



THE INTERNATIONAL SEALED AUTHORITY AND THE BIG OCEAN STATES: CHARTING THE FUTURE FOR RESILIENT PROSPERITY

Introduction

The oceans and their marginal seas, covering almost 71 per cent of the surface of the Earth, have played a significant role in the development of humanity since early times. 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 manage resources of the global commons peacefully and to ensure equity in access 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.



The United Nations Convention on the Law of the Sea and the Big Ocean States

The United Nations Convention on the Law of the Sea (UNCLOS), which was adopted in 1982 and entered into force in 1994, provides a comprehensive and integrated governance framework for the entire international community.

UNCLOS regulates access to ocean space, its uses and its resources and lays down clear and universal rules for the exercise of maritime jurisdiction by coastal States. 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. As of May 2024, UNCLOS has been ratified by 168 States and the European Union.

The entry into force of UNCLOS 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.

UNCLOS does not define the term "small island developing State" (SIDS), although these countries actively contributed to its development.¹ As there is no widely accepted definition of SIDS, membership in this group is by self-selection. Thus, the SIDS also include two small continental States. SIDS are also sometimes referred to as Big Ocean States (BOS). In addition to the 39 BOS which are Members of the United Nations, 20 Non-UN Members or Associate Members of UN Regional Commissions are part of the BOS.² BOS are dispersed in the Caribbean and the Pacific, Atlantic and Indian Oceans. They all 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 the rise of sea levels and posing an existential threat, particularly in the Pacific - has become an overriding concern for most BOS.

Big Ocean States and the International Seabed Authority

All 39 BOS Members of the United Nations are parties to UNCLOS and, therefore, Members

¹<https://www.isa.org.jm/events/report-launch-the-law-of-the-sea-an-ocean-of-opportunity-for-ldcslldcs-and-sids/#studies>

² the list is here - <https://www.un.org/ohrlls/content/list-sids>

of the International Seabed Authority (ISA), the international organization created by UNCLOS to organize and control seabed minerals-related activities in the seabed and ocean floor beyond the limits of national jurisdiction (the Area).

The regime of the Area and Big Ocean States

The provisions relating to the Area are central to UNCLOS. These provisions are enshrined in Part XI and Annex III of UNCLOS, together with the 1994 Agreement Relating to the Implementation of Part XI (1994 Agreement), which was adopted to bring the regime of the deep seabed closer in line with political and economic realities.

The Area and its resources are declared the common heritage of humankind (Article 136) in order to preserve the greater part of ocean space as a commons open to use by the entire international community. The Area is open to use exclusively for peaceful purposes to all States, whether coastal or landlocked, without discrimination (Article 141). 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 to these resources, defined as all solid, liquid or gaseous mineral resources in situ in the Area or beneath the seabed, including polymetallic nodules (Article 133(a)), are vested in humankind as a whole, on whose behalf ISA is to act (Article 137). All activities of exploration for and exploitation of the resources of the Area 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 (Article 140(1)).

ISA has its headquarters in Kingston, Jamaica. Its main organs are the Assembly, the ISA supreme organ consisting of all the Member States, the Council, the executive organ of ISA, and the Secretariat, headed by the Secretary-General. The Assembly elects 36 members of the Council from five groups of States Parties representing different interests and ensuring an equitable geographical distribution (Article 161(1)). Six members of the ISA Council must be elected from among developing States Parties representing special interests, which must include, *inter alia*, island States and least developed States (Article 161(1)(d), 1994 Agreement, Section 3(15)(d)).

The first Secretary-General of ISA was a representative of BOS in the person of H.E Mr Satya N. Nandan, from Fiji. Currently six BOS are members of the Council and have actively participated in the work of the Council. The primary function of the Council, which has an extensive range of powers, is to supervise and control the implementation of Part XI of UNCLOS and the 1994 Agreement on all matters within the competence of ISA (Article 162(2)(a)).

The Legal and Technical Commission (LTC) (Article 163) and the Finance Committee (Article 162(2)(y)), consisting of individual experts, are important subsidiary organs of ISA. Many of the decisions of the Council and the Assembly must be based on the recommendations of these bodies. The LTC members are elected by the Council and those of the Finance Committee by the Assembly. From 2017 to 2022, four experts from BOS were elected members of the LTC. Four experts from BOS are currently part of the LTC during the 2023-2027 term (Fiji, Jamaica, Tonga, Trinidad and Tobago). Two BOS experts are currently members of the Finance Committee (Jamaica, Nauru).

The Enterprise is established as an organ of ISA to carry out activities in the Area directly, on behalf of all Member States, subject to the directives and control of the Council (Article 170). Under the 1994 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. In 2023, Member States established the position of Interim Director-General of the Enterprise as mandated by the 1994 Agreement.³

Activities in the Area and Big Ocean States

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 (Article 153(2)). A plan of work submitted to ISA by an applicant sponsored by a developed State party requesting authorization for exploration must be divided into two parts of "equal estimated commercial value" to allow for two mining operations (Annex III, Article 8(1)). Under the mechanism of the so-called "reserved areas," one of these sites is granted to the applicant. At the same time, the other is held in a site bank for future development by the Enterprise, either by itself or in association with developing States. In the case of polymetallic sulphides and cobalt-

³ ISA. 2023. Decision of the Council of the International Seabed Authority relating to the establishment of the position of an interim director general of the Enterprise (ISBA/28/C/10).

rich ferromanganese 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.

According to UNCLOS, the effective participation of developing States must be promoted with due regard to their special interests and needs and, in particular, the special needs of the landlocked and geographically disadvantaged States to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it (Article 148).

Any developing State or a qualified entity sponsored by it may notify ISA that it wishes to submit a plan of work in a reserved area. Such a request will be considered if the Enterprise does not intend to carry out activities in that area (Annex III, Article 9(4)). This mechanism 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.

Six BOS have already taken advantage of UNCLOS provisions to sponsor exploration activities in the reserved areas. A total of 429,666 km² of reserved areas have been allocated to the Cook Islands, Kiribati, Jamaica, Nauru, Tonga and Singapore. At present, a total of 839,218 km² remains available in the reserved area site bank for polymetallic nodules and 3,000 km² for cobalt-rich ferromanganese crusts.

Big Ocean States and equitable sharing of benefits from activities in the Area

Although its core function is to manage activities in the Area, ISA has been entrusted by UNCLOS with other important tasks, as well. These include promoting and encouraging marine scientific research (Article 143), the transfer to developing States of technology and scientific knowledge (Article 144) and the effective protection of the marine environment and conservation of the natural resources of the Area (Article 145).

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. 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. Criteria for the equitable sharing of benefits are still under consideration, as

commercial exploitation of the Area has yet to begin. The Finance Committee has proposed the establishment of a Common Heritage Fund as an alternative or adjunct to the direct distribution of monetary benefits derived from activities in the Area. In July 2023, the Council and the Assembly took note and welcomed the progress made by the Finance Committee on equitable sharing of financial and other economic benefits derived from activities in the Area and supported the possible creation of a Common Heritage Fund, without prejudice to the further consideration of other mechanisms for the equitable sharing of financial benefits.

One important stream of benefits is the development of programmes aimed at strengthening the capacities of developing States and technologically less developed States (Article 143(3)(b), Article 144, Article 273, Article 274). In August 2022, the ISA Assembly adopted a Capacity Development Strategy to discharge such functions.

The ISA Capacity Development Strategy is aimed at enhancing the ability of ISA to build and develop the capacity of developing States Members of ISA with a view to ensuring the full participation of States in the work of ISA and the activities carried out in the Area.⁴

Since 2000, two main programmes have been implemented by ISA to strengthen the capacities of BOS under the ISA Capacity Development Strategy. These are the Contractors' Training Programme and the Abyssal Initiative for Blue Growth. Among BOS, 89 individuals from 13 countries, including 44 women, have benefited from the Contractors' Training Programme.

At the UN Ocean Conference held in New York in June 2017, ISA and the United Nations Department of Economic and Social Affairs officially announced the launch of their voluntary commitment to strengthen the capacity of Pacific BOS to access and benefit from their blue economy sustainably. In 2019, this commitment was operationalized through the Abyssal Initiative for Blue Growth, launched at a regional workshop in Nuku'alofa, Tonga. The main goal of the project was to support BOS in strengthening their capacity to develop and implement appropriate enabling legal, institutional and policy frameworks for the sound and sustainable management of marine mineral resources in the Area. The Abyssal Initiative for Blue Growth received support from the Government of Norway through the participation of the Norwegian Agency for Development Cooperation, as well

⁴ ISA. 2022. Decision of the Assembly of the International Seabed Authority relating to the implementation of a programmatic approach to capacity development (ISBA/27/A/11).

as in-kind contributions from Singapore and the United Kingdom through the participation of resource experts.

Five workshops were organized in the context of the Abyssal Initiative for Blue Growth. In February 2019, Tonga hosted the first regional workshop organized by ISA, the United Nations Department of Economic and Social Affairs and the Kingdom of Tonga. Aimed at Pacific BOS sponsoring States, the workshop gathered stakeholders to pinpoint capacity-building needs. Nine Pacific BOS, representatives of international organizations and civil society organizations together identified needs in legal frameworks, marine research participation, environmental management and benefit-sharing. There were two additional workshops in August 2019. The one held in Nauru, "Role and responsibilities of sponsoring States," focused on clarifying those roles under international law, enhancing mechanisms and discussing non-monetary benefits from contractor

relationships. The emphasis of the workshop held in Kiribati, "Marine scientific research in the Area," was on understanding its importance and leveraging contractor relationships for national objectives. In June 2021, the Cook Islands hosted a virtual workshop, "Deep-seabed environmental management and monitoring." Discussions covered legal frameworks, precautionary approaches, environmental risk assessment and data sharing. Pacific BOS sponsoring States identified specific capacity development needs and discussed cooperation strategies. Finally, in June 2023, Tonga hosted another workshop, "Equitable sharing of benefits from activities in the Area." Participants explored operationalizing UNCLOS to ensure fair benefits, particularly for developing countries like Pacific BOS. Critical capacity development needs were also revisited. Collectively, these workshops aimed at enhancing Pacific BOS' capabilities and promoting equitable and sustainable management of marine resources.

Conclusion

This policy brief has shown that the nexus between BOS and ISA presents a dynamic landscape for charting the future of resilient prosperity. In that, UNCLOS serves as the cornerstone, providing a comprehensive framework that ensures equitable access to ocean resources while promoting sustainable development goals.

UNCLOS is a stepping stone on which BOS have gained exclusive rights to living and non-living resources within their maritime areas. It also signalled a pivotal shift in the legal landscape. The involvement of BOS in deep-sea mineral exploration, exemplified by the landmark advisory opinion of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea requested by the ISA Council at the initiative of Nauru, underscores their growing engagement in harnessing seabed resources for economic development.

However, sustainable development remains a pressing challenge for many BOS, necessitating

ongoing cooperation and assistance from the international community. Initiatives such as the Barbados Programme of Action, the Mauritius Strategy and the SAMOA Pathway have laid the groundwork for advancing sustainable development agendas in BOS.

Looking ahead, the meeting in St. John's, Antigua and Barbuda, to adopt the Antigua and Barbuda Agenda for BOS represents a critical juncture. By reaffirming commitments to promoting sustainable ocean-based economies and enhancing support for renewable energy transitions, BOS are poised to navigate the complex challenges of climate change, resource management and economic resilience in the years to come.

In essence, the collaboration between BOS and ISA, underpinned by UNCLOS, holds immense potential for fostering inclusive and sustainable development in the maritime domain. By leveraging partnerships, investment and innovative strategies, BOS can chart a course towards resilient prosperity, ensuring that the vast resources of the oceans benefit present and future generations alike.



ABOUT THE INTERNATIONAL SEABED AUTHORITY

Made up of 168 Member States, and the European Union, ISA is mandated under the UN Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of humankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep seabed related activities.