

# SMALL ISLAND DEVELOPING STATES AND THE LAW OF THE SEA: AN OCEAN OF OPPORTUNITY



2021 United Nations Decade  
2030 of Ocean Science  
for Sustainable Development

# **SMALL ISLAND DEVELOPING STATES**

## **AND THE LAW OF THE SEA: AN OCEAN OF OPPORTUNITY**



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First Edition 2021

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This publication was produced by the International Seabed Authority (ISA), with the contribution of H.E. Helmut Tuerk and under the overall supervision of Dr. Marie Bourrel-McKinnon of the Executive Office of the Secretary-General (EOSG).

All information and data are current as of July 2021.

For additional information or feedback on this publication, write to us at news@isa.org.jm.

ISBN 978-976-8313-00-3

ISBN 978-976-8313-03-4

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# Abbreviations and acronyms

<b>CLCS</b>	Commission on the Limits of the Continental Shelf
<b>EEZ</b>	Exclusive economic zone
<b>GGGI</b>	Global Green Growth Institute
<b>ICJ</b>	International Court of Justice
<b>ISA</b>	International Seabed Authority
<b>ITLOS</b>	International Tribunal for the Law of the Sea
<b>LDC</b>	Least developed country
<b>LLDC</b>	Landlocked developing country
<b>LLGDS</b>	Group of Landlocked and Geographically Disadvantaged States
<b>SDG</b>	Sustainable Development Goal
<b>SIDS</b>	Small Island Developing States
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UN ESCAP</b>	United Nations Economic and Social Commission for Asia and the Pacific
<b>UN-OHRLLS</b>	United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>UNOSSC</b>	United Nations Conference on South-South Cooperation
<b>WGEO</b>	World Green Economy Organization



# Foreword by the Secretary-General

**Mr. Michael W. Lodge**  
**Secretary-General, ISA**

I am pleased to introduce this short study on the relevance of the 1982 United Nations Convention on the Law of the Sea to the Small Island Developing States (SIDS). Since 2017, the International Seabed Authority has been actively collaborating with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) to support the efforts of that office to facilitate the coordinated implementation of the programmes developed through the United Nations system to benefit those groups of countries.

This study is one of three similar studies prepared by the International Seabed Authority, one each for the groups of landlocked developing countries, least developed countries and Small Island Developing States, aimed at informing them of the benefits of the Convention.

The Authority is tasked under the Convention to manage deep-sea mineral exploration and exploitation, protect the deep-sea marine environment and its biodiversity and promote marine scientific research for the benefit of all humanity. The interests of all humanity in the ocean and the conservation and sustainable use of its resources make it imperative that the global governance regime reflects the maritime interests of all States, whether coastal or landlocked.

The Authority is therefore under a positive obligation to promote the effective participation of all developing States in any regime based on the Convention and in particular its Part XI, and to recognize the special needs of SIDS, which make up more than 20 per cent of the membership of the Authority.

The full implementation of the Convention is also fundamental to achieving the outcomes of the SAMOA Pathway, to which the Authority is fully committed. I express the hope that this publication will be of assistance to the SIDS as they seek to realize the full potential of the ocean and its resources to support their sustainable economic development.

# 1

## Introduction

The oceans and their marginal seas, covering almost 71 per cent of the surface of the Earth, have since early times played a significant role in the development of humanity. They provide food and minerals, generate oxygen and ensure communication and trade. The dependence of the world population on the ocean economy has steadily increased over the past 100 years to satisfy the ever-growing needs of humanity.

Thanks to ongoing technological progress and innovation, access to different maritime areas and their resources, whether living or non-living, has reached new frontiers and opened new prospects.

This presents new challenges and imperatives such as the need to peacefully manage global commons resources and to ensure equity in access to, and the distribution of benefits from, such resources.

These imperatives are also central to Sustainable Development Goal 14 under the 2030 Agenda for Sustainable Development, which urges all States to conserve and sustainably use the oceans, seas and marine resources for sustainable development. This includes the application of rigorous and adaptive measures for the protection and preservation of the marine environment.



The ocean has played a significant role in the development of humanity. Photo: Jaco Island in Timor Leste. Getty Images.

## 2 Development of a global legal regime for the ocean and its resources

Ever since humankind managed to venture out on the seas, the freedom of this seemingly limitless space has been challenged by domination from land, often leading to conflict among seafaring nations. During the twentieth century, the situation called for the codification of the customary law of the sea for the benefit of all nations. These efforts led to the adoption in 1958 of the four Geneva Conventions, soon largely to be overtaken by State practice, culminating in 1982 in the adoption of the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994.



The Convention on the Law of the Sea was adopted at the United Nations Headquarters

on 30 April 1982 during the Third UN Conference on the Law of the Sea.

Photo: United Nations

Box 1

### The four Geneva Conventions on the Law of the Sea

On 29 April 1958, the United Nations Conference on the Law of the Sea opened<sup>1</sup> four conventions for signature:

Convention	Entry into force	Parties
Convention on the High Seas	30 September 1962	63
Convention on the Continental Shelf	10 June 1964	58
Convention on the Territorial Sea and the Contiguous Zone	10 September 1964	52
Convention on Fishing and Conservation of the Living Resources of the High Seas	20 March 1966	39

<sup>1</sup> Final Act A/CONF.13/L.58, 1958, UNCLOS, Off. Rec. vol. 2, 146

## The United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the Convention

UNCLOS was opened for signature on 10 December 1982 in Montego Bay, Jamaica, after more than 14 years of negotiations involving more than 150 countries from all regions of the world and representing all legal and political systems as well as reflecting the whole spectrum of socio-economic development. UNCLOS<sup>2</sup> entered into force on 16 November 1994.



T.T.B. Koh, Permanent Representative of Singapore to the UN introduces the draft resolution on the Convention on Law of the Sea at the UN General Assembly. Photo: United Nations, 3 December 1982



Third United Nations Conference on the Law of the Sea, informal meeting of the Drafting Committee, United Nations Headquarters, New York. Photo: United Nations, 27 February 1981

To address certain difficulties with the seabed mining provisions contained in Part XI of UNLOS, which had been raised, primarily by the industrialized countries, the UN Secretary-General convened in July 1990 a series of informal consultations which culminated in the adoption, on 28 July 1994, 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 (1994 Agreement).

The 1994 Agreement entered into force on 28 July 1996. In the event of an inconsistency between the Agreement and Part XI, the provisions of the Agreement shall prevail.

UNCLOS is based on the premise that the problems of ocean space are interrelated. It provides a comprehensive framework for the entire international community, regulating all ocean space, its uses and resources, and laying down clear and universal rules for coastal States' maritime jurisdiction. It also represents a common denominator for the different maritime interests of all States, whether coastal or landlocked, balancing their respective rights and duties over a space that represents more than half of the planet and the resources it contains.

At present, UNCLOS has almost achieved universality. As of July 2021, it has been ratified by 168 parties, which includes 167 States (164 United Nations member States plus the UN Observer State Palestine, as well as the Cook Islands and Niue) and the European Union. An additional 14 UN Member States have signed it, but not ratified it.

<sup>2</sup>Full text: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm)

**The law of the sea, as enshrined in UNCLOS, is essentially based on the following core elements:**

- ❖ The division of ocean space into maritime zones where different rights and obligations apply.
- ❖ The recognition of different legitimate uses of and activities in the ocean.
- ❖ The duty of all States to ensure, through proper conservation and management measures, the long-term sustainable use of living and non-living resources.
- ❖ The designation of a common space beyond national jurisdiction and its resources as the common heritage of humankind and the establishment of a unique global organization mandated to manage this area and its resources on behalf of humankind.
- ❖ The peaceful settlement of disputes.
- ❖ The right of access to and from the sea for landlocked States.

UNCLOS does not provide any definition of the term "Small Island Developing States" (SIDS), although these countries actively contributed to the development of the Convention. SIDS were only recognized as a special case at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992. As there is no widely accepted definition of SIDS, membership in this group is by self-selection and thus also includes two small continental States. In addition to the 38 SIDS which are Members of the United Nations, 20 Non-UN Members or Associate Members of UN Regional Commissions are listed (see **Figure 1**). SIDS are located in the Caribbean and in the Pacific, Atlantic and Indian Oceans. All of them share similar sustainable development challenges, including small but growing populations, limited resources, remoteness from international markets, high transportation costs, susceptibility to natural disasters, excessive dependence on international trade and fragile environments. On top of this, climate change – leading to sea-level rise and posing an existential threat, particularly in the Pacific – has become an overriding concern for most SIDS.

**All 38 SIDS which are Members of the United Nations are parties to UNCLOS and therefore Members of ISA.**



SIDS are located in the Caribbean and in the Pacific, Atlantic and Indian Oceans. Photo: Aerial view of Mauritius in the Indian Ocean. Balate Dorin/Getty Images

**Figure 1. Participation of SIDS in UNCLOS**

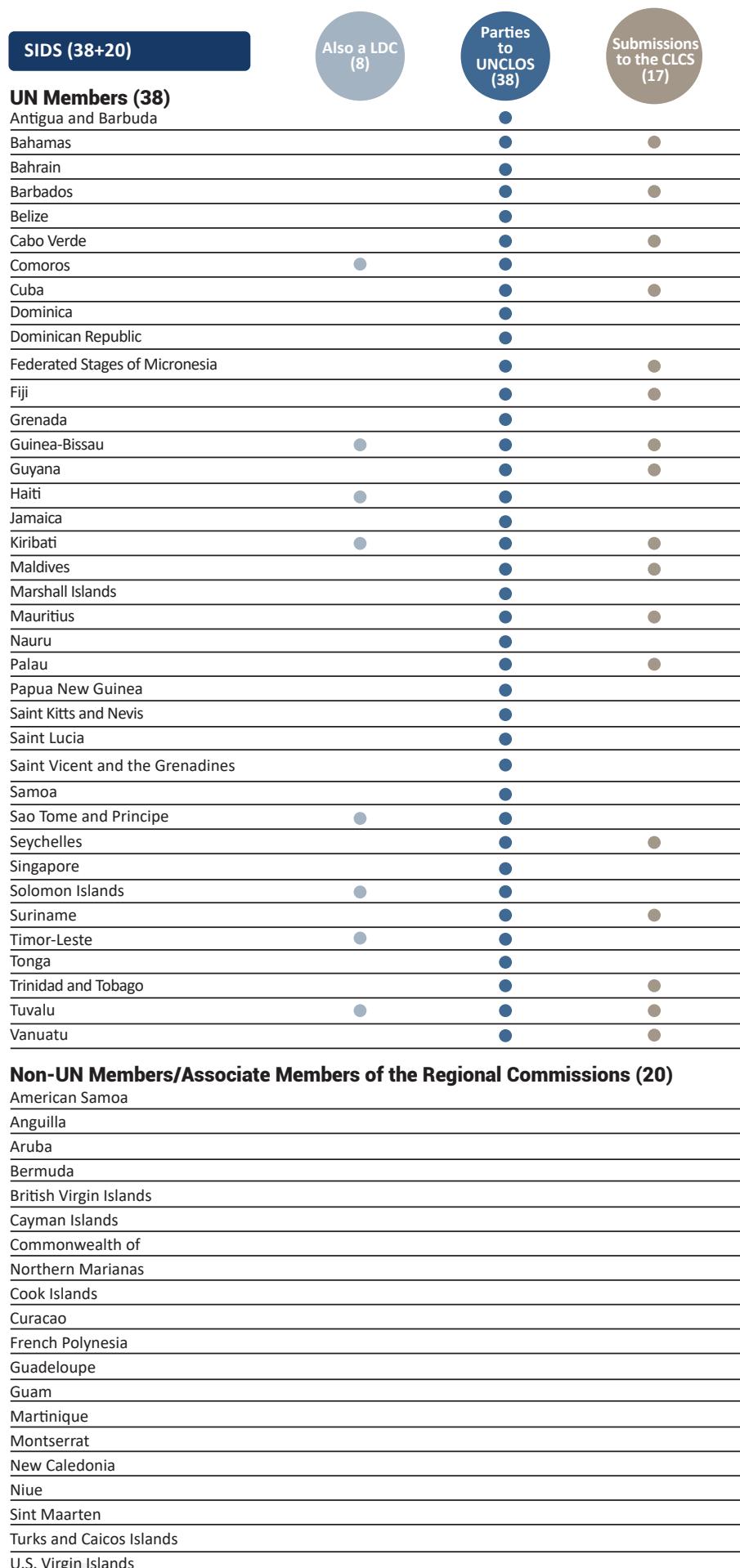




Photo: BlueOrange Studio.

## 3 The United Nations Convention on the Law of the Sea – an overview

### A. Within national jurisdiction

UNCLOS grants every coastal State the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles measured from determined baselines (Art. 3), generally the low-water mark. The sovereignty of the coastal State extends to the airspace over the territorial sea as well as to its bed and subsoil (Art. 2) (see **Figure 2**). At the same time, the right of "innocent passage", defined as passage "not prejudicial to the peace, good order or security of a coastal State", was confirmed for ships of all States, whether coastal or landlocked (Arts. 17-19). Coastal States have, furthermore, the possibility to declare a contiguous zone up to a maximum of 24 nautical miles from the baseline. In that zone, a coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea (Art. 33).

As a corollary to the extension of the limits of the territorial sea, UNCLOS introduced the novel concept of "transit passage", maintaining the right to unimpeded navigation and overflight with respect to straits which are used for international navigation. Ships and aircraft in transit passage must, however, observe international regulations on navigational safety, civilian air-traffic control and prohibition of vessel-source pollution, proceed without delay through or over the strait without stopping, except in distress situations, and refrain from any threat or use of force against the coastal States. **A further new concept, which highly benefited many SIDS, is that of the "archipelagic State"** – a State that is constituted wholly by one or more archipelagos, meaning groups of closely-spaced islands (Art. 46). **The waters between the islands are declared archipelagic waters, which are under national sovereignty.** All ships and aircraft, however, enjoy the right of "archipelagic sea lanes passage", akin to transit passage in sea lanes and air routes designated by an archipelagic State (Art. 53).

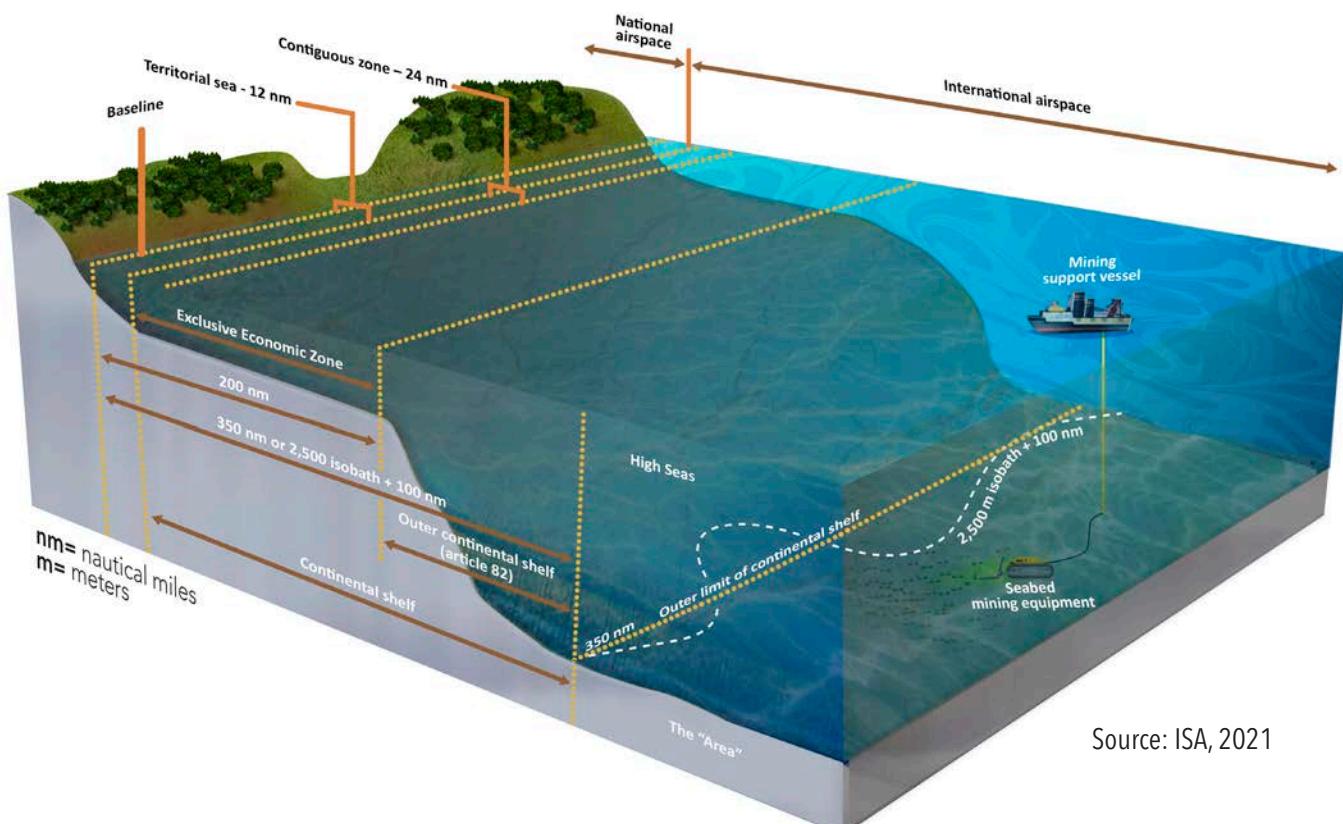
An entirely new concept introduced by UNCLOS is the exclusive economic zone (EEZ), which has a *sui generis* legal status constituting a compromise between sovereignty of the coastal State and freedom for all States. In the EEZ, with a maximum limit of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing all

natural resources, as well as other economic activities. Moreover, it has jurisdiction regarding the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment (Art. 56). These rights of the coastal State are counterbalanced by the fact that the provisions of UNCLOS relating to the high seas and other pertinent rules of international law continue to apply to the EEZ insofar as they are not incompatible with it. All States, whether coastal or landlocked, thus enjoy the high seas freedoms of navigation and overflight and of laying submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms (Art. 58(1)).

UNCLOS substantially broadened the concept of the continental shelf. The continental shelf now encompasses the entire continental margin, comprising the shelf, the slope and the rise, or the seabed up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial seas is measured, even where no geological shelf exists. There is now, however, a more precise delineation of the outer limits of the continental shelf beyond 200 nautical miles, which may be set at a maximum distance of 350 nautical miles from the baselines or up to 100 nautical miles from the 2,500 m isobath (Art. 76(1), (5)). Such limits become "final and binding" if adopted by the coastal State on the basis of recommendations by the Commission on the Limits of the Continental Shelf (CLCS) (Art. 76(8)), a body consisting of 21 experts in the field of geology, geophysics and hydrology, elected by the States parties to UNCLOS (Annex II, Art. 2(1)).

To obtain recognition of continental shelf rights beyond 200 nautical miles, the coastal States with a continental margin extending beyond 200 nautical miles had to agree to a system of revenue-sharing in respect to the exploitation of non-living resources of the continental shelf beyond that distance. This system is described further below (see **Section 5**).

**Figure 2. Maritime zones and the "Area" under UNCLOS**



Source: ISA, 2021

## B. Beyond national jurisdiction

### 1. Freedom of the high seas and the regime of the Area



The Area and its resources are declared the "common heritage of mankind". Photo: polymetallic nodules on the seabed.  
The Metals Company

The high seas are open to all States, whether coastal or landlocked. Freedom of the high seas is exercised under the conditions laid down by UNCLOS and by other rules of international law. Besides freedom of navigation and overflight, it stipulates also, subject to certain conditions, the freedom to lay submarine cables and pipelines, to construct artificial islands and other installations, to fish, and to engage in marine scientific research, both for coastal and landlocked States (Art. 87). Every State, whether coastal or landlocked, has the right to sail ships flying its flag on the high seas (Art. 90).

The provisions of UNCLOS relating to the Area constitute a central feature of the entire Convention, operationalizing the concept of **common heritage of humankind**. These are enshrined in its Part XI and Annex III, together with the 1994 Agreement Relating to the Implementation of Part XI, which was adopted to bring the regime of the deep seabed closer in line with political and economic realities. The Area is defined as "the seabed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction" (Art. 1(1)) (see **Figure 2**). The precise extent of the Area will only be determined when all coastal States have established the outer limits of their continental shelves in accordance with the provisions of the Convention but is estimated to cover more than 50 per cent of the global sea floor. In view of the tremendous workload of the CLCS, this will still take quite a long time.

The Area and its resources are declared the "common heritage of mankind" (Art. 136) in order to preserve the greater part of ocean space as a commons open to use by the entire international community. No claim or exercise of sovereignty or sovereign rights over any part of the Area or its resources nor appropriation by any State – not just States parties – natural or juridical person is to be recognized. All rights in these resources, defined as all solid, liquid or gaseous mineral resources in situ in the Area or beneath the seabed, including polymetallic nodules (Art. 133(a)), are vested in humankind as a whole, on whose behalf ISA is to act (Art. 137).

Activities in the Area, defined as all activities of exploration for, and exploitation of, its resources (Art. 1(3)), are to be carried out for the benefit of humankind as a whole irrespective of the geographical location of States, whether coastal or landlocked, taking into particular consideration the interests and needs of developing States and of peoples who have not obtained full independence or other self-governing status recognized by the United Nations (Art. 140(1)). The Area is open to use exclusively for peaceful purposes for all States, whether coastal or landlocked, without discrimination (Art. 141).

## 2. The International Seabed Authority

The International Seabed Authority (ISA), based in Kingston, Jamaica, is the organization through which the States parties organize and control activities in the Area, particularly with a view to administering its resources (Arts. 156, 157(1)). All States parties to UNCLOS are ipso facto Members of ISA. Although the core function of ISA is to manage deep-seabed mining, it has been entrusted by UNCLOS with other important tasks. These include promoting and encouraging marine scientific research (Art. 143), the transfer to developing States of technology and scientific knowledge (Art. 144) and the effective protection of the marine environment and conservation of the natural resources of the Area (Art. 145).



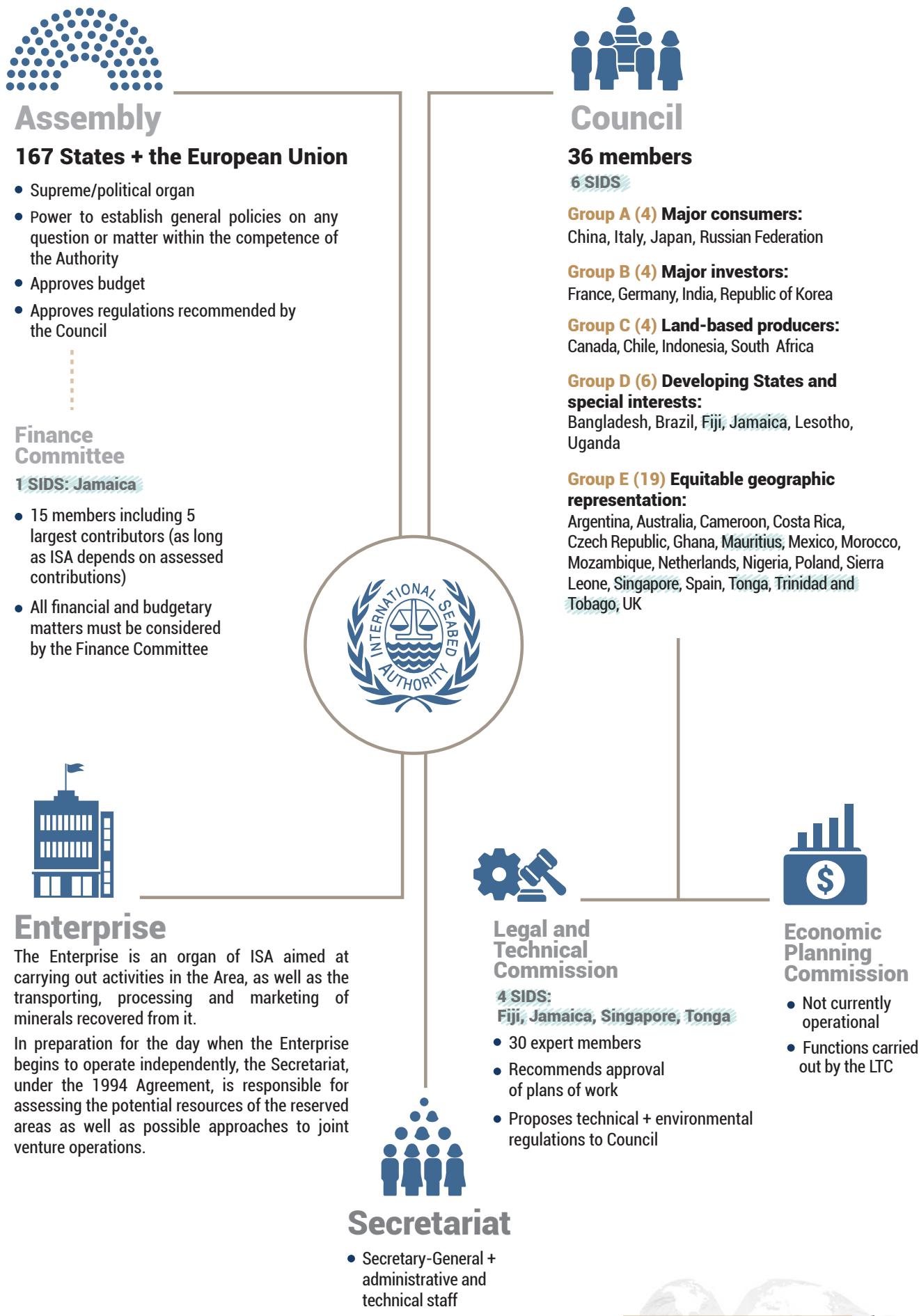
ISA has its headquarters in Kingston, Jamaica. Photo: ISA

The main organs of ISA are the **Assembly**, consisting of all the Members and considered the supreme organ, the **Council**, which is the executive organ, and the **Secretariat**, headed by a Secretary-General. The Assembly elects the 36 members of the Council from five groups of States parties representing different interests and ensuring an equitable geographical distribution (Art. 161(1)). The Secretary-General is elected by the Assembly from among the candidates proposed by the Council (Art. 166(2)(c)).

It is the task of the Assembly to establish the general policies of the Authority in collaboration with the Council (Art. 160(1)), while the Council is entrusted to establish specific policies (Art. 162(1)). The Assembly also approves the budget of the Authority, including the scale of assessment for contributions by States parties, as submitted by the Council (Art. 160(2)(e)(h)), and must finally approve the rules, regulations and procedures relating to prospecting, exploration and exploitation in the Area (Art. 161(2)(f)(ii)). The primary function of the Council, which has an extensive range of powers, is to supervise and control the implementation of Part XI of the Convention on all matters within the competence of ISA (Art. 162 (2)(a)).

Important subsidiary organs, consisting of individual experts, are the **Legal and Technical Commission** (Art. 163) and the **Finance Committee** (Art. 162(2)(y)). Many of the decisions of the Council and the Assembly must be based on the recommendations of these bodies. The members of the Legal and Technical Commission are elected by the Council, and those of the Finance Committee by the Assembly. The Enterprise is established as an organ of ISA to carry out activities in the Area directly, on behalf of all Members, subject to the directives and control of the Council (Art. 170). Under the 1994 Implementation Agreement, certain limited functions of the **Enterprise** are to be carried out by the Secretariat until such time as the Council decides that the Enterprise should function independently. Since 2019, the Secretary-General has appointed a Special Representative for the Enterprise.

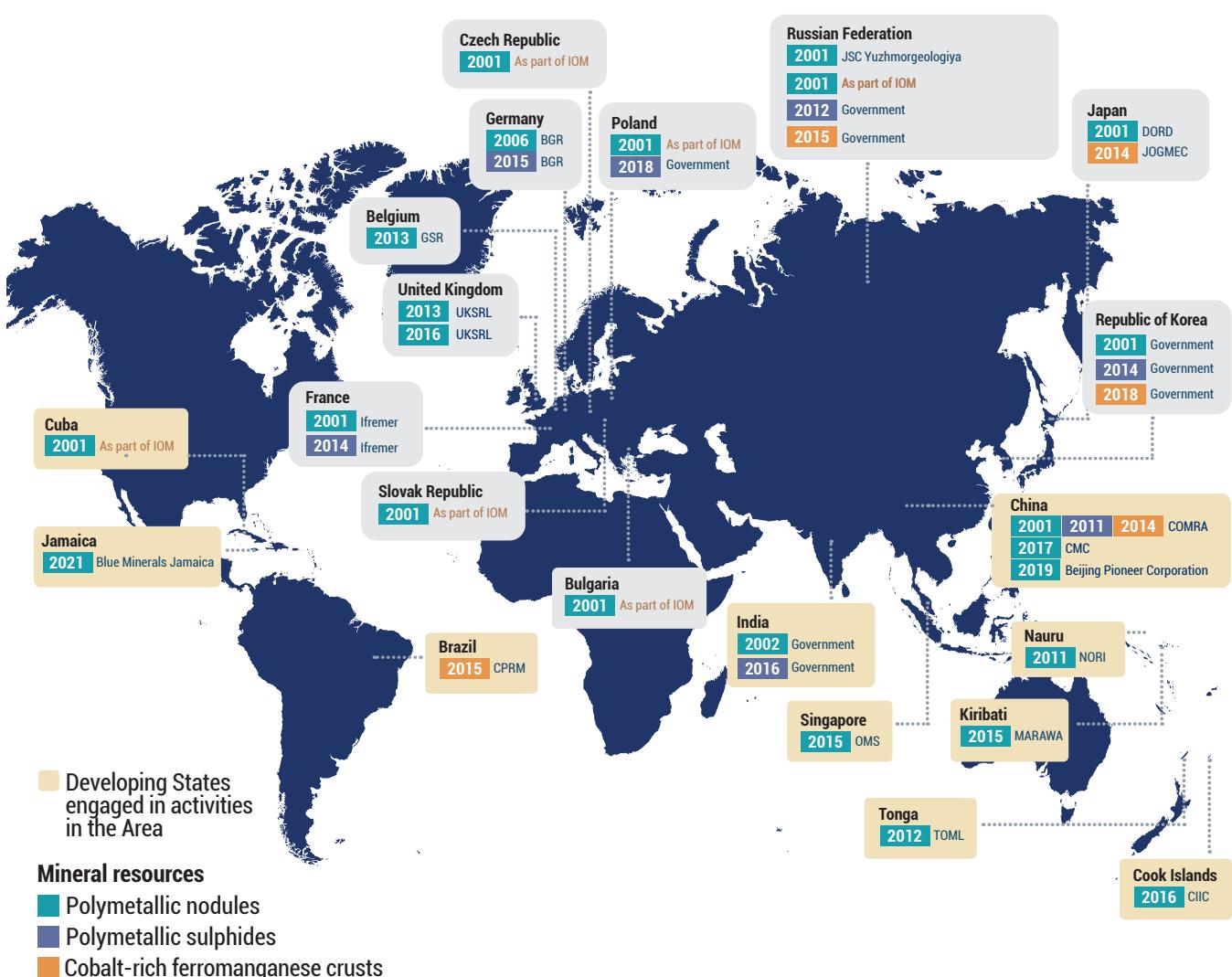
**Figure 3. Structure of ISA and participation of SIDS in its different organs**



Activities in the Area are to be carried out either by the Enterprise, or in association with ISA by States parties or State enterprises or “natural or juridical persons” which possess the nationality of States parties or are effectively controlled by them or their nationals (Art. 153(2)). Natural or juridical persons must be sponsored by one or more States parties (Annex III, Art. 4(3)), and sponsoring States have the responsibility to ensure within their legal system that a sponsored contractor is carrying out activities in the Area in conformity with its contract and its obligations under the Convention (Art. 139 and Annex III, Art. 4(4)).

A plan of work submitted to ISA by an applicant sponsored by a developed State party requesting an authorization for exploration must divide it into two parts “of equal estimated commercial value” to allow two mining operations (Annex III, Art. 8(1)). One of these sites is granted to the applicant, while the other is held in a site bank for future development by the Enterprise either by itself or in association with developing States. In case of polymetallic sulphides and cobalt-rich crusts, applicants have been given the option to either contribute a reserved area or to offer a future equity interest in a joint venture with the Enterprise, which has proven to be by far the preferred option.

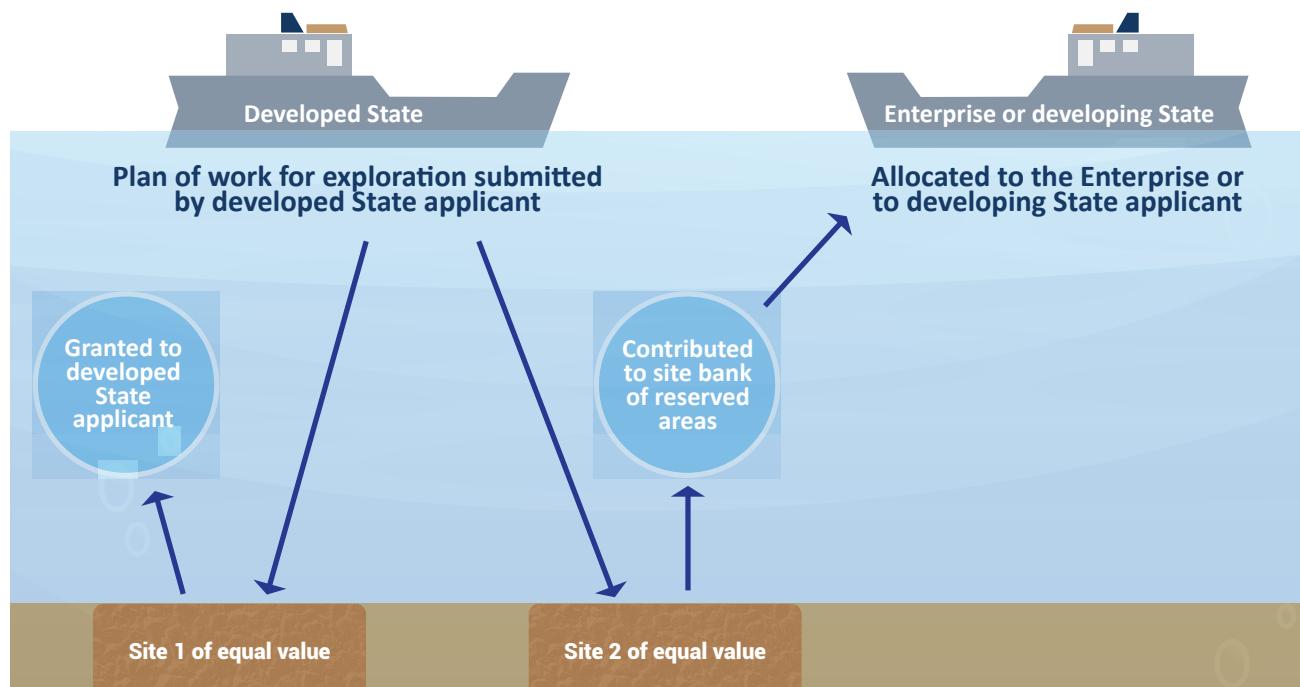
**Figure 4. States sponsoring activities in the Area**



Any developing State or a qualified entity sponsored by it may notify ISA that it wishes to submit a plan of work which will be considered if the Enterprise does not intend to carry out activities in that area (Annex III, Art. 9(4)). This mechanism of so-called “reserved areas” is a key component of the system of access to the Area and one of the means by which UNCLOS ensures that developing countries can access deep-sea mineral resources. It is one of the tasks of the ISA Secretariat to carry out resource assessment of these reserved areas.

Several developing countries, including six SIDS, have already taken advantage of provisions of the Convention to sponsor exploration activities in reserved areas. These include Cook Islands, Kiribati, Jamaica, Nauru, Tonga and Singapore (see **Figure 4**), to which reserved areas of 427,495 km<sup>2</sup> have been allocated in total. At present, **a total of 887,485 km<sup>2</sup> remains available in the reserved-area site bank for polymetallic nodules and 3,000 km<sup>2</sup> for cobalt-rich crusts** (see **Figure 5**).

**Figure 5. Understanding the "reserved areas" mechanism**



### 5.1 Creation of a site bank of reserved areas for the Enterprise and developing States

Ifremer (France) 150,440 km <sup>2</sup>	COMRA (China) 150,000 km <sup>2</sup>	IOM 150,000 km <sup>2</sup>
MOES (India) 150,000 km <sup>2</sup>	Korea 150,000 km <sup>2</sup>	Yuzhmorgeologiya (Russian Federation) 132,328 km <sup>2</sup>
DORD (Japan) 150,000 km <sup>2</sup>	UKSRL (UK) 133,184 km <sup>2</sup>	BGR (Germany) 72,744 km <sup>2</sup>
GSR (Belgium) 71,937 km <sup>2</sup>		

**5.2 Amount of reserved areas contributed by contractors as of August 2021**

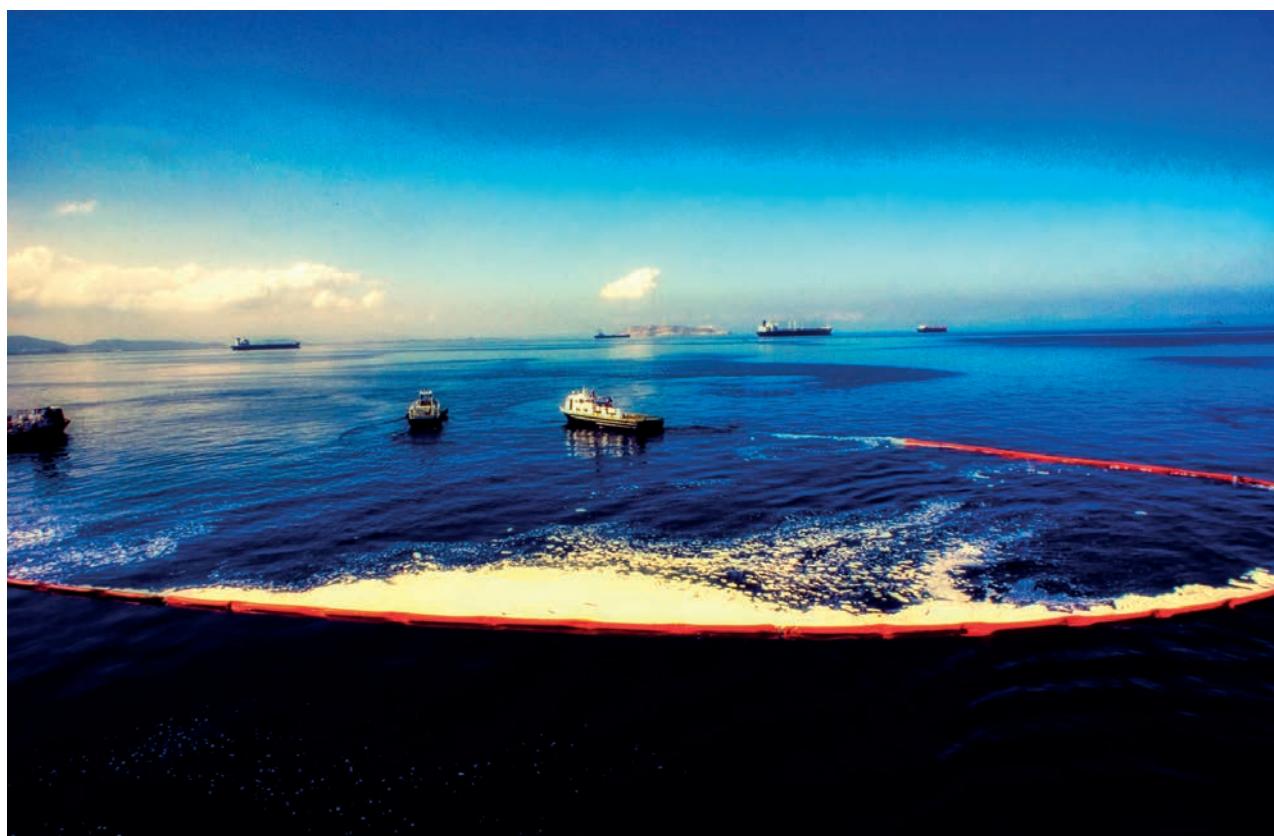


**5.3 Amount of reserved areas allocated to developing States and areas still available**

### 3. Protection and preservation of the marine environment

UNCLOS provides that "States have the obligation to protect and preserve the marine environment" (Art. 192). There is, further, the requirement to balance their sovereign rights to exploit their national resources pursuant to their environmental policy with that basic duty (Arts. 193). **States thus must individually or jointly take all measures that are necessary to prevent, reduce and control pollution of the marine environment from any source** as well as ensure that activities under their jurisdiction or control do not cause damage by pollution to other States and their environment (Art. 194(1)(2)). They are also obliged to cooperate on a global and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices, for the protection and preservation of the marine environment (Art. 197).

The duty to prevent, reduce and control pollution of the marine environment not only relates to seabed activities subject to national jurisdiction and to activities in the Area - by dumping or from vessels - but also to pollution from land-based sources, including rivers and pipelines. States are under an obligation to adopt laws and regulations in this respect and to enforce them.



Under UNCLOS, States must take all measures that are necessary to prevent, reduce and control pollution of the marine environment.

Photo: Oil spill recovery. Daniel Azocar/ Getty Images

### C. Peaceful settlement of disputes

States parties to UNCLOS are under the **obligation to settle any dispute concerning the interpretation and application of the Convention by peaceful means** in accordance with the Charter of the United Nations (Art. 279). They have the right to settle such disputes by any peaceful means of their own choice (Art. 280). First, they are obliged to proceed expeditiously to an exchange of views regarding settlement by negotiation or other peaceful means (Art. 283), which may include conciliation (Art. 284).

Where no settlement has been reached, a State is free to choose, by written declaration to the Secretary-General of the United Nations one or more of the following means: The International Tribunal for the Law of the Sea (ITLOS) (Annex VI), the International Court of Justice (ICJ), an arbitral tribunal (Annex VII) or a special arbitral tribunal (Annex VIII) for certain categories of disputes (Art. 287). In the absence of such a declaration or if the parties have not accepted the same procedure, they are deemed to have accepted arbitration under Annex VII. There are, however, certain limitations and exceptions to the application of compulsory procedures entailing binding decisions. The limitations relate to the exercise of certain discretionary powers by a coastal State, in particular as regards its sovereign rights in respect of fisheries in the EEZ (Art. 297(1)(2)). Exceptions to the compulsory procedures may also be made by virtue of written declarations, including with respect to sea boundary delimitations, historic bays or titles, or to military activities (Art. 298(1)).

ITLOS, newly established by UNCLOS and based in Hamburg, Germany, consists of 21 judges elected by the States parties for a term of nine years (Annex VI, Art. 2(1), Art. 5). Its composition must ensure adequate representation of the principal legal systems of the world and an equitable geographical distribution (Annex VI, Art. 2(2)). Its Statute also provides for the establishment of a Seabed Disputes Chamber, consisting of 11 members (Annex VI Art. 15, Art. 35), which has been granted exclusive and compulsory jurisdiction over disputes arising out of the exploration and exploitation of the Area. Such disputes comprise those between a State party and ISA or between ISA and a prospective contractor (Art. 187). The Seabed Disputes Chamber may also give advisory opinions at the request of the Assembly or the Council of ISA (Art. 191), which has so far happened once at the request of the Council.

### Box 3

#### **Advisory Opinion of the Seabed Disputes Chamber of ITLOS on the “responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area”**



Seabed Disputes Chamber of ITLOS. Photo: ITLOS

On February 1, 2011, the Seabed Disputes Chamber of ITLOS unanimously adopted a historic advisory opinion in response to a request made by the Council of ISA to clarify the legal responsibilities and obligations of sponsoring States. The Advisory Opinion was the first decision of the Seabed Disputes Chamber of the Tribunal and the first advisory opinion submitted to it.<sup>3</sup>

<sup>3</sup> Source: [https://www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_161\\_E.pdf](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_161_E.pdf)

# **4 Rights and benefits of Small Island Developing States (SIDS) under UNCLOS**

## **A. Recognition of the special situation of SIDS**

The States parties to UNCLOS have recognized the desirability of establishing through it a legal order for the oceans and seas which will facilitate international communication and promote their peaceful use, the equitable and efficient utilization of their resources, the sustainable development of their living resources, and the study, protection and preservation of the marine environment. They have also borne in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special needs and interests of developing countries, whether coastal or landlocked.

The adoption of UNCLOS in its entirety, after difficult and protracted negotiations from 1974 to 1982, constituted a major step forward in the attempt to level, at least to some extent, the playing field between developing and developed countries with respect to the law of the sea and to strike a balance between the interests and needs of all segments of the international community. The respective interests of the different categories of States, including SIDS, are thus reflected in the provisions of the Convention. UNCLOS allows smaller States to deal with larger nations on a more equal basis and to access the benefits of marine resources more easily.

## **B. Right to participate in the exploitation of living resources**



School of tuna fish. Photo: ZekaG / Getty Images.

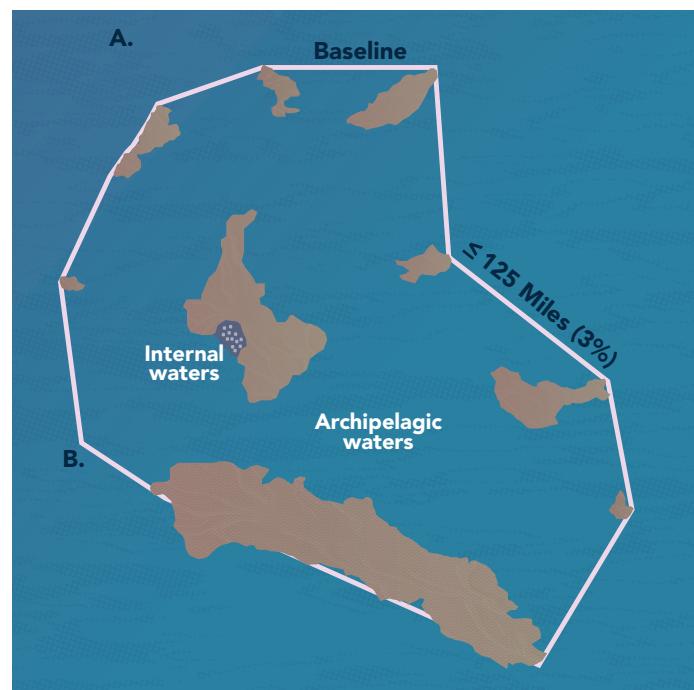
The creation of the 200 nautical mile EEZ in Part V of UNCLOS was a major gain for coastal States. In these zones, which account for around 90 per cent of fisheries, coastal States have sovereign rights over resources and jurisdictional rights related to exploration, exploitation and protection of resources. For SIDS, this achievement can even be considered of fundamental importance, as they have limited resources other than those found in the oceans. The economic interests of developing States, and of coastal fishing communities in particular, have been safeguarded by allowing them exclusive and undisputed access to the living resources within their EEZs. They have the right to determine the allowable catch of these resources (Art. 61(1)), with the obligation to promote the objective of their optimum utilization (Art. 62(1)).

The interests of SIDS in relation to fisheries were further reinforced by the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA). UNFSA requires States to give full recognition to the special requirements of developing States in relation to conservation and management of fish stocks and in particular the need to avoid adverse impacts on subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly SIDS (UNFSA, Art. 24(2)).

For SIDS, the EEZ is on average 28 times larger than the country's landmass. These States are faced by the challenge of having to manage, with limited institutional and governance capacity, vastly increased fishing resources in order to ensure long-term conservation and sustainable use. Meanwhile, the 2030 Agenda for Sustainable Development has set the goal to increase the economic benefits to Small Island Developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism by 2030 (A/RES/70/1, Goal 14.7.)

## C. Archipelagic States

SIDS have further benefited from a new concept in international law, that of the archipelagic State, laid out in Part IV of UNCLOS, which has placed additional maritime areas under their sovereignty. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, provided that the main islands are included within the baselines (Art. 47(1)). The drawing of archipelagic baselines is subject to a number of conditions, such as the ratio of land to water within these lines and their total length, which seem quite generous to archipelagic States, but do not seem to have been precisely applied in all instances.



Archipelagic baseline under UNCLOS (A: Low tide elevation with no navigational mark; B: Low tide elevation with navigational mark).  
Based on TALOS 2006.

## D. The continental shelf regime

An important gain for coastal States was the recognition of their sovereign rights over the continental shelf, to the outer edge of the continental margin, for the purposes of exploring it and exploiting its natural resources (Art. 77). At the time of the creation of UNCLOS, it was assumed that no more than 30 to 35 States would be able to claim an entitlement to a continental shelf beyond 200 nautical miles, and that this provision would therefore probably not be of particular benefit for Small Island Developing States, an assumption that has proven to be wrong. Since then, it has turned out that this number will be considerably higher and may include 80 to 90 States in the end. The number of submissions to the Commission on the Limits of the Continental Shelf (CLCS) currently stands at 88, although this number includes cases of multiple submissions made by a single State as well as joint submissions by two or more States. Thus far, 17 SIDS have made single or joint submissions to the CLCS, which has adopted eight recommendations related to this group of States (see **Figure 1**).

In defining the continental shelf, UNCLOS provides that the continental margin comprises the submerged prolongation of the land mass of the coastal State (Art. 76(3)). By using the expression "land mass" rather than "continental land mass", UNCLOS makes it clear that island States have the same rights over the continental shelf as coastal States on continents. This equal treatment of island and continental States is also found in the regime of islands, making up Part VIII of the Convention, which provides that the maritime zones of an island are determined in accordance with UNCLOS provisions applicable to other land territory (Art. 121(2)). The only exception is rocks which cannot sustain human habitation or economic life of their own and therefore have no EEZ or continental shelf (Art. 121(3)). A central concern has thus been taken into account for island States, which had demanded to be granted the same status as continental States regarding the generation of maritime zones.

## E. Protection and preservation of the marine environment



*Pelagia noctiluca*. Photo: Alexander Semenov.

With respect to the protection and preservation of the marine environment, including the prevention, reduction and control of marine pollution, UNCLOS provides for scientific and technical assistance to developing States, directly or through competent international organizations. Such assistance comprises the promotion of scientific, educational, technical and other assistance, such as training of scientific and technical personnel, supplying these States with necessary facilities and equipment, and providing assistance for the minimization of the effects of major incidents which may cause serious pollution of the marine environment and the preparation of environmental assessments (Art. 202). For the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, developing States are to be granted preference by international organizations in the allocation of appropriate funds and technical assistance (Art. 203(a)).

## F. Marine scientific research and technology transfer

UNCLOS provides that **all States**, irrespective of their geographic location, **have the right to conduct marine scientific research, subject to the rights and duties of other States** (Art. 238). The Convention also provides for the duty of States and competent international organizations to actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as to strengthen their autonomous marine scientific research capabilities (Art. 244(2)). States and competent international organizations planning to undertake marine scientific research must give notice of a proposed research project to the neighbouring landlocked and geographically disadvantaged States (Art. 254(1)). After the coastal State concerned has given its consent for the marine scientific research project, the neighbouring landlocked and geographically disadvantaged States must, at their request, be given the opportunity to participate in the project (Art. 254(3)).

States, directly or through competent international organizations, are also under an **obligation to cooperate** in accordance with their capabilities to **promote actively the development and transfer of marine science and marine technology** on fair and reasonable terms and conditions (Art. 266(1)). In this context, they must promote the development of the marine scientific and technological capacity, particularly of developing States, including landlocked and geographically disadvantaged States, regarding the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment and marine scientific research (Art. 266(2)).

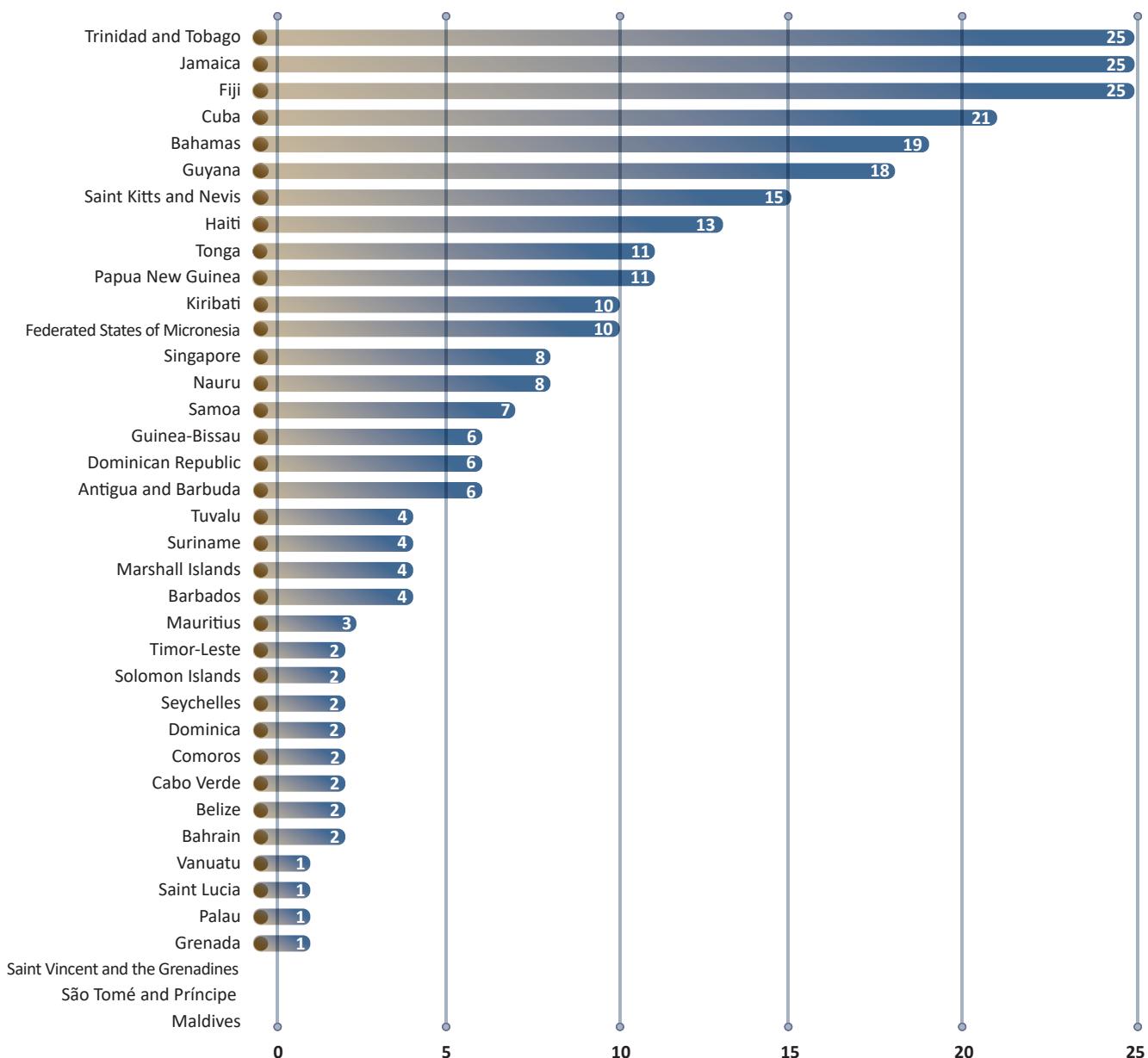
There is, further, an obligation to establish programmes of technical cooperation for the effective transfer of marine technology to developing, landlocked and geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology (Art. 269(a)).

## G. Participation in the work of ISA

With respect to activities in the Area, according to UNCLOS the effective participation of developing States must be promoted, having due regard to their special interests and needs, and in particular to the special need of the landlocked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it (Art. 148). ISA is also under the **obligation to take measures to promote and encourage the transfer to developing States of technology and scientific knowledge** relating to activities in the Area, so that all States parties benefit therefrom (Art. 144(1)(b)). While it is stipulated that ISA must avoid discrimination in the exercise of its powers and functions, special consideration is nevertheless permitted for developing States (Art. 152).

The ISA Assembly has the power to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities that are due to their geographical location (Art. 160(2)(k)). Six members of the ISA Council must be elected from among developing States parties representing special interests, and these interests must include, inter alia, island States and least developed States (Art. 161(1)(d); Implementation Agreement, Section 3(15)(d)) (see **Figure 3**).

**Figure 6. Number of times a State was represented at the annual session of ISA out of 25 sessions**



## H. Capacity-building and training

### 1. Role and mandate of ISA in building the capacities of its members

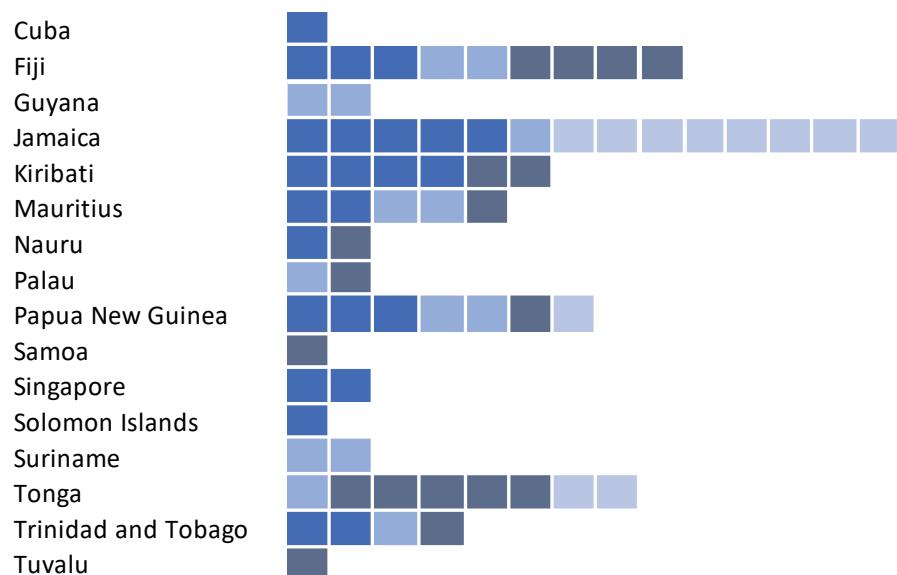
The entry into force of UNCLOS created the enabling conditions for the operationalization of the regime of the Area. A critical element of this regime lies in the establishment of ISA as a dedicated intergovernmental organization to regulate and manage access to and use of deep-seabed mineral resources whilst ensuring the protection of the marine environment. As part of this mandate, ISA is also entrusted with the responsibility to ensure equitable sharing of benefits derived from the conduct of activities in the Area. One important stream of benefits is the development of programmes aimed at strengthening the capacities of developing States and technologically less developed States (Art. 143(3)(b), Art. 144, Art. 273, Art. 274).

Since 2000, three main programmes have been implemented by ISA to strengthen the capacities of developing and technologically less developed States. These are the Contractor Training Programme (CTP), the Endowment Fund for Marine Scientific Research in the Area (EFMSR), and an internship programme. In addition, since 2017, a series of activities have been undertaken to reinforce the actions of ISA in building the capacities of its Members.<sup>4</sup> **Among SIDS, 67 individuals from 16 countries have benefited from ISA training programmes (see Figure 7).**

**Figure 7. Capacity-building at ISA**  
**7a. Current capacity-building programmes and initiatives**



**7b. Participation of individuals from SIDS in the different programmes**



## **2. Implementing a programmatic approach to respond to the needs identified by developing States**

The duty of ISA to design and implement mechanisms to build capacity for developing States in accordance with its mandate under UNCLOS is recognized in the Strategic Plan of ISA for the period 2019-2023 (ISBA/24/A/10, Annex). Such mechanisms should aim not only at promoting and encouraging the transfer of technology to developing States (UNCLOS Art. 144, Art. 273, Art. 274) but also at ensuring the expansion of opportunities for participation in activities in the Area (Art. 148).

<sup>4</sup> See <https://www.isa.org.jm/training>



ISA convened an international workshop on capacity development, resources and needs assessment in Kingston, Jamaica in February 2020. Photo: ISA.

Members of ISA have identified that one of the key challenges for ISA lies in the development of mechanisms, including capacity-building programmes, that ensure the fully integrated participation of developing States in activities in the Area at all levels. Strategic Direction 5 (Build capacity for developing States) and Strategic Direction 6 (Ensure fully integrated participation by developing States) of the ISA Strategic Plan are aimed at accomplishing this objective (see **Box 4**).

To better understand the specific needs of developing States, in particular least developed countries (LDCs), landlocked developing countries (LLDCs) and SIDS, in relation to capacity development, ISA convened an international workshop on capacity development, resources and needs assessment in Kingston, Jamaica, in February 2020.<sup>5</sup> As preparation for the workshop, the ISA Secretariat prepared a comprehensive review of all capacity-building programmes and initiatives implemented by ISA between 1994 and 2019.<sup>6</sup> Both the review and the workshop were informed by an advisory committee established by the Secretary-General to provide expert input and strategic advice. The review was further revised in light of comments from the advisory committee, the training subgroup of the Legal and Technical Commission, participants in the workshop and input received from Member States during a public consultation held between April and June 2020. In addition, the Secretariat conducted a survey of all members of ISA between April and June 2020, in which Members were invited to identify their priority capacity-development needs relating to the role and mandate given to ISA under UNCLOS. One of the key outcomes of the survey was that, out of those States that were not currently sponsoring activities in the Area, 89 percent indicated that their country had aspirations to engage in activities in the Area in the future and wished to develop capacity to do so.

The outcomes of the above process were reported to the ISA Assembly in 2020. In December 2020, the Assembly adopted a decision on capacity development (ISBA/26/A/18), in which it requested the Secretary-General to develop and implement a dedicated strategy for capacity development and explore options to mobilize additional resources to provide financial support for capacity development. The Assembly also invited Members of ISA to identify national focal points for capacity development.

<sup>5</sup> ISA, International workshop on capacity development, resources and needs assessment, 2020. Accessible at: <https://bit.ly/3ymBez2>

<sup>6</sup> ISA, Review of capacity-building programmes and initiatives implemented by the International Seabed Authority 1994-2019, 2020. Accessible at: <https://bit.ly/3yqinDf>

**ISA Strategic Directions 5 and 6 on building the capacity for developing States and ensuring their fully integrated participation in the work of ISA**



### **3. Advancing women's empowerment and leadership in deep-sea research, particularly women from developing States including LDCs, LLDCs and SIDS**



ISA is committed to promote the participation and leadership of women in deep-sea research. Photo: ISA

According to the 2020 Global Ocean Science Report,<sup>7</sup> women continue to remain underrepresented in ocean science, especially in highly technical categories. This is even more prominent in emerging sectors such as deep-sea research and in developing States, particularly in LDCs, LLDCs and SIDS. This is notably the case because of a general lack of financial resources to access the deep sea and insufficient academic training in deep-sea related disciplines.

To address these challenges, ISA, together with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS), has developed a series of activities and initiatives aimed at improving the conditions needed to promote women's empowerment and access to leadership positions in deep-sea research for those from developing States, with a particular focus on women scientists from LDCs, LLDCs and SIDS. One of these initiatives, the **Women in Deep-Sea Research (WIDSR) project**, was launched on International Women's Day 2021 and will focus on policy development, advocacy, communications and outreach.<sup>8</sup>

<sup>7</sup> IOC-UNESCO (2020). Global Ocean Science Report 2020—Charting Capacity for Ocean Sustainability. K. Isensee (ed.), Paris, UNESCO Publishing. <https://unesdoc.unesco.org/ark:/48223/pf0000375147>

<sup>8</sup> <https://www.isa.org.jm/vc/enhancing-role-women-msr/WIDSR-project>

# 5 Equitable sharing of financial and other economic benefits

To obtain recognition by the international community of continental shelf rights beyond 200 nautical miles, the coastal States with a continental margin extending further had to agree to a system of revenue-sharing. Article 82 of UNCLOS thus provides that these coastal States are to make payments or contributions in kind in respect to the exploitation of the non-living resources of the continental shelf beyond that distance (Art. 82(1)). Payments and contributions must be made annually after the first five years of production at a site. The rate of payment or contribution increases by 1 per cent for each subsequent year and is to remain at 7 per cent as of the twelfth year (Art. 82(2)). An exemption has been made for making such payments and contributions in respect of a mineral resource of which a developing State is a net importer (Art. 82(3)). The payments or contributions are to be made through ISA, which must distribute them to States parties, on the basis of **equitable sharing criteria**, taking into account the **interests and needs of developing States, particularly the least developed and the landlocked among them** (Art. 82(4)).

An important task of ISA is to provide for the **equitable sharing of financial and other economic benefits derived from activities in the Area** on a non-discriminatory basis, stipulated in Article 140 of UNCLOS (Art. 140(2)). The Assembly has the competence to consider and approve, upon the recommendation of the Council, rules, regulations and procedures on the equitable sharing of such benefits and payments and contributions made pursuant to Article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status (Art. 160(2)(f)(i)). Criteria for the equitable sharing of benefits are still under consideration by ISA, as commercial exploitation of the Area as well as of the continental shelf beyond 200 nautical miles is yet to begin. There is also a difference between the cases of Articles 82 and 140, as proceeds derived from activities in the Area belong to ISA according to Article 140, with the Assembly having to decide upon equitable sharing (Art. 160(2)(g)), while payments accrued under Article 82 from the continental shelf must be distributed directly to the States parties, with ISA serving as a conduit.



ISA must distribute the benefits from deep-seabed mining equitably.  
Photo: Polymetallic sulphides. BGR.

# 6 Conclusion

UNCLOS has substantially improved the legal situation of SIDS in the law of the sea by securing for them exclusive rights to living and non-living resources in adjacent maritime areas, which provides critically important revenues. Besides the ongoing exploitation of fish stocks, their interest in the exploitation of seabed minerals within and beyond national jurisdiction has begun to increase. Exploitation of the resources of the continental shelf beyond 200 nautical miles may bring further considerable benefits to SIDS. It may be presumed that SIDS will be very high up on the list of beneficiaries once ISA is in a position to distribute economic benefits from deep-seabed mining and from exploitation of the continental shelf beyond 200 nautical miles by other coastal States.

In 2011, the first fifteen-year exploration contract for a reserved area of the deep seabed was signed between ISA and a SIDS, Nauru. This represented an important milestone and has encouraged other developing countries, including SIDS, to follow their example. The signing of this contract was preceded by an Advisory Opinion of the Seabed Disputes Chamber of ITLOS, requested by the ISA Council at the initiative of Nauru, which clarified the obligation of States parties with respect to the sponsorship of activities in the Area as one of "due diligence". The Chamber also noted that the provisions of UNCLOS which take into consideration the special interests and needs of developing States should be effectively implemented with a view to enabling these States to participate in deep-seabed mining on an equal footing with developed States.

Despite the rights and benefits conferred by UNCLOS and its implementation agreements related to SIDS, sustainable development remains a real challenge for many of them, requiring continued cooperation and assistance by the international community. In 1994, the Barbados Programme of Action identified specific actions and measures to enable SIDS to achieve sustained development, and the Mauritius Strategy for the Further Implementation of that Programme of Action was adopted in 2005.

In 2010, a high-level meeting of the UN General Assembly carried out a five-year review of progress made in addressing the vulnerabilities of SIDS. **The Third International Conference on Small Island Developing States, held in Samoa in 2014, adopted the SIDS Accelerated Modalities of Action (SAMOA) Pathway**, which was endorsed by the UN General Assembly (A/RES/69/15). The SAMOA Pathway reaffirmed that SIDS remain a special case for sustainable development in view of their unique and particular vulnerabilities (preambular para. 5) and recognized that sea-level rise and other adverse impacts of climate change pose a significant risk to SIDS and their efforts to achieve sustainable development (preambular para. 11).



Secretary-General Ban Ki-moon at the Third International Conference on Small Island Developing States, 31 August 2014 in Apia, Samoa. UN Photo/Evan Schneider

On 10 October 2019, the UN General Assembly adopted a **"Political declaration of the high-level meeting to review progress made in addressing the priorities of SIDS through the implementation of the SAMOA Pathway"** (A/RES/74/3). This declaration expresses particular concern that many SIDS have not achieved high levels of economic growth, owing in part to their vulnerabilities to the ongoing negative impacts of environmental challenges and external economic and financial shocks (para. 4). All entities of the United Nations system are called upon to address and integrate SIDS-related priorities into their respective strategic and work plans, in accordance with their mandates (para. 31(a)).

In this context, ISA is in a position to provide valuable assistance and support to these highly vulnerable States and to help increase their participation in activities in the Area, including deep-sea exploration, exploitation of seabed resources and marine scientific research. ISA is also making SIDS increasingly aware of the benefits of the blue economy, including through the establishment of a benefit-sharing mechanism for economic and non-financial benefits derived from activities in the Area. ISA is further promoting the development of the necessary capacities in SIDS for marine scientific research, where the role and participation of women scientists is being enhanced, as well as organizing and facilitating technology transfer. Measures are also being identified to increase the participation of SIDS in the implementation of the regime of the Area and in the work of ISA.

## Further reading

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