed at activities under the jurisdiction or control of States relate to the situation foreseen by Article 206 of UNCLOS (Assessment of potential effects of activities). As far as the purposes are “support the consideration”, ‘provide for strategic’ EIA, and ‘build and strengthen the capacity of developing states’, there is coherence with UNCLOS. On the other hand, when referring to the operationalization of ‘the provision of the Convention on environmental impact assessment for areas beyond national jurisdiction”, or the purpose of ‘achieve a coherent environmental impact assessment framework’ for ABNJ, those draft provisions of Part IV could directly conflict with the special regime provided for in UNCLOS and the 1994 Agreement.

23. Part XI and Annex III of UNCLOS create a regime of universal application when it comes to the protection of the marine environment of the Area. Under Article 145 UNCLOS, ISA shall adopt appropriate rules, regulations and procedures for *inter alia*, the prevention, reduction and control of pollution and other hazards to the marine environment, and the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

24. Under Article 165(2)(d) and (e) of UNCLOS, the ISA Legal and Technical Commission is empowered to prepare assessments of the environmental implications of activities in the Area and make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts.

25. The 1994 Agreement reaffirms those responsibilities by stating that between the entry into force of UNCLOS and the approval of the first plan of work for exploitation, ISA shall concentrate on, *inter alia*, the “*adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment*”.

26. ISA has hence developed a comprehensive regime for EIA for activities in the Area. For the exploration phase, there are in place substantive provisions, regulations and [recommendations](#) related to the assessment of possible environmental impacts, which define the sort of activities that require EIAs, the form and content of such EIAs when required, as well as guidance on baseline studies, monitoring and reporting, including on the impact on marine biodiversity on the seabed as well as in the water column above it. ISA has also developed a global database, through which all environmental data collected by ISA contractors are made available to the public. ISA is in the process of developing draft regulations to govern exploitation of mineral resources in the Area, which includes detailed provisions relating to EIA. Contractors would also be required to prepare an Environmental Management and Monitoring Plan, which would be based on the EIA and EIS.

27. ISA has over 25 years' experience in developing and implementing rules, regulations and procedures to ensure effective protection of the marine environment, including the assessment and management of the environmental effects of activities in the Area. This is an area where there already exists a comprehensive legal framework at the international level as

well as carefully elaborated institutional arrangements that reflect the delicate balance of interests between all States in the Area.

28. In view of the above, it is paramount that the ILBI recognises the mandate and practices of ISA with respect to EIA in ABNJ, and do not duplicate or undermine such existing practices.

### **Capacity-building and the Transfer of marine technology**

29. Part V of the FRDT deals with CB&TT. Article 42 sets the objectives pursued under the section on CB&TT. In particular, the provisions on CB&TT aim at assisting States Parties to protect and preserve marine biodiversity with a view to ensure its conservation and sustainable use; generating knowledge through marine scientific research; developing and transferring marine technology; as well as ensuring the fair and equitable distribution of the economic and other benefits. The objectives referred to partially overlap with those set out for the ISA in Articles 144 and 274 UNCLOS, section 5 of the 1994 Agreement, the [ISA Strategic Plan](#) (SD 5 and 6), the [ISA Action Plan in support of the UN Decade](#) (SRP6) and the [ISA Capacity Development Strategy](#). Indeed, the ISA has the duty to design and implement mechanisms to build capacity for developing countries which promote and encourage the transfer of technology to developing States and expand opportunities for their participation in activities in the Area.

30. In this perspective, the Contractors' Training Programme, the ISA Partnership Fund, the internship programme, the Abyssal Initiative for Blue Growth, the Africa Deep Seabed Resources project, the Secretary-General's Award for Excellence in Deep-Sea Research, the Women in Deep-Sea Research project to mention some, already encompass many objectives set out in Part V of the FRDT.

31. The content of Article 43 of the FRDT partially overlaps with the role and mandate attributed to ISA, including under Article 273 UNCLOS. Indeed, with a view to effectively implement its mandate related to CB&TT, ISA already relies on active cooperation with global and regional stakeholders.

32. During IGC-5, on Article 44 (Modalities for CB&TT), the debate mostly evolved around whether the CB&TT should be needs driven or country driven, with the first option prevailing and finally reflected in the FRDT. It is worth mentioning that the needs assessment encouraged under Article 44 of the FRDT has also been conducted by ISA for its capacity development programmes, to ensure that they align with and address the necessities of developing States as identified by them. Building on this, national focal points for capacity development matters are nominated by ISA Members (as of January 2023, they were 53) to work closely with the ISA Secretariat to implement CD activities.

33. In the light of its role and mandate under UNCLOS, and taking into account the capacity development programmes and strategy it has developed, ISA can contribute to the achievement of the objectives set out in Part V of the BBNJ Agreement including by:

(a) Supporting developing States to carry out marine scientific research necessary to the conservation and sustainable use of biological diversity in ABNJ (in line with article 42 of the FRDT);

(b) Providing technical support to developing countries to conduct activities in the Area to ensure that the best scientific evidence, knowledge and practices are applied for the

effective conservation and sustainable use of marine biological diversity (in line with Article 42 of the FRDT);

(c) Fostering cooperation and partnership necessary to fulfill the common CB&TT objectives, including through the identification of new partners on a regional and global level (in line with article 43 of the FRDT);

(d) Contributing to the needs assessments necessary for effective CB&TT and sharing lessons learned in almost 30 years of activity in this field (in the spirit of Article 44 of the FRDT);

(e) Empowering women in deep-sea science to ensure that gender-responsive CB&TT activities for the conservation and sustainable use of biological diversity in areas beyond national jurisdiction are realized (in accordance with Article 44 of the FRDT);

(f) Developing and strengthening human resources and technical expertise through education and training in the field of conservation and sustainable use of ocean resources (in line with article 46 of the FRDT);

(g) Developing and strengthening the institutional capacity and regulatory frameworks of developing Member States in all the areas of its mandate as well providing, sharing and disseminating data, information and knowledge relevant to the enhancement of the capacities of developing States to conserve and sustainably use biological diversity in ABNJ (in accordance with article 46 of the FRDT);

(h) Raising awareness, reviewing and monitoring CB&TT activities it conducts to maximize their efficiency and avoiding duplications.

## **Conclusions**

34. ISA, as one of the three institutions established by UNCLOS, and given its specialized mandate over activities in the Area, will contribute to any collective effort aimed to foster the implementation, development and achievement of the objectives set forth in it, mindful that the legal framework of UNCLOS and the 1994 Agreement is respected and reinforced and that the mandates of the institutions created for its implementation are strengthened and not duplicated.

35. UNCLOS sets out in Part XII and Part XI comprehensive provisions that already encompass the conservation and sustainable use of marine biological diversity. In the case of the Area, ISA's mandate, consistent with Part XII, includes to take measures for the protection of the marine environment as a whole, including measures to protect organisms that are not only found in the Area. So, for example, under Article 145, ISA must take measures to prevent damage to the flora and fauna of the marine environment, as well as measures to prevent, reduce and control interference with the ecological balance of the marine environment.

36. Therefore, it is essential, that in the haste to seek to manage particular components of the marine environment, we do not overlook or undermine the existing provisions of UNCLOS, and that we fully respect the rights and jurisdictions carefully elaborated in UNCLOS. This includes the need to be fully consistent and respect the rights of States in relation to the Area and its resources, as set out in UNCLOS and the 1994 Agreement, since those rights are to be exercised only in accordance with Part XI and the 1994 Agreement. In particular, we should

recall the provisions of Article 311(6) which provides that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136.

37. In view of the applicable legal framework under UNCLOS and the 1994 Agreement, ISA recalls its specialized mandate and the contribution that it can make to marine scientific research, protection of the marine environment, Area-Based Management Tools including Marine Protected Areas, environmental impact assessment, benefit sharing, transfer of technology and capacity-building.