



Time to evaluate: Towards the second periodic review of the International Seabed Authority

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The 1982 United Nations Convention on the Law of the Sea (UNCLOS) obliges the International Seabed Authority (ISA) to conduct "a general and systematic review of the manner in which the international regime of the Area (...) has operated in practice" at every five-year period.¹ The outcome of the review enables the Assembly to then take, or recommend that other organs take measures to improve the operation of the regime.² Despite being in existence for nearly 30 years, the periodic review was only conducted once. At its meeting in July 2023, the Assembly decided to include the next periodic review as an agenda item for its 29th session taking place from July 29-August 2, 2024, with a view to adopt a decision for its convening.³

This *Policy Brief* highlights lessons learned from the last period review process (1), explains why it is timely and relevant for the Assembly to launch this review (2) and provides recommendations to ensure the review is both meaningful and impactful (3).

¹ UNCLOS, Article 154, part XI.

² Ibid.

³ ISBA/28/A/16, available at: <https://www.isa.org.jm/wp-content/uploads/2023/08/2314823E.pdf>

KEY MESSAGES

The periodic review of the International Seabed Authority (ISA) serves as a tool to provide accountability and oversight, and a 'fit-for-purpose' regime is critical for legitimacy and continuous support of the international community for the ISA.

The ISA aims to adopt a decision on the next periodic review during next year's Assembly.

States and the ISA Secretariat can start preparing for the launch of the second periodic review including by (i) deciding on the scope, mandate and process of the review (i.e. the terms of reference), (ii) considering the ISA's budget and capacity constraints and (iii) reflecting on a process to implement and to track progress of implementation to follow up on the recommendations eventually adopted by the Assembly.

1. LESSONS LEARNED FROM THE FIRST REVIEW PROCESS

Despite the legal obligation under article 154 of UNCLOS to conduct a periodic review of the ISA at every five-year period, the need for a periodic review was for the first time indicated in the ISA Secretary-General annual report of 2014, twenty years after the ISA was established.⁴ In 2000, when the first review was due, the Assembly considered it to be "too early" to determine whether the ISA had functioned effectively in practice as the Authority was still taking care of organisational issues to make the institution operable.⁵ In 2014, the Secretary-General thought it was timely to bring up the topic in light of 1) a growing interest in the development of marine minerals in the deep seabed, notably from private companies, 2) the increased workload of the secretariat, 3) the need for more baseline environmental data and 4) for an appropriate fiscal regime.⁶ The process towards the establishment of the first periodic review is summarised in Table 1.

All in all, the process towards a first periodic review of the ISA took some time and led to 34 recommendations.⁷ The list of recommendations mentioned in the final report include the following:

- The need to (i) regularly **review the required skills and expertise** of the Secretariat and consider adding expertise in the fields of environmental policy, management and planning; (ii) produce a **record of decisions taken at each session with a timeline for them to be carried out**; (iii) prepare a draft Strategic Plan; and (iv) **engage more extensively with the scientific community and deep-sea science** projects and initiatives.
- The **meeting schedule** of the various organs of the ISA should be revised, with a suggestion to consider increasing the number of Council meetings.
- It should be considered to extend the **period of office for the President of the Assembly** to two or three years.
- Investment is needed in **better data management and data-sharing mechanisms**.
- **Transparency** should be enhanced by (i) informing the Assembly of the state of all contracts at least once every five years; (ii) encouraging the Legal and Technical Commission (LTC) to hold more open meetings; (iii) ensuring non-confidential information (e.g. on the protection and preservation of the marine environment) is shared widely and is readily accessible; (iv) and paying attention to transparency in the development of finance provisions and the benefit-sharing mechanism.

⁴ ISBA/20/A/2, para 90-93, available at: https://www.isa.org.jm/wp-content/uploads/2022/06/isba-20a-2_1.pdf

⁵ Ibid.

⁶ Ibid.

⁷ D Johnson *et al.*, "Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154: Final Report," Seascope Consultants (30 December 2016).

TABLE 1. Summary of the process towards the first periodic review of the ISA

June 2014	The ISA Secretary-General, in its Annual Report, recommends to the Assembly to commence a periodic review. ⁸
July 2015	The Assembly decides to undertake a review ⁹ through consultants appointed by, ¹⁰ and working under the oversight of a Review Committee. ¹¹
January 2016	The Review Committee appoints Seascope Consultants Ltd to conduct the review and both agree on the scope of the report.
May 2016	Seascope Consultants Ltd submits an interim report.
July 2016	The Assembly takes note of the interim report as well as the comments of the Review Committee, the Legal and Technical Commission, Finance Committee and secretariat and decides to provide States parties, observers and stakeholders a further opportunity to submit written observations on the document before October 15, 2016. ¹²
December 2016	Seascope Consultants Ltd. submits a revised interim report, or "final report", including an executive summary. ¹³
February 2017	The Chair of the Review Committee submits the final report on the periodic review to the Assembly. ¹⁴
June 2017	The Secretary-General provides comments on the recommendations contained in the final report. ¹⁵
August 2017	The Assembly approves the final report on the periodic review and provides instructions on how to proceed with the recommendations. ¹⁶

- The **levels of expertise in both the LTC and the Secretariat** required to incorporate applicable standards for the protection and preservation of the marine environment should be increased as appropriate. The LTC should be encouraged to establish a **working group dealing with environmental issues**. For the Secretariat, an **Environmental Division, a Legal Division and a Technical Division** could be envisaged.
- Discussions should be held to **increase financial support for the Secretariat**. The Strategic Plan should determine a Programme of Work and the Authority should then agree how to finance the work.

⁸ Ibid.

⁹ ISBA/21/1/9/Rev.1, available at: <http://undocs.org/ISBA/21/A/9/Rev.1>

¹⁰ Based on a short list of qualified consultants prepared by the Secretary-General according to the established procurement procedures of the Authority.

¹¹ Comprised of the President and the Bureau of the Assembly, the President of the Council and with the Chairs of the regional groups as observers.

¹² ISBA/22/A/11, available at: <https://undocs.org/ISBA/22/A/11>

¹³ D Johnson *et al.*, "Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154: Final Report," Seascope Consultants (30 December 2016).

¹⁴ ISBA/23/A/3, available at: https://www.isa.org.jm/wp-content/uploads/2022/06/isba-23a-3_1.pdf

¹⁵ ISBA/23/A/5, available at: <https://undocs.org/ISBA/23/A/5>

¹⁶ ISBA/23/A/13, available at: https://www.isa.org.jm/wp-content/uploads/2022/06/isba-23a-13_1.pdf

- An **independent review of enforcement and oversight capabilities of the Authority** is needed to inform the setting up of an autonomous regulatory body.
- To address the **serious lack of attendance** at the Authority's annual sessions, consider whether the Assembly could meet less frequently and/or for a shorter period or at a different location for some of its meetings.
- The Authority should develop a **policy on transparency and conflicts of interest** and should consider revising the Regulations to set standards for confidentiality.

The Review Committee kept 19 out of 34 recommendations for its final report. The reasons put forward were the need to have less but more precise recommendations and it then excluded those which were judged (i) too premature, (ii) quite far removed from the practices that the Authority had developed over the past 20 years, and (iii) unlikely to be accepted by consensus at the time.¹⁷

Based on these recommendations, the ISA took several measures. The Assembly adopted in 2018 a Strategic Plan for the period 2019-2023, complemented by a High-Level Action Plan that includes key performance indicators to assess the performance of ISA towards achieving the Strategic Plan.¹⁸ In 2019, the ISA created DeepData which is an Internet-based data management system that serves as a global repository of information on the state of deep-seabed resources and their environments.¹⁹

The implementation of some of the recommendations of the first periodic review is still ongoing, especially those related to transparency. The final report concluded that "the current governance processes of the Authority are not sufficiently transparent".²⁰ To date, "the need for improved transparency at the ISA is a continuous concern and often a source of criticism".²¹ States might wish to draw on lessons learned from other review processes, such as those of regional fisheries management organisations (RFMOs).²² To ensure continuity, the Assembly should seize the opportunity to use the first periodic review process as a basis to assess to what extent the recommendations have been implemented.

2. FIRST STEPS TOWARD A SECOND PERIODIC REVIEW

On June 20, 2023, Germany proposed to include the terms of reference for the periodic review as an item on the provisional agenda for the 28th Session of the Assembly.²³ After intense discussions throughout the week, the Assembly decided in the last hours of the meeting to "include the periodic review as an agenda item for its 29th session in 2024 with a view to adopt a decision, and requested the Finance Committee to consider budgetary implications pertaining to the undertaking of the periodic review".²⁴ In addition, the Assembly decided to postpone the adoption of the new Strategic Plan, by extending the current Strategic Plan 2019-2023 until 2025.²⁵ In this way, the periodic review could inform the content of the new Strategic Plan. It also requested the Secretariat to review the High-Level Action Plan with a view to extending it in line with the Strategic Plan.²⁶

BOX 1. IDDRI, IUCN AND RIFS SIDE EVENT ON THE PERIODIC REVIEW

On Tuesday July 25, 2023, IDDRI, the Research Institute for Sustainability—Helmholtz Center Potsdam (RIFS) and the International Union for Conservation of Nature (IUCN) organised a side event on the periodic review of the Authority. The panel was comprised of Clemens Wackernagel (Head of Delegation of Germany), Matthew Gianni (Co-founder of the Deep Sea Conservation Coalition) and Pradeep Singh (Fellow at RIFS). Considering that the agenda of the meeting had not been adopted at the time of the side event, the exchanges focused on the necessity and content of a second periodic review, and provided an opportunity for State representatives and observers alike to learn about the process based on the first review.

¹⁷ ISBA/23/A/3, paragraph 7, available at: https://www.isa.org.jm/wp-content/uploads/2022/06/isba-23a-3_1.pdf

¹⁸ <https://www.isa.org.jm/strategic-plan/>

¹⁹ <https://www.isa.org.jm/brochures/deepdata-brochure/>

²⁰ D Johnson *et al.*, "Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154: Final Report," Seascope Consultants (30 December 2016).

²¹ Blanchard C. *et al.*, (2023). "The current status of deep-sea mining governance at the International Seabed Authority," *Marine Policy*, 147.

²² Ardrón, J. A. (2018), "Transparency in the operations of the International Seabed Authority: An initial assessment," *Marine Policy*, 95, 324-331.

²³ https://www.isa.org.jm/wp-content/uploads/2023/07/REV_-ISBA_28_A_INF-8.pdf

²⁴ <https://enb.iisd.org/international-seabed-authority-isa-council-28-2-summary>

²⁵ *Ibid.*

²⁶ *Ibid.*

3. THREE RECOMMENDATIONS FOR THE 29TH ASSEMBLY MEETING (2024)

In the lead-up to the 29TH Assembly meeting in July 2024, States and all ISA stakeholders can start preparing for the launch of the second periodic review, including by:

1. Instructing the Secretariat to prepare a report assessing to what extent the recommendations of the first review have been implemented and improving the process to ensure better implementation for the upcoming review.
2. Deciding on the scope, mandate and process of the review. In the first review process, the Assembly did not modify the terms of reference as suggested by the Secretary-General. This is an opportunity to reflect on questions such as: should the composition of the Review Committee stay the same or should it include other IOs (such as RFMOs for instance) and NGOs? How to ensure the consultation process is inclusive? Are there new challenges (e.g. what are the interactions between the functioning of the ISA and the recently adopted international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ)?). The formal ISA review could also be supplemented by other external or shadow reviews, which would undoubtedly provide ISA States with a broader range of views and options to improve the operation of the regime in a constructive manner for the benefit of humankind as a whole.

3. Considering the budgetary implications as well as the capacity of the Secretariat to prepare the review. Conducting the periodic review is a legal obligation under UNCLOS, but how can the review be conducted in a cost- and time-efficient way while remaining thorough?²⁷

The periodic review provides a key opportunity to analyse the state of play of the manner in which the international regime of the Area has operated in practice and to strengthen the implementation of UNCLOS. It entitles the Authority to modify and improve its legal framework,²⁸ because it allows the Assembly to take, or recommend that other organs take measures to improve the operation of the regime. The mandate of the ISA covers a large portion of the planet, namely the seabed beyond national jurisdiction (the Area) and its mineral resources, which are the common heritage of humankind. Consequently, it is a matter of good governance to conduct the review on a regular basis. The periodic review serves as a tool to provide accountability and oversight and is critical for continuous support of the international community for the Authority. That is why both States and the ISA stakeholders should have an interest in supporting a thorough review which leads to recommendations that are properly implemented.

²⁷ Insofar is visible from publicly accessible ISA budgetary documents, the last review costed at least 82.645 US dollars according to the financial report for 2017. ISBA/24/FC/9, page 4, available at: <https://www.isa.org/jm/wp-content/uploads/2022/06/isba24-fc9-en.pdf>

²⁸ Pecoraro, A. (2022). "The Regulatory Powers of the International Seabed Authority: Security of Tenure and Its Limits," *Ocean Development & International Law*, 53:4, 377-402.

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