



## Assembly

27 June 2023

English only

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**Twenty-eighth session**  
Kingston, 24-28 July 2023

### **Supplementary list of agenda items for the twenty-eighth session of the Assembly**

1. In accordance with rule 11 of the [Rules of Procedure of the Assembly](#), the Secretary-General of the International Seabed Authority has the honour to communicate a supplementary list of agenda items for the twenty-eighth session of the Assembly containing proposals received from members of the Assembly as follows:

a. A proposal received on 20 June 2023 from the Permanent Mission of the Federal Republic of Germany to the International Seabed Authority for the inclusion of the following additional item to the provisional agenda of the Assembly ***“Terms of reference for the periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea”***.

b. A joint proposal received on 23 June 2023 from the Permanent Mission of the Republic of Chile, the Republic of France, the Republic of Palau and the Republic of Vanuatu for the inclusion of the following additional item to the provisional agenda of the Assembly ***“Establishment of a general policy by the Assembly related to the conservation of the marine environment, including in consideration of the effects of the ‘two-year rule’”***

2. Both proposals are Annexed to the present note.

## **Annex I**

### **Note verbale dated 20 June 2023 from the Permanent Mission of the Federal Republic of Germany to the International Seabed Authority**

The Permanent Mission of the Federal Republic of Germany to the International Seabed Authority presents its compliments to the International Seabed Authority in Kingston and has the honour to forward a letter from the Federal Ministry for Economic Affairs and Climate Action dated June 16, 2023 regarding a supplementary agenda item for the Assembly of the 28th Session of the International Seabed Authority with an explanatory memorandum and a draft resolution in accordance with Rule 17 of the Rules of Procedure for the Assembly.

The Permanent Mission of the Federal Republic of Germany to the International Seabed Authority avails itself of this opportunity to renew to the International Seabed Authority the assurances of its highest consideration.

## **Enclosure I**

### **Letter dated 16 June 2023 from the Federal Ministry for Economic Affairs and Climate Action to the International Seabed Authority**

#### **Supplementary agenda item for the Assembly of the 28th Session of the International Seabed Authority**

In view of the upcoming Assembly of the 28th Session of the International Seabed Authority, the Federal Government requests the inclusion of the following supplementary item in the agenda in accordance with Rule 11 of the Rules of Procedure of the Assembly:

*“Terms of reference for the periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea.”*

Please find attached an explanatory memorandum and a draft resolution in accordance with Rule 17 of the Rules of Procedure for the Assembly.

**Clemens Wackernagel**

## Enclosure II

### **Explanatory Memorandum and Draft Resolution (Pursuant to Rule 17 of the Rules of Procedure of the Assembly)**

Germany requests the inclusion of the following supplementary item in the agenda of the Assembly for the 28th session in July 2023: “Terms of reference for the periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea”.

Article 154 of the Convention provides as follows: *“Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the Area established in this Convention has operated in practice. In the light of this review the Assembly may take, or recommend that other organs take, measures in accordance with the provisions and procedures of this Part and the Annexes relating thereto which will lead to the improvement of the operation of the regime.”*

The last periodic review of the Authority, which was the first of its kind, concluded in 2017. It resulted in some notable improvements such as the development of the Authority’s Strategic Plan, the enhancement of the Authority’s data management strategy, and the birth of Authority’s database or “DeepData”.

As Article 154 of the Convention legally requires the Authority to conduct a review every five years, it is proposed that the Assembly adopt a decision at its 28th session to commence the second review process.

To conduct the review, the methodology that was adopted by the Assembly for the first periodic review could be replicated (see document ISBA/21/A/9/Rev.1).

As before, a review committee comprising the President and the Bureau of the Assembly, the President of the Council, and with the coordinators of the regional groups who may also participate as observers, should oversee the process.

The initial review should be carried out by consultants appointed by the review committee, who should meet with the review committee to determine the scope of the review and carry out the review under the close supervision of the latter. The consultants should prepare an interim report, which the review committee should comment on and invite comments from the Secretariat and subsidiary organs of the Authority.

Thereafter, these documents should be made public and the interim report should be debated at the Assembly. The process should be open for written comments from member states, observers and stakeholders. The consultants should then prepare a revised interim report. Bearing in mind the outcomes and findings thereof, the review committee should prepare a final report with recommendations for the Assembly to consider with a view of approving and implementing at its following session.

The terms of reference for this second periodic review should replicate the first review, with the addition of a term to assess the implementation of the recommendations of the previous review.

A draft resolution to the above effect is enclosed for the consideration of the Assembly.

## Enclosure III

### **Draft Decision of the Assembly regarding the second periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea**

*The Assembly of the International Seabed Authority,*

*Recalling* that article 154, part XI, of the United Nations Convention on the Law of the Sea provides:

Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the Area established in this Convention has operated in practice. In the light of this review the Assembly may take, or recommend that other organs take, measures in accordance with the provisions and procedures of this part and the annexes relating thereto which will lead to the improvement of the operation of the regime.

*Having regard* for the first periodic review of the Authority pursuant to article 154 of the Convention that was completed in 2017.

*Fully appreciative* of the outcomes of that first periodic review that undoubtedly led to improvement in the effectiveness of the Authority and its organs in carrying out their respective functions.

*Conscious* that a second periodic review under article 154 of the Convention is timely and would undoubtedly lead to further improvements in the operation of the regime and enhance the effectiveness of the Authority.

1. *Decides* to undertake, pursuant to article 154 of the Convention, a general and systematic review of the manner in which the international regime of the Area has operated in practice;
2. *Also decides* that, like the first periodic review, this second periodic review shall similarly be carried out under the oversight of a review committee comprising the President and the Bureau of the Assembly, the President of the Council, with the current President of the Assembly remaining a member of the Committee until the completion of the review, and that the Chairs of the regional groups may also participate as observers in the review committee;
3. *Further decides* that the review shall be conducted by consultants appointed by the review committee, based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the Authority;
4. *Decides* that the review committee shall meet with the consultants and decide on the scope of the report prior to its drafting; the Committee shall thereafter monitor the progress of work and present an interim report, including comments by the Secretariat, the Legal and Technical Commission and the Finance Committee of the International Seabed Authority, for consideration by the Assembly at its twenty-ninth session in 2024;

5. *Also decides* that the final report, including any draft recommendations designed to improve the operation of the regime, shall be presented by the review committee to the Assembly at its thirtieth session in 2025;

6. *Further decides* that the terms of reference for the review shall be those contained in the annex to the present decision;

7. *Requests* the Secretary-General to provide the necessary and appropriate administrative and logistical support to the review committee and to circulate copies of the final report to all member States of the Authority at least three months in advance of the thirtieth session.

## Enclosure IV

### **Terms of reference for the first periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea**

1. The International Seabed Authority is an autonomous international organization established under the United Nations Convention on the Law of the Sea 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. The Authority is the organization through which States parties to the Convention are required, in accordance with the Convention, to organize and control activities in the Area, particularly with a view to administering the resources of the Area.

2. Under article 154 of the Convention, the Assembly of the Authority is required, every five years from the date of entry into force of the Convention, to undertake a general and systematic review of the manner in which the international regime of the Area established in the Convention has operated in practice. The purpose of article 154 is to allow the Assembly to take, or recommend that other organs take, measures, in the light of experience and the changing circumstances of the Authority's existence, that will lead to the improvement of the operation of the regime.

3. The Assembly intends to conduct a periodic review under article 154 at its thirtieth session in 2024. A comprehensive report is to be prepared according to the following terms of reference.

4. The report shall include a review of the manner in which the various organs and subsidiary organs of the Authority have operated in practice and of whether they have effectively performed the functions stipulated in paragraph 5 of section 1 of the annex to the 1994 Agreement. In particular, the report shall include:

- (a) A review of the level of representation and attendance of members of the Authority at its regular annual sessions;
- (b) An analysis of the performance of the Assembly as the supreme organ of the Authority in establishing general policies and in the exercise of its additional powers and functions pursuant to article 160, paragraph 2, of the Convention;
- (c) An analysis of the performance of the Council as the executive organ of the Authority in establishing specific policies to be pursued by the Authority on any question or matter within the competence of the Authority and in the exercise of its additional powers and functions pursuant to article 162, paragraph 2, of the Convention;
- (d) A review of the structure of the secretariat and of the performance of its functions as referred to in subsection D of section 4 of part XI of the Convention and paragraph 5 of section 1 of the annex to the 1994 Agreement, including its performance of the functions of the Enterprise pursuant to section 2 of the annex to the 1994 Agreement;
- (e) A review of the performance, level of representation and attendance of members of the subsidiary organs of the Authority, an analysis of their current and projected workload and the identification of measures that may lead to an improvement of their operations; and
- (f) A review of the implementation of the recommendations of the previous periodic review.

## **Annex II**

### **Note verbale dated 23 June 2023 from the Permanent Mission of the Republic of Chile to the International Seabed Authority**

The Permanent Mission of the Republic of Chile to the International Seabed Authority presents its compliments to the Secretariat of the International Seabed Authority and has the honour to enclose a proposal for a new Assembly agenda item, to the 28th period of the Assembly Session taking place on 24-28 July 2023.

The Permanent Mission of the Republic of Chile to the International Seabed Authority avails itself of this opportunity to renew to the Secretariat of the International Seabed Authority, the assurances of its highest considerations.



## Enclosure I

### **Proposal of the Republic of Chile, the Republic of France, the Republic of Palau, and the Republic of Vanuatu on a new agenda item to be incorporated at the twenty-eighth session, Kingston, 24-28 July 2023**

Title: *"Establishment of a general policy by the Assembly related to the conservation of the marine environment, including in consideration of the effects of the 'two-year rule'"*

Rationale: The "two-year rule", triggered under section 1(15), subparagraph (c) of the Annex to the Agreement of 1994 relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, has raised significant challenges for the functioning of the Authority and the actions that can take place under its mandates.

In response to the concerns raised by many member States during the 27th and 28th sessions, the Authority must analyze the effects of such actions, and potentially adopt measures and policies. This requires a transparent and well-informed consideration of the potential consequences of the "two-year rule" in the marine environment, and in the context of a faithful implementation of article 145 of the Convention, which mandates to adopt all necessary measures to ensure the effective protection of the marine environment against the harmful effects that may result from the activities in the Area.

The two-year rule and its potential consequences is also relevant for considering how the work under the Authority can contribute to (and not undermine) the principles governing the area and the objectives of other internationally agreed frameworks, such as the Paris Agreement and the Kunming-Montreal Biodiversity Framework.

It is clear that the Council nor the Assembly, have not had enough time to consider this issue and act accordingly.

Therefore, Chile on behalf of the proponents, presents a proposal of a new agenda item for the upcoming Assembly meeting, in order to address this issue and adopt the necessary measures and/or decisions, following the standard decision-making process as established in Section 3 of the Agreement.

In order to contribute to the consideration of this issue, a draft decision is enclosed, for consideration of the Assembly.

## Enclosure II

### **Draft decision that establishes as part of the Authority's general policies a precautionary recess of exploitation activities in the zone**

*The Assembly of the International Seabed Authority,*

*Bearing in mind* the invocation of paragraph 15 (c) of section 1, of the Annex to the Agreement relating to the Implementation of Part XI (Agreement) of the United Nations Convention on the Law of the Sea of 10 December 1982 (Convention) by the Republic of Nauru in June 2021, with an effective date of 9 July 2021,

*Noting* with appreciation the informal intersessional dialogue on paragraph 15 co-facilitated by Ambassador Hugo Verbist (Belgium) and Mr. Tan Soo Tet (Singapore), as well as the webinars held on March 8, 2023, and May 30, 2023, and the Briefing Note of the facilitators to the Council identifying areas of commonality and consensus based on the views expressed during the dialogue, as well as issues and questions on which divergences in views remain,

*Conscious* that the prescribed time under subparagraph (b) of paragraph 15 expired on 9 July 2023, and the appropriate rules, regulations and procedures (RRPs) have not been adopted by the Council,

*Reaffirming* its commitment to the completion of the adoption of the RRP's relating to exploitation in accordance with the Convention and the Agreement,

*Considering* that the Council is currently discussing the Regulations for the Exploitation of Mineral Resources in the Area, without having yet finalized its elaboration, and that negotiations were disrupted by a force majeure scenario due the COVID-19 outbreak,

*Recalling* that, pursuant to Article 145 of the Convention, necessary measures shall be taken in accordance with the Convention regarding activities in the Area to ensure effective protection of the marine environment from harmful effects which may arise from such activities and, that to this end, the Authority shall exercise control as necessary to comply with the provisions of Part XI and the corresponding annexes,

*Recalling* United Nations General Assembly Resolution 2749 (XXV) of 17 December 1970 on the Declaration of Principles Governing the Seabed and Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction, especially its numeral 11,

*Recalling* also, the responsibility of all States Parties to fulfil in good faith the obligations they have undertaken under the Convention, and especially those under Part XI, in order to secure to each of them the rights and benefits arising from their status as such, and the duty to cooperate between them to protect the marine environment,

*Bearing in mind* that the Area and its resources are the Common Heritage of Mankind,

*Recalling* that the Assembly, the highest body of the Authority, is competent to establish the General Policies with respect to activities in the Area, in accordance with Article 160 of the Convention, and that in accordance with Article 150 of the Convention, the purpose of the Policies relating to activities in the Area is, among

others, to ensure the orderly, safe and rational management of the resources of the Area in accordance with sound conservation principles,

*Recognizing* that the General Policies on activities in the Area must be consistent and coherent with existing international environmental principles and instruments, especially in the application of the Precautionary Approach/Principle in such activities, in line with a harmonious and systematic interpretation between these and Part XI, in view of the evolving nature of international law,

*Recognizing* that, due to the current lack of enough scientific knowledge, it is impossible to assess the extent of the harmful effects on the marine environment that may eventually arise from exploitation activities in the Area, and therefore, such activities should not be carried out in absence of the necessary RRP's,

1. Decides, in collaboration with the work undertaken by the Council, as a General Policy of the Authority, that the Authority will not approve exploitation work plans, until all rules, regulations and procedures are approved and adopted, fulfilling the provisions of Article 6 of Annex II of the Convention, including those on operational requirements, financial contributions and the undertaking concerning the transfer of technology, among other relevant provisions of the Convention and the Agreement of Part XI.