



Briefing to the International Seabed Authority for the 24th Session

16-27 July 2018

Executive Summary

Transparency

The International Seabed Authority (ISA) needs to become much more transparent in its working methods. This includes making all information relevant to the potential or actual impact of mining activities on the environment publicly available and open to review including environmental baseline information collected by contractors, environmental impact assessments (EIAs) and monitoring plans under the exploration regulations and exploitation regulations, exploration and exploitation contracts, issues related to compliance with and possible breach of the regulations, open meetings of the Legal and Technical Commission (LTC), and the provision of detailed reports of LTC meetings including an explanation of the deliberations and rationale behind recommendations made by the LTC to the Council.

Regional Environmental Management Plans

No mining should be allowed in a region until a REMP is adopted for that region. REMPs should be legally binding and fully integrated into the regulations, thus requiring contractors to comply with REMPs. The process for developing and approving REMPs needs to be clarified. A systematic, transparent and scientifically robust strategy should lay out how the ISA proceeds from workshops to a final plan, who will be involved at what stages, what information is needed, who will have opportunities to provide input and review, and how the REMPs will be approved and adopted. Moreover, States should postpone applications for exploration and/or the LTC and Council should suspend approval of plans of work for exploration for the Mid-Atlantic Ridge, the western Indian Ocean ridges, the western Pacific seamount area and other relevant areas until after REMPs are adopted in these regions.

Environmental Impact Assessments

The EIAs should be subject to substantive independent, as well as procedural, review of overall impact of the proposed activities on the marine environment, any possible harm, and applicable mitigation measures. The ISA and sponsoring states should publish EIAs, as has recently been done for the EIAs submitted to the ISA by Belgian contractor Global Sea Mineral Resources NV (GSR) and the German Federal Institute for Geosciences and Natural Resources (BGR) for the testing of mining equipment in 2019. The EIAs should be open for public comment and input.

Strategic Plan

The revised draft Strategic Plan is a considerable improvement on the initial draft plan. However, while paragraph 25 on transparency includes transparency in “the internal administration of the Authority, as well as its internal procedures, the procedures of its various organs and subsidiary bodies and its procedures towards States”, this is not implemented in the Strategic Plan. Strategic Direction 3.3 is only to “[e]nsure public access to environmental information.” It should instead read “3.3. Ensure public access to environmental information, participation by stakeholders in decision-making and in review and judicial matters.” Strategic Direction 3.4 should read, taking into account Article 145 of the Convention, “Prevent, reduce and control pollution and other hazards to the marine environment, interference with the ecological balance of the marine environment, and prevent damage to the flora and fauna of the marine environment, including through developing appropriate regulations, procedures, monitoring programmes and methodologies.”

Need for Public Debate about Seabed Mining

The [joint submission](#) to the ISA Strategic Plan signed by 45 NGOs noted that the Sustainable Development Goals (SDGs), and in particular SDG 12 “Ensure sustainable consumption and production patterns”, and SDG 14 “Conserve and sustainably use the oceans, seas and marine resources”, set the global frame for rethinking our economy. Unless we stop and recalibrate, we risk significant biodiversity loss and the degradation of deep ocean ecosystems which play a vital role in the health of our planet, for an obsolete dream of boundless growth. Article 145 of the Law of the Sea Convention clearly requires measures to ensure effective protection for the marine environment from harmful effects.

The ISA is developing exploitation regulations, but it should also actively facilitate a broader discussion about whether seabed mining should be carried out, the implications of seabed mining for biodiversity and how to ensure the effective protection of the Area as the common heritage of mankind.

Environment Committee

The Deep Sea Conservation Coalition (DSCC) recommends the establishment of a standing Environment Committee as a subsidiary body to Council, to assist it in its functions and to address the scientific and environmental functions entrusted the Council before full consideration of matters by the Council as mandated by the Convention. The Environment Committee could be entrusted with implementing functions such as the development of REMPs, development of the EIA and statement, environmental management and monitoring plans (EMMPs) and overseeing compliance and enforcement and possibly the inspectorate, or aspects of it. The Environment Committee should be mandated to obtain the best independent scientific information available through broad outreach and engagement with the international scientific community.

Liability

A liability regime needs to be established before the exploitation regulations are adopted. This must include:

- rules around responsibility and liability for the Authority, sponsoring States and contractors;

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- the standard of care for the Authority, for Sponsoring States and for Contractors – absolute liability, strict liability, of fault based and the standard of liability for breach by sponsoring States of direct obligations;
- the meaning of ‘wrongful’ acts by contractors: whether that term encompasses breaches of regulations, breach of contract, negligence, or liability for all damage, whether caused by negligence or however caused;
- the form reparation may take: restitution, compensation, satisfaction or a combination of the three;
- the role, form and substance of bonds and insurance; and
- the definition of effective control.

The liability and sustainability funds must be established.

Standards and Guidelines

Important issues include a list of standards and guidelines that will be developed; how a decision will be made on which items will be standards and which will be guidelines, and on what basis; confirmation of the binding nature of the standards and guidelines, and consequent compliance and enforcement issues; who will be involved in developing, reviewing, and approving the standards and guidelines and what will the process be for reviewing and updating the standards and guidelines; and confirmation that no exploitation can start unless and until necessary standards and guidelines are in place.

Exploitation Regulations

The regulations and their framework must be robust and include:

- clear conservation and management objectives;
- transparent and enforceable procedures including access to information, public participation, and review procedures;
- requirements based on the precautionary and ecosystem approaches and the polluter pays principle;
- publicly available, comprehensive, prior EIAs, based on extensive, high quality environmental baseline information, public and independently scientifically verified environmental management and monitoring programs and independent, effective and accessible review procedures;
- the requirement that protected areas must be established to achieve objectives established for the areas;
- the requirement that the development and adoption of any deep-sea mining exploration and exploitation regulations be transparent and participatory;
- the requirement that any mining activities permitted must respect the common heritage of humankind.

The DSCC makes specific recommendations on the draft regulations released in May.