

Digging deep: critical questions remain in the rush to regulate seabed mining

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The 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines areas of maritime jurisdiction and sets out the rights and obligations of States, thus serving as a "Constitution for the ocean". Whereas Coastal States have exclusive rights to harvest minerals within their national jurisdiction, mineral resources of the seabed beyond national jurisdiction ("the Area") are subject to a dedicated international legal framework. Under UNCLOS, seabed minerals in the Area are part of the common heritage of humankind: they cannot be appropriated by any one State and benefits arising from their exploitation must be shared. The International Seabed Authority (ISA) is responsible for regulating mining in the international seabed Area and protecting the marine environment.

Having operated in relative obscurity since its inception in 1994, the Authority is now firmly in the spotlight, especially since Nauru triggered a rule in the international legal framework in June 2021 that requires adoption of exploitation regulations by 9 July 2023 (the "two-year rule"). At the same time, calls to halt development of seabed mining are growing, including from States, scientists, and the private sector. The ISA is at an inflection point, and States must carefully consider next steps as strong political engagement and action will be essential for finding a way forward.

This *Issue Brief* aims to help States and stakeholders to understand the legal framework and the current state of play, with a particular focus on the two-year rule. It outlines possible pathways to averting deadlock and instituting a precautionary pause on the development of mining activities.

KEY MESSAGES

The International Seabed Authority (ISA) is at an inflection point, with slow progress on the elaboration of mining regulations, a deadline looming, and lack of consensus regarding interpretation of key legal provisions and processes.

The governance framework is not ready to regulate seabed mining in line with the mandate and objectives of the ISA and other relevant international agreements.

Facing complexities and contradictions, States must invest in the process, carefully consider their positions, and strive to reach consensus on a way forward.

Given the urgent calls from scientists and a growing coalition of States and stakeholders, the Members of the ISA Assembly could adopt a general policy that provides guidance and implements a precautionary pause.

1. INTRODUCTION

The International Seabed Authority (ISA) is mandated to organize, regulate, and control mineral-related activities in the international seabed Area. The Authority is under a legal obligation to effectively protect the marine environment and to ensure that any eventual exploitation is conducted for the benefit of humankind as a whole. The Authority has not yet adopted exploitation regulations.

Having operated in relative obscurity since its inception in 1994, the Authority is now firmly in the spotlight and faces pressure from all sides:

- A leading proponent of mining assures investors that it expects to apply for an exploitation contract this year and extract 10 million tonnes of minerals by 2025.¹
- The proponent's Sponsoring State has triggered a rule in the international legal framework that requires adoption of exploitation regulations by 9 July 2023 (the "two-year rule").
- The complex task of elaborating these regulations is perhaps unprecedented in the history of international rulemaking. It is highly unlikely that the ISA Council will meet the two-year deadline and there is little clarity on the process for assessing applications in the absence of the required regulations.
- The scientific community has urged caution, highlighting that there is currently insufficient scientific knowledge to understand the environment and assess the risks.² It will take years, possibly decades, to develop valid environmental baselines, which are the foundation of meaningful impact assessment.
- States have committed to take ambitious action on climate change and biodiversity loss,³ protect marine ecosystems,⁴ and decouple economic growth from environmental degradation.⁵ States also recently agreed a new Global Biodiversity Framework and a treaty to conserve and sustainably use marine biodiversity in areas beyond national jurisdiction (including the seabed).⁶

1 See The Metals Company, Timeline, <https://metals.co/timeline/>. Speaking at an event taking place on the penultimate day of the Council meeting, the CEO of the Metals Company stated: "The ISA isn't down there deciding whether this is going to happen or not, that is decided" (Water Tower Research fireside chat, March 30. Quote from DSCC transcription at <https://savethehighseas.org/isa-tracker/2023/03/31/dsc-interventions-31-3-23/>).

2 See, e.g., Amon et al. (2022); Ginzky, Singh, and Markus (2020); Christiansen, Bräger, and Jaeckel (2022); Miller et al.

3 Notably the 2015 Paris Agreement adopted by Parties to the United Nations Framework Convention on Climate Change (http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf) and the 2023 Kunming-Montreal Global Biodiversity Framework adopted by Parties to the UN Convention on Biological Diversity (CBD) (<https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>).

4 Sustainable Development Goal (SDG) 14.2 committed States to "sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts including by strengthening their resilience and taking action for their restoration". See <https://sdgs.un.org/goals/goal14>.

5 SDG12 is dedicated to promoting responsible consumption and production. See <https://sdgs.un.org/goals/goal12>.

6 The CBD Global Biodiversity Framework (see note 3) and the Draft agreement under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (see https://www.un.org/bbni/sites/www.un.org/bbni/files/draft_agreement_advanced_unedited_for_posting_v1.pdf).

- Calls to halt development of seabed mining are growing, including from: 14 States,⁷ scientists,⁸ leading car manufacturers and technology companies,⁹ UN Environment,¹⁰ the International Union for the Conservation of Nature (IUCN),¹¹ financial institutions,¹² the European Parliament,¹³ and youth groups.¹⁴
- Many other States have reiterated the need for precaution and robust regulations. For example, the African Group has highlighted that critical questions, including on benefit-sharing and environmental impacts, "must be substantially answered before regulations for exploitation can be finalized and commercial scale mining permitted, even on a provisional basis."¹⁵

The ISA is at an inflection point, with slow progress on the elaboration of exploitation regulations, lack of consensus regarding interpretation of the relevant legal provisions, and a deadline looming. The legal and institutional framework is not ready to regulate seabed mining in line with the mandate and objectives of the ISA and other relevant international agreements. States must carefully consider next steps as strong political engagement and action will be essential for finding a way forward.

This *Brief* aims to support States and stakeholders in understanding the complexities of this critical moment in the process to effectively govern the international seabed and its resources. It first provides a short overview of the legal framework (Section 2) and state of play, including the ongoing development of the exploitation regulations (Section 3) and the legal uncertainties concerning interpretation of the two-year rule (Section 4). Section 5 summarises the progress made at the March 2023 meeting of the Council.

7 A Global Alliance was launched in June 2021 by Fiji, Palau, and Samoa, now joined also by Chile, Costa Rica, Dominican Republic, Ecuador, Federated States of Micronesia, France, Germany, Panama, Spain and Vanuatu who have called for a halt to deep sea mining. See <https://savethehighseas.org/voices-calling-for-a-moratorium-governments-and-parliamentarians/>.

8 Through a Marine Expert Statement Calling for a Pause to Deep-Sea Mining that has been signed by over 700 scientists and researchers from 45 countries. <https://www.seabedminingsciencestatement.org/>.

9 See <https://savethehighseas.org/voices-calling-for-a-moratorium-companies/>.

10 See UNEP Finance Initiative (2022).

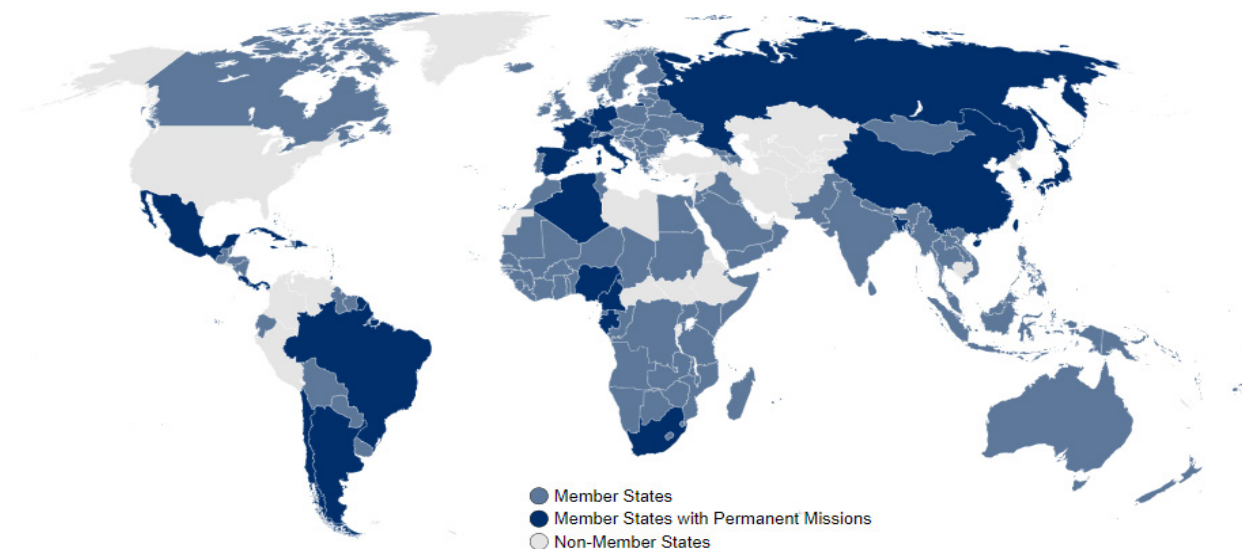
11 IUCN Resolution 069/2021 - Protection of deep-ocean ecosystems and biodiversity through a moratorium on seabed mining, <https://www.iucncongress2020.org/motion/069>.

12 E.g., The European Investment Bank. See https://www.eib.org/attachments/publications/eib_eligibility_excluded_activities_en.pdf.

13 European Parliament resolution of May 3, 2022 toward a sustainable blue economy in the EU: the role of the fisheries and aquaculture sectors, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0135_EN.html.

14 E.g., The Sustainable Ocean Alliance. See <https://www.soalliance.org/campaign-against-deep-seabed-mining>.

15 Submission of members of the Council of the International Seabed Authority from the African Group in relation to the request made by Nauru pursuant to section 1, paragraph 15, of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (ISBA/26/C/40, July 13, 2021) https://www.isa.org/jm/wp-content/uploads/2022/06/ISBA_26_C_40-2110120E.pdf.

FIGURE 1. Member States of the International Seabed Authority

<https://www.isa.org.jm/member-states/>

Section 6 provides some reflections on possible ways forward, focussing on: (1) Avoiding deadlock in the Council through a vote or an advisory opinion from the International Tribunal for the Law of the Sea; and (2) Leveraging the powers of the Assembly to adopt a general policy that guides the Council and establishes a precautionary pause. In concluding, Section 7 emphasises the need to devote significant political will and resources to the ISA process, increase participation, and heed the urgent calls of the scientific community by implementing a precautionary pause.

2. LEGAL FRAMEWORK

The **UN Convention on the Law of the Sea (UNCLOS, 1982)**¹⁶ defines areas of maritime jurisdiction and sets out the rights and obligations of States, thus serving as a "Constitution for the ocean" (Koh 1982). Whereas Coastal States have exclusive rights to harvest minerals within their national jurisdiction,¹⁷ mineral resources of the seabed beyond national jurisdiction ("the Area") are subject to a dedicated international legal framework.

Under UNCLOS, seabed minerals in the Area are part of the **common heritage of humankind**: they cannot be appropriated by any one State and benefits arising from their exploitation must be shared.¹⁸ Member States are jointly responsible for management¹⁹ and preservation for future generations.²⁰

¹⁶ Available at https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

¹⁷ UNCLOS, Art. 56.

¹⁸ UNCLOS, Art. 137(1) and Arts. 137(2) & 140 respectively.

¹⁹ UNCLOS, Arts. 137(2), 153(1), 157.

²⁰ UNCLOS, Arts. 145 & 150(b).

The **International Seabed Authority (ISA)** was established by UNCLOS²¹ with a mandate to organise, regulate, and control all mineral-related activities in the Area. All mining activities in the Area require approval by the ISA,²² which must act in the interest of humankind as a whole and ensure the effective protection of the marine environment.²³ Members include 167 States and the European Union (EU).²⁴

3. STATE OF PLAY

Since its inception, the ISA has been developing a body of rules, procedures, regulations and recommendations to govern seabed mining in the Area (informally referred to as the "**Mining Code**"). **Exploration regulations** are in place²⁵ and 31 exploration contracts are currently in effect.²⁶

²¹ Subsequently modified by the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (adopted 1994, often simply referred to as the "Seabed Agreement" or "Part XI Agreement"). Available at: https://www.un.org/depts/los/convention_agreements/texts/agreement_part_xi/agreement_part_xi.htm.

²² UNCLOS, Art. 153:3; Annex III, Art. 6:3; Seabed Agreement, Annex, Section 1:6.

²³ UNCLOS, Art. 145.

²⁴ <https://www.isa.org.jm/member-states/>

²⁵ Regulations on Prospecting and Exploration for: Polymetallic Nodules (ISBA/19/C/17 and ISBA/19/A/9); Polymetallic Sulphides (ISBA/16/A/12/Rev.1); and Cobalt-rich Ferromanganese Crusts (ISBA/18/A/11).

²⁶ Information on exploitation contracts is available at <https://www.isa.org.jm/exploration-contracts/>.

BOX 1. KEY DECISION-MAKING ORGANS OF THE INTERNATIONAL SEABED AUTHORITY

- The **Assembly** is the “supreme organ” of the Authority with the power to establish general policies of the ISA. All Parties to the Seabed Agreement are members of the Assembly.

- The 36-member **Council** is the executive body that holds most of the legislative power. It supervises and coordinates implementation of the seabed regime, including developing the terms of contracts, approving and overseeing their implementation, and establishing environmental and other standards.

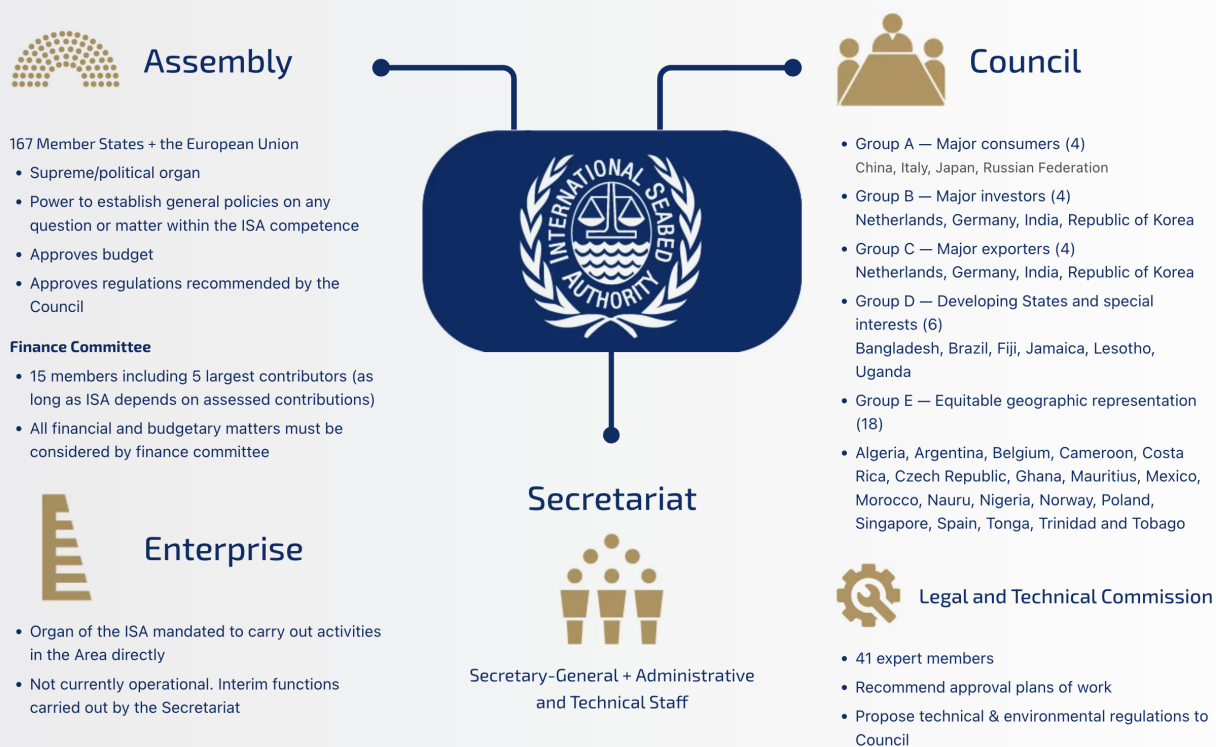
- The **Legal and Technical Commission** (LTC), a subsidiary body of the Council,^{*} issues (non-binding) recommendations

to the Council and to contractors.^{**} The LTC’s 41 members are elected by the Council for a 5-year term.

*. UNCLOS Art. 163(1)(b).

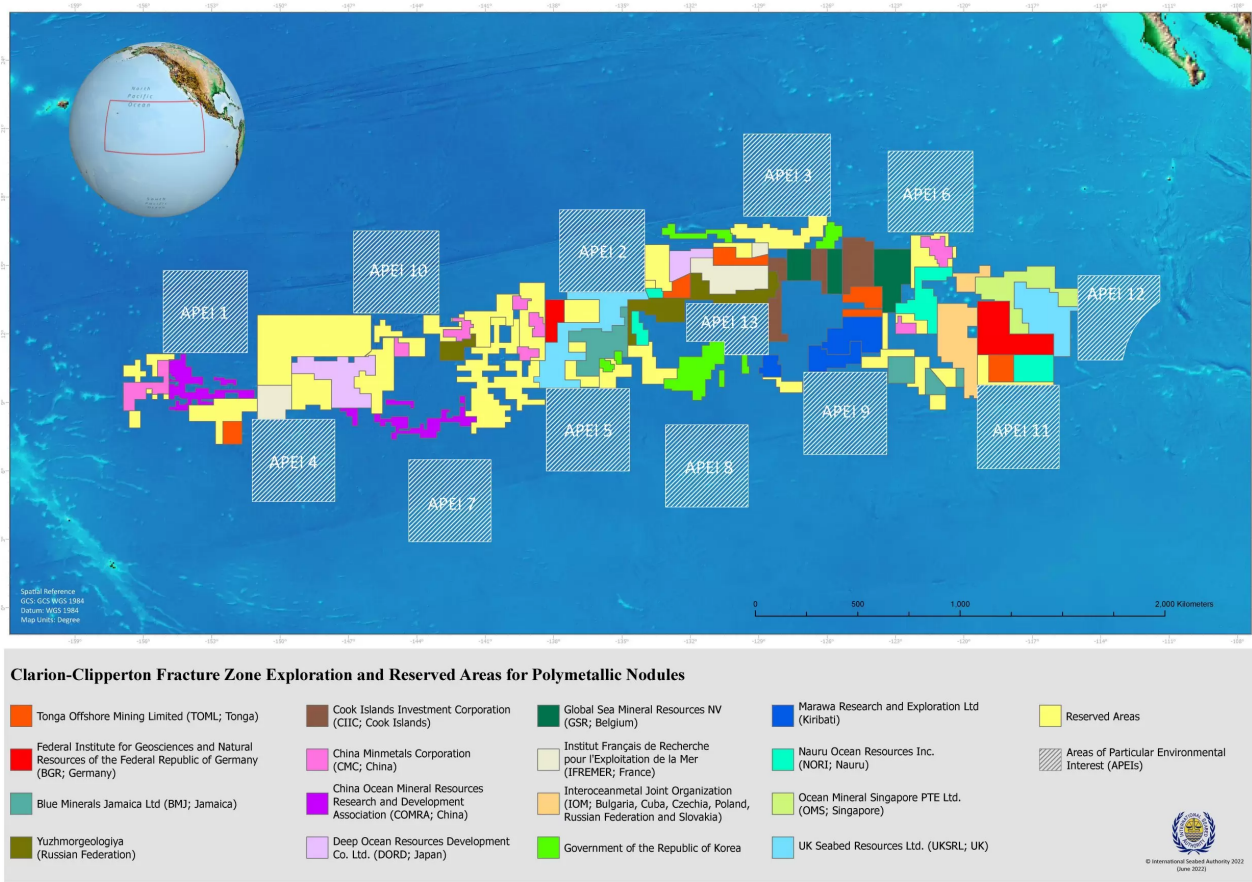
** . Although these recommendations are non-binding, the LTC is “nevertheless essential for the implementation of both the legislative and the executive powers of the ISA” (Lallier and Maes 2016). The Council only takes decisions based on LTC recommendations (UNCLOS Art. 162(2)(o) (ii) and contractors are requested to follow them insofar as possible (Ginzky, Singh, and Markus 2020) .

FIGURE 2. Overview of the institutional structure of the International Seabed Authority



<https://www.isa.org.jm/organs/>

FIGURE 3. Map of exploration in the Clarion-Clipperton Zone



Source: <https://www.isa.org.jm/maps/clarion-clipperton-fracture-zone/>.

Exploitation regulations are still being negotiated.²⁷ A Member State seeking to advance to exploitation may request that the Council complete the adoption of these regulations within two years (the “two-year rule”).²⁸ The Government of the Republic of Nauru made such a request in June 2021, thus requiring adoption of exploitation regulations by **July 9, 2023**.²⁹

If the Council “has not completed the elaboration” of exploitation regulations within the prescribed timeframe and a mining application is pending, the Council must “none the less

consider and provisionally approve” a plan of work based on existing provisions.³⁰

4. LEGAL UNCERTAINTY SURROUNDING THE TWO-YEAR RULE

The approval process envisaged under the Seabed Agreement specifies that the LTC shall review a proposed plan of work for mineral extraction based on a range of provisions, including the exploitation regulations that the Council has not yet adopted.³¹

²⁷ The current President’s Text is available at https://www.isa.org.jm/wp-content/uploads/2023/03/Presidents_text_compilation.pdf.

²⁸ Seabed Agreement, Section 1:15.

²⁹ ISA, “Nauru requests the President of ISA Council to complete the adoption of rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area” (June 29, 2021) <https://www.isa.org.jm/news/nauru-requests-president-isa-council-complete-adoption-rules-regulations-and-procedures/>. Nauru meets the requirements for making such a request, having been a member State of the ISA for over 25 years and being a Sponsoring State whose national intends to apply for an exploitation licence.

³⁰ I.e., “the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors”. Seabed Agreement, Section 1:15(c).

³¹ Seabed Agreement, Section 1:6.

The LTC would then make recommendations to the Council, which ultimately decides whether to approve the proposal.

However, there is considerable uncertainty and divergent opinions as to the applicable process if the two-year rule has been triggered and the deadline is not met, in particular:

- The **meaning of “consider and provisionally approve”**, including whether the Council can disapprove a plan of work after having considered it and whether it can postpone consideration until certain conditions are met.
- The **procedure and criteria** for consideration and provisional approval, in particular the respective roles of the Council and LTC.³²
- The **consequences of provisional approval** of a plan of work, including whether approval equates to the conclusion of an exploitation contract.

The provisional approval process would vary considerably depending on the interpretation chosen. For example, an interpretation that accords a central role for the LTC would make it difficult for the Council to take a decision contrary to the LTC's recommendations due to the applicable voting procedures (especially if the Council wished to reject an application that the LTC recommends approving).³³

5. COUNCIL MEETING, MARCH 2023

The Council met from March 16-31, 2023 at the ISA headquarters in Kingston, Jamaica.³⁴

Two States announced their support for a pause at the meeting,³⁵ with informal indications of more to come. France, on behalf of 13 States and supported by 5 Council Members,³⁶ issued a declaration “Calling for a partnership for the Deep Sea” which aims to “form a broad coalition of nations to oppose deep-sea mining”.³⁷

Delegates continued working on the exploitation regulations, but progress was slow and more time is needed. 12 intersessional working groups are convening to advance on diverse outstanding issues, including: the environmental impact assessment process stakeholder consultation, formulation of an

appropriate inspection mechanism, Coastal State obligations, and underwater cultural heritage.

Members also engaged in extensive informal discussions on the two-year rule and the process for assessing a plan of work submitted in the absence of exploitation regulations, building on the views expressed during an intersessional dialogue.³⁸

The Council adopted a decision that:³⁹

- Emphasizes that the LTC is under no obligation to recommend approval or disapproval of a plan of work, nor is it under an obligation to submit a recommendation at all.
- Expresses an understanding that the Council has the obligation to consider a plan of work but has the capacity to decide whether or not to provisionally approve it.
- Requires the Secretary-General to inform States within 3 days of a plan of work being submitted.

The decision commits Members to continue the informal intersessional dialogue, seeking to make progress on the following questions:

- Is there a legal basis for the Council to postpone the consideration/provisional approval of a pending application?
- Is the LTC required to review a plan of work and submit recommendations to the Council as part of the approval process under the two-year rule?
- What guidelines or directives may the Council give to the LTC? What criteria may the Council establish for the LTC for it to apply in reviewing a plan of work?
- What considerations and procedures apply after a plan of work for exploitation has been provisionally approved and leading up to the conclusion of a contract for exploitation?
- What are the ramifications of provisional approval?

While the commitment to further intersessional work should be welcomed, the decision overall does not provide much further clarity. The decision reflects limited progress toward consensus on outstanding issues and may introduce additional uncertainties.⁴⁰ Importantly, the decision does not provide further clarity on what directives the Council may give to the LTC. This is a critical issue as it is unclear upon what basis the LTC shall review applications in the absence of regulations or further Council guidance, thus leaving the process in a legal loophole.

³² The two-year rule (Seabed Agreement, Section 1:15) makes no reference to the LTC, though it is generally assumed that it will be involved in evaluating and assessing an application (Singh, 2022). It is unclear whether the role of the Council to “consider and provisionally approve” under the rule is intended to be distinct from the general decision-making process described for approval of a plan of work (Section 3:11). UNCLOS (Annex III Arts. 3 & 6) requires the LTC to consider the exploitation regulations when making a recommendation, but as these are not yet agreed, it is unclear whether and how the LTC could consider a proposal.

³³ Seabed Agreement, Section 3:11(a). For detailed analysis, see Singh (2022).

³⁴ <https://www.isa.org/jm/sessions/28th-session-2023/>.

³⁵ The Dominican Republic and Vanuatu.

³⁶ Brazil, Korea, Netherlands, Portugal and Switzerland.

³⁷ France Diplomacy, “International Seabed Authority Council – France calls for expanding the coalition against deep-sea mining” (March 2023) <https://www.diplomatie.gouv.fr/en/french-foreign-policy/climate-and-environment/news/article/international-seabed-authority-council-france-calls-for-expanding-the-coalition>.

³⁸ See documents on the web page for the intersessional dialogue meeting: (<https://www.isa.org/jm/events/webinar-informal-intersessional-dialogue/>), in particular the Co-Facilitators' Briefing Note to the Council on the informal intersessional dialogue established by Council decision ISBA/27/C/45 (https://www.isa.org/jm/wp-content/uploads/2023/03/Co_Facilitators_Briefing_Note.pdf).

³⁹ Decision of the Council of the International Seabed Authority relating to the understanding and application of section 1:15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (ISBA/28/C/9, March 31, 2023) <https://www.isa.org/jm/wp-content/uploads/2023/04/2306127E.pdf>.

⁴⁰ E.g., The decision refers to the LTC's “independent role [...] in accordance with the Convention and the Agreement”, though neither UNCLOS or the Seabed Agreement describe the LTC as independent. The decision also notes that there should be no “commercial exploitation” before regulations are in place, though “commercial” is not defined.

6. THE WAY FORWARD

Despite best efforts, the exploitation regulations remain under-developed and the correct interpretation of the two-year rule remains unclear. Compelling legal arguments can be made for various interpretations and the polarising nature of the debate suggests that consensus may prove elusive. In these circumstances, States will need to carefully consider their positions, coordinate and cooperate to find viable paths forward, and be willing to invest significant political capital in the process.

Averting deadlock in the upcoming Council meetings

The Council will convene again between July 10-21, 2023 (starting just one day after the expiry of the two-year deadline). If the Council concludes that efforts to reach consensus on the process have been exhausted, it could:

- **Vote:** Members could vote on key issues, such as whether the Council should provide a directive to the LTC. Attendees at the March Council meeting appeared keen to continue seeking consensus, though the political atmosphere can quickly shift and there may be further support for a vote at the July meeting. Significant diplomatic effort would be needed to attract the majority needed to decide to provide directives to the LTC.
- **Request an International Tribunal for the Law of the Sea (ITLOS) advisory opinion:** the Council could adopt a decision seeking guidance from the Seabed Disputes Chamber.⁴¹ A handful of delegations have informally referred to this possibility. Parties would still have to agree on how to formulate the questions posed in the request and on how to proceed while they await the opinion of the Tribunal.

Leveraging the power of the Assembly

As the only dedicated forum where all Parties meet to discuss and guide the work of the ISA, States and stakeholders look to the Assembly to ease the deadlock. Advancing through the Assembly would ensure that the full membership of the ISA is involved in making critical decisions on the common heritage of humankind, rather than just the 36 current Members of the Council.

The Assembly is the supreme organ of the ISA and has the power under UNCLOS to define general policies on any question or matter within the competence of the Authority.⁴² The Assembly will meet from July 24-28 July 2023, just after the Council meeting, and, presumably, in 2024.

Setting a high-level general policy on deep-seabed mining could give clear guidance to the Council as to how it should

proceed. Drawing on various international precedents,⁴³ Parties could implement a precautionary pause that would postpone consideration of plans of work for exploitation for a defined period,⁴⁴ or until scientific knowledge enables definition of valid environmental baselines and the effective protection of the marine environment.

To adopt a general policy, States would need to:

1. Put the item on the agenda. Any Party can make such a request at least 30 days before the meeting opens; items of an “important and urgent character” can be proposed at any time, subject to a majority vote.⁴⁵
2. Draft a proposed general policy, in collaboration with the Council.⁴⁶
3. Meet the quorum requirement by ensuring attendance of a simple majority (85 States).⁴⁷ The quorum has rarely been met—69 Member States attended the last Assembly meeting in August 2022.⁴⁸
4. Take a decision by consensus (or by a two-thirds majority vote if all efforts to reach consensus have been exhausted).⁴⁹

The Assembly meeting could also provide a timely opportunity to discuss and/or initiate an overdue review of the Authority⁵⁰ and begin the process of revising the expiring strategic plan,⁵¹ both of which will be critical in determining the future trajectory and functioning of the ISA. While it could be advantageous to address these issues in parallel, it remains to be seen whether Parties are willing to add further items to their daunting agenda.⁵²

⁴³ E.g., a moratorium on commercial whaling adopted by the International Whaling Commission (1982); a UNGA resolution establishing a moratorium on all large-scale pelagic driftnet fishing on the high seas (UNGA resolution 44/225, 1989); a moratorium on fishing for Alaska pollock (1994); and the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (2018).

⁴⁴ E.g., 2030, at the expiry of the UN Decade for Ocean Science and the Sustainable Development Goals.

⁴⁵ Rules of Procedure of the Assembly, Rules 11-12.

⁴⁶ As per Section 3:1 of the Agreement. There is no further detail regarding the nature of this collaboration or the requirements and process to be followed.

⁴⁷ UNCLOS, Art. 159(5).

⁴⁸ https://www.isa.org/jm/wp-content/uploads/2023/02/ISBA_27_A_INF_6-List-of-Delegations_Assembly_27th-Session-rev-11082022.pdf

⁴⁹ Rules of Procedure of the Assembly, Rule 61.

⁵⁰ UNCLOS Art. 154 requires a review every 5 years. The last review, concluded in 2017, is available here: <https://www.isa.org/jm/news/isa-commences-first-periodic-review/>. Member States appear to hold differing views regarding the timing of this review should be triggered: some argue for initiating the process as soon as possible, given that it is overdue and can be advanced in parallel; others see the agenda as already being overloaded and that the issue should be tackled early in 2024, timed to coincide with the election of a new Secretary-General.

⁵¹ <https://www.isa.org/jm/strategic-plan/>

⁵² Member States appear to hold differing views regarding the timing: some indicated that the process should begin as soon as possible, given that it is overdue and can be advanced in parallel or as part of a cohesive approach to the overall ISA process; others have suggested that the review and strategy processes should be tackled early in 2024, coinciding with the election of a new Secretary-General.

⁴¹ UNCLOS, Arts. 159(10) & 191. The Chamber is a separate judicial body within the Tribunal entrusted, through its advisory and contentious jurisdiction, with the exclusive function of interpreting Part XI of the Convention and the relevant annexes and regulations that are the legal basis for the organization and management of activities in the Area.

⁴² The Assembly also has the power to request an ITLOS advisory opinion.

7. CONCLUSION

As Members of the International Seabed Authority prepare to take critical decisions that will shape the future governance of the international seabed, they face contradiction and complexity:

- There is insufficient scientific evidence to ensure that seabed mining will not harm biodiversity; yet the Council may be required to consider and provisionally approve a mining application.
- The development of the regulations has proven to be a colossal task and more time is needed to strengthen the organizational and scientific basis for decision-making; yet the process is under artificial pressure from the ambiguous two-year rule.
- The Parties to the Seabed Agreement must make decisions on behalf of humankind as a whole; yet few are actively engaged in ISA processes and many lack the capacity to do so.

Parties will need to devote significant political will and financial resources to the ISA process during this critical period. Parties with the means should stand in solidarity with those that have limited capacity, providing financial and technical support to ensure that all can be meaningfully represented. Dedicated time on the agenda is clearly needed, and hopefully some time for informal exchange can be found during the intersessional working groups and other upcoming meetings regarding ocean issues.⁵³

⁵³ E.g., The Informal Consultative Process (focusing on maritime technology, 5-9 June, https://www.un.org/Depts/los/consultative_process/consultative_process.htm); the meeting of the States' Parties to the Convention on the Law of the Sea (12-16 June, https://www.un.org/depts/los/meeting_states_parties/thirtythirdmeetingstatesparties.htm); and the resumed Intergovernmental Conference to adopt the high seas biodiversity treaty (19-20 June, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/089/82/PDF/N2308982.pdf?OpenElement>).

Parties can unblock the process by leveraging the broad powers of the Assembly to adopt a general policy that guides the Council and implements a precautionary pause. Their willingness to invest in the process and heed the urgent calls of the scientific community will be decisive in ensuring the effective governance of this vast and valuable global commons.

REFERENCES

Amon, Diva J., Sabine Gollner, Telmo Morato, Craig R. Smith, Chong Chen, Sabine Christiansen, Bronwen Currie, *et al.* (2022). 'Assessment of Scientific Gaps Related to the Effective Environmental Management of Deep-Seabed Mining'. *Marine Policy* 138 (April): 105006. <https://doi.org/10.1016/j.marpol.2022.105006>.

Christiansen, Sabine, Stefan Bräger, and Aline Jaeckel (2022). 'Evaluating the Quality of Environmental Baselines for Deep Seabed Mining'. *Frontiers in Marine Science* 0 (August): 1409. <https://doi.org/10.3389/fmars.2022.898711>.

Ginzky, Harald, Pradeep A. Singh, and Till Markus (2020). 'Strengthening the International Seabed Authority's Knowledge-Base: Addressing Uncertainties to Enhance Decision-Making'. *Marine Policy* 114 (August 2019): 103823. <https://doi.org/10.1016/j.marpol.2020.103823>.

Koh, Tommy T. B. (1982). 'A Constitution for the Oceans'. In *Remarks by Tommy T.B. Koh, of Singapore, President of the Third United Nations Conference on the Law of the Sea*.

Lallier, Laura E., and Frank Maes. (2016). 'Environmental Impact Assessment Procedure for Deep Seabed Mining in the Area: Independent Expert Review and Public Participation'. *Marine Policy* 70 (August): 212–19. <https://doi.org/10.1016/j.marpol.2016.03.007>.

Miller, K. A., K. Brigden, D. Santillo, D. Currie, P. Johnston, and K. F. Thompson (2021). 'Challenging the Need for Deep Seabed Mining From the Perspective of Metal Demand, Biodiversity, Ecosystems Services, and Benefit Sharing'. *Frontiers in Marine Science* 8 (July). <https://doi.org/10.3389/fmars.2021.706161>.

Singh, Pradeep A. (2022). 'The Invocation of the "Two-Year Rule" at the International Seabed Authority: Legal Consequences and Implications' 37: 1–38. <https://doi.org/10.1163/15718085-bja10098>.

UNEP Finance Initiative (2022). 'Harmful Marine Extractives: Understanding the Risks & Impacts of Financing Non-Renewable Extractive Industries'.

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