

## The International Seabed Authority: Fifth to Twelfth Sessions (1999-2006)

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**Annex:**

Fifth to Twelfth Sessions of the Authority: Overview  
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This article adopts broadly the same outline as an earlier one, published in 1999, which dealt with the first four sessions of the International Seabed Authority (up to the point when provisional membership terminated, on 16 November 1998).<sup>1</sup> The present article, together with the 1999 article, seeks to describe the first twelve years of the Authority, which may be seen as its formative period.<sup>2</sup> The article describes (in Section III) the organisational and substantive work of the Authority in the years between 16 November 1998 and 31 March 2007. Certain introductory matters are covered in Section I. Section II continues the description of some salient features of the Authority that was given in the 1999 article. Further thoughts on the future are set out in Section IV.

During the eight sessions covered by the present article, the various organs of the Authority have continued to deal with organisational matters, but the emphasis has shifted significantly towards substantive work. The organs of the Authority have continued to operate largely by

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<sup>1</sup> M.C. Wood, "International Seabed Authority: The First Four Years", in: J.A. Frowein/ R. Wolfrum (eds), *Max Planck UNYB* 3 (1999), 173 et seq. (hereafter referred to as the "1999 article").

<sup>2</sup> The 2004 report of the Secretary-General provides an authoritative account of the work of the Authority over the first ten years of existence, and is most useful: ISBA/10/A/3: *Selected Decisions and Documents of the Tenth Session* 10, 10-50.

consensus, and decisions have been taken essentially on practical and technical grounds, rather than being driven by the more ideological concerns of the negotiating phase in the 1960s, 1970s and 1980s. Increasing emphasis has been given to environmental protection. And interest has grown in resources of the deep seabed other than polymetallic nodules. Discussions in other forums and by certain writers on issues such as genetic resources have not always acknowledged that the Authority's role is limited to mineral resources; the Authority has resisted occasional pressures to go beyond its true mandate.

The Authority is an autonomous international organisation, not part of the United Nations system, though in practice it is closely associated with it, in its origins and in its day-to-day business (including by its participation in the staff common system). As is provided in the *United Nations Convention on the Law of the Sea*, 1982 (hereafter the Convention), the Authority is the organisation through which the parties to the Convention shall, in accordance with its Part XI, organise and control exploration for, and exploitation of, the mineral resources of the Area (the seabed and ocean floor and subsoil thereof, beyond national jurisdiction).<sup>3</sup> The Authority was established in 1994, pursuant to Part XI of the Convention and the Annexes related thereto (Annexes III and IV), the *1994 Agreement relating to the Implementation of Part XI of the Convention* (hereafter the Implementation Agreement or Agreement), and Resolutions I and II of the Third United Nations Conference on the Law of the Sea.<sup>4</sup>

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<sup>3</sup> Article 157.1, read with article 1.1(3) and article 133(a).

<sup>4</sup> The most important documents of the Authority are to be found in the annual publication *Selected Decisions and Documents* of each session (hereafter referred to as *Selected Decisions* followed by the number of the session; thus *Selected Decisions and Documents of the Twelfth Session* is referred to as *Selected Decisions 12*). Indexes to the main documents are to be found in *Selected Decisions*. See also *The Law of the Sea: Compendium of Basic Documents* (International Seabed Authority/ The Caribbean Law Publishing Company, 2001) and *International Seabed Authority: Basic Texts* (The International Seabed Authority, Kingston, Jamaica 2003), with a useful Note on Documentation and commentaries and documentary sources for each of the basic texts (hereafter *Basic Texts*). A Note on Documentation is also included in the latest *Selected Decisions*, where there is also a cumulative index of documents. No official records of meetings are kept (though sound recordings are made), and the Press Releases, while useful, are not authoritative or indeed necessarily always accurate. Official accounts of the work of the Assembly and Council are to be found in the successive con-

Highlights of the activities of the Authority during the eight-year period under review include the approval in July 2000 of the *Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area*; the issue of the first seven fifteen-year contracts for exploration in 2001/02 to the seven registered pioneer investors, together with the issue in 2006 of a fifteen-year contract to Germany; the holding of a series of scientific and technical workshops and seminars; and the Tenth Anniversary Session of the Authority held in 2004. While there is a significant record of positive achievements, including the promotion of knowledge and scientific research, the Authority's role remains relatively modest, absent significant commercial interest in the development of deep seabed mineral resources.

The period also saw the publication in 2003 of Volume VI of the *Virginia Commentary*, which contains "an integrated commentary on the deep seabed regime as a whole: 1982 Convention, 1994 Agreement and 2000 Code."<sup>5</sup> And there have been other useful publications, both official<sup>6</sup> and private,<sup>7</sup> as well as a further development of the Authority's website.<sup>8</sup>

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cluding statements of their Presidents on the work of each session or part of a session. The annual reports of the Authority's Secretary-General under article 166.4 of the Convention provide an invaluable overview of developments (especially that for the Tenth Anniversary Session in 2004, see note 2), as do his statements at the United Nations General Assembly under the agenda item "Oceans and Law of the Sea", and to the annual Meetings of States Parties to the Convention.

<sup>5</sup> M.W. Lodge/ S. Nandan/ S. Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Volume VI (2003), p.xii (*Virginia Commentary*).

<sup>6</sup> *The Law of the Sea: Concept of the Common Heritage of Mankind: Legislative History of Articles 133 to 150 and 311(6) of the United Nations Convention on the Law of the Sea*, United Nations, 1996; *Secretary-General's Informal Consultations on Outstanding Issues Relating to the Deep Seabed Mining Provisions of the United Nations Convention on the Law of the Sea: Collected Documents*, International Seabed Authority, 2002, with bibliography; *Legislative History of the "Enterprise" under the United Nations Convention on the Law of the Sea and the Agreement Relating to the Implementation of Part XI of the Convention*, International Seabed Authority, 2002; *Proceedings of the Tenth Anniversary Commemoration of the Establishment of the International Seabed Authority*, International Seabed Authority, 2004 (hereafter *Tenth Anniversary Commemoration*).

<sup>7</sup> D.A. French, *Der Tiefseebergbau*, 1990; M.C.W. Pinto, "Common Heritage of Mankind: From Metaphor to Myth, and the Consequences of Con-

The 1999 article suggested three objectives for the short to medium-term:

- The members of the Authority need to ensure that nothing is done that will unnecessarily hamper commercial deepsea mining if and when that becomes a real prospect (since otherwise the common heritage will benefit no one), while taking due account of other interests, in particular the need for adequate environmental protection and the need to avoid unfair competition (subsidies).
- Members also need to ensure that the Convention and Agreement are strictly adhered to, in particular that the Authority does not ex-

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structive Ambiguity”, in: J. Makarczyk (ed.), *Theory of International Law at the Threshold of the 21st Century: Essays in Honour of Krzysztof Skubiszewski*, 1996, 249 et seq.; N.J. Seeberg-Elverfeldt, *The Settlement of Disputes in Seabed Mining*, 1998; R. Churchill/ V. Lowe, *The Law of the Sea*, 3rd edition, 1999, 223-254; D. da Empoli, “Public Choice Analysis of a New International Organization: The International Sea-Bed Authority,” *Constitutional Political Authority* 11 (2000), 59 et seq.; M.W. Lodge, “International Seabed Authority’s Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area,” *Journal of Energy and Natural Resources Law* 20 (2002), 270 et seq.; J.P. Lévy, *Le Destin de l’Autorité Internationale des Fonds Marins*, 2002; E. Guntrip, “The Common Heritage of Mankind: An adequate Regime for Managing the Deep Seabed?,” *Melbourne JIL* 4 (2003), 376 et seq.; M.W. Lodge, “Environmental Regulation of Deep Seabed Mining,” in: A. Kirchner (ed.), *International Marine Environmental Law*, 2003, 49 et seq.; J.P. Lévy, “La première décennie de l’Autorité internationale des fonds marins,” *RGDIP* 109 (2005), 191 et seq.; M.W. Lodge, “International Seabed Authority Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area”, in: E. Bastide/ T. Wälde/ J. Warden-Fernández (eds), *International and Comparative Mineral Law and Policy*, 2005, 171 et seq.; S. Nandan, “Administering the Mineral Resources of the Deep Seabed”, in: D. Freestone/ R. Barnes/ D. Ong (eds), *The Law of the Sea: Progress and Prospects*, 2006, 75 et seq.; R. Wolfrum, “Rechtsstatus und Nutzung des Tiefseebodens (des Gebiets)”, in: W. Graf Vitzthum (ed.), *Handbuch des Seerechts*, 2006, 333. Relevant entries in the second edition of the *Max-Planck Encyclopedia of Public International Law* (publication from 2008) include those on the International Seabed Authority, and the Common Heritage of Mankind.

<sup>8</sup> Available at <<http://www.isa.org.jm>>, described in: ISBA/12/A/2, para. 34: *Selected Decisions* 12, 7. The Library of the International Seabed Authority in Jamaica is a very useful resource. For further references, see *Bibliography on the Law of the Sea*, published by the United Nations (DOALOS) and *Public International Law*, published by the Max Planck Institute for Comparative Public Law and International Law, Heidelberg.

ceed its powers and functions and that procedural safeguards (especially the relationship between Council and Assembly, and in the budgetary sphere Finance Committee) are maintained.

- Members further need to ensure that the Authority remains cost effective, and that its budget is no more than strictly necessary for its specific and limited functions under the Convention and Agreement. Depending on the prospects for deep seabed mining radical steps may be needed to avoid unnecessary expenditure.<sup>9</sup>

These objectives have been broadly shared by the Authority and its members thus far. Nothing has been done that would hamper eventual commercial deep seabed mineral exploitation, and cost-effectiveness and evolution continue to be watchwords. Occasional loose interpretations of the Authority's powers and functions have been countered, and there has been no short-circuiting of the procedural safeguards introduced by the Agreement. As the Secretary-General of the Authority has recently written,

“[t]he relationship between the various organs and subsidiary bodies in the internal structure of the Authority is an important feature of the machinery established by the 1982 LOSC and the 1994 Agreement. It is critical to confidence in the system. ... The system we now have provides for checks and balances and promotes cooperation and coordination between the different organs and bodies.”<sup>10</sup>

Indeed, nothing in the twelve years of the Authority's existence justifies the criticisms made by some opponents of the Convention. On the contrary, in accordance with the clear terms of the Convention and the Agreement, the Authority has established itself as among the most reliable and cost-effective international institutions.

## I. Introductory

### 1. The Present Status of the Convention and 1994 Implementation Agreement

As of 31 March 2007, there were 153 parties to the Convention, referred to as States Parties (150 states; two self-governing associated states – Cook Islands and Niue; and one international organisation - the Euro-

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<sup>9</sup> 1999 article, see note 1, 236-237.

<sup>10</sup> Nandan, see note 7, 82.

pean Community); and 127 parties to the Agreement. So as of that date, 26 parties to the Convention were not yet parties to the Agreement.<sup>11</sup> While there has been some improvement in this regard since 16 November 1998,<sup>12</sup> when 34 parties to the Convention were not yet parties to the Agreement, it remains regrettable that nearly one in six parties to the Convention have not yet taken the step of becoming party to the Agreement. However, this appears to be for bureaucratic reasons, not because of any opposition to the Agreement itself. It is “an incongruity”<sup>13</sup> rather than a practical problem, since the members of the Authority of necessity all participate on the same basis. They have repeatedly reaffirmed that the Convention and Agreement are to be interpreted and applied together as a single instrument, and that in the event of any inconsistency the provisions of the Agreement prevail. None has challenged this.<sup>14</sup>

As of 31 March 2007, the parties to the Convention included four of the five permanent members of the Security Council, all 27 Member States of the European Union and the European Community itself, as well as a wide range of states from all regions. Canada became a party in 2003. The United States had still not acceded; many officials, interested government departments, and influential policy makers have made valiant efforts, so far to no avail. Opposition within the United States seems to be largely a matter of domestic politics. Particular individuals seem to be able to block progress in the Senate more or less indefinitely. Such substantive arguments as are made against the Convention are

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<sup>11</sup> See the report of the Secretary-General, ISBA/12/A/2, paras 3 and 4, which lists the states concerned: *Selected Decisions 12*, 1: Angola, Antigua and Barbuda, Bahrain, Bosnia and Herzegovina, Brazil, Cape Verde, Comoros, Democratic Republic of the Congo, Djibouti, Dominica, Egypt, Gambia, Ghana, Guinea-Bissau, Guyana, Iraq, Mali, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome e Principe, Somalia, Sudan, Uruguay, Yemen. Each year the Secretary-General writes to the states concerned, and it has been suggested that he (and others) might take up the matter in person (in New York and elsewhere), when opportunities arise. The UN General Assembly, in its annual resolution on Oceans and the Law of the Sea, calls upon states to become parties to the Convention and the Agreement: see, for the latest resolution, para. 3 of A/RES/61/222 of 20 December 2006.

<sup>12</sup> The latest such state to become party to the Agreement was Viet Nam in August 2006.

<sup>13</sup> ISBA/12/A/2, para. 3: *Selected Decisions 12*, 1.

<sup>14</sup> 1999 article, see note 1, 182-183.

based more on ideology than on reason. It is now over twelve years since the President of the United States affirmed that the Agreement met all objections of the United States to Part XI of the Convention.<sup>15</sup> The changes in Congress following the November 2006 mid-term elections may bring some movement.

## 2. The Prospects for Deep Seabed Mining

So far as concerns polymetallic nodules, the January 1994 conclusion of a Group of Technical Experts – that it was unlikely that commercial deep seabed mining would take place before 2010 – is proving to have been correct. The Group was unable to assess when commercial production might be expected to commence.<sup>16</sup> Commercial production for polymetallic nodules seems as far away as ever. Writing in 2002, Michael Lodge said,

“it is apparent that, nearly 20 years after the adoption of the 1982 Convention, seabed mining is further off than ever before. Commercial interest in deep seabed polymetallic nodules has dwindled to the point where commercial exploitation of these resources seems, at best, a remote possibility. In the present economic climate, none of the contractors and sponsoring States are actively pursuing exploration programmes aimed at further exploitation of these resources.”<sup>17</sup>

Other mineral resources currently under consideration within the Authority are polymetallic sulphides and cobalt-rich ferromanganese crusts. Prospects for the exploitation of these resources within areas of national jurisdiction seem a good deal more positive than they were only a few years ago; but it is less clear whether and when they will be exploited in the deep seabed. Methane hydrates may also exist in the Area, but they are mainly in the continental shelf and there would seem to be no prospects of commercial production in the Area. In his statement to the United Nations General Assembly on 8 December 2006, the Secretary-General of the Authority said,

“With regard to polymetallic nodules, the pace of development of these resources has been slow. The Authority has issued exploration licenses to eight entities, all of them State-supported. It has always

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<sup>15</sup> 1999 article, see note 1, 184.

<sup>16</sup> 1999 article, see note 1, 186.

<sup>17</sup> Lodge 2002, see note 7, 50.



been my belief that until the private sector gets involved, the prospects for commercial mining of minerals from the deep seabed will remain uncertain. The two main inhibiting factors for commercial mining have been the lack of development of mining technology and the price of metals. For commercial mining purposes, the two are interrelated.

The rising demand for metals in emerging economies in recent years has altered the economic environment considerably. It has caused metal prices to surge ...

It is therefore not surprising that the private sector has begun to show interest in marine mineral deposits. In that respect, recent developments in the exploration for and exploitation of polymetallic sulphides have been most promising ...<sup>18</sup>

### 3. Part XI (The Area) and General International Law

Under the heading “Deep Seabed Mining and General International Law”, the 1999 article considered the position of deep seabed mining under customary international law. There have been no dramatic developments in this regard, though the increased participation in the Convention and Agreement and the passage of time are not without significance. Such controversy as there used to be seems to have died down. The issue hardly arises nowadays; no one seems to have any ambition to engage in deep sea mining outside the Convention, and it would scarcely be realistic, in commercial or any other terms, to do so.<sup>19</sup> Even those opposed to Part XI do not suggest that deep sea mining would be viable, in practical terms let alone legally, outside the Convention.

The Area is defined in article 1.1(1) of the Convention as “the seabed and ocean floor and subsoil thereof, beyond the limits of national

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<sup>18</sup> Doc. A/61/PV.71, 5-6.

<sup>19</sup> Wolfrum, see note 7, 342-345. In a talk at the Centre for International Governance, University of Leeds, on 14 March 2007, David Anderson said that “[t]he regime is applicable on a global basis and any attempt to conduct mining operations on a unilateral basis would meet with the sternest opposition. Any right to do so that, in the past, may have existed as a matter of customary law on the freedom of the seas must now have withered away as a result of the express terms of the adjusted Convention and the practice of States, including both Parties and non-Parties, in regard to the ISA,” see the Centre’s website.

jurisdiction.” The limits of national jurisdiction for the seabed and subsoil are the outer limit of the continental shelf (as defined in article 76 in Part VI of the Convention), and either lie 200 nm from the territorial sea baselines or beyond 200 nm, according to a complex formula and procedure set out in article 76 and Annex II. A copy of each chart or list of geographical coordinates showing the outer limit of the continental shelf is to be deposited with the UN Secretary-General, and with the Secretary-General of the Authority (article 84.2). Neither the Authority nor the United Nations has any other role in this regard and none has been suggested.<sup>20</sup> Article 134.4 provides expressly that nothing in the article (which deals with the scope of Part XI) affects the establishment of the outer limits of the continental shelf.

The precise determination of the extent of the Area is not likely to be completed for many years. Among other things, it depends upon the completion, by all coastal states with shelves extending beyond 200 nm from baselines, of the procedures for establishing the outer limits of their continental shelves (laid down in article 76 and Annex II of the Convention), which is likely to take a long time.

The possibility of the joint exploitation of deposits straddling the boundary between the Area and the continental shelf of a coastal state is anticipated in article 142 of the Convention (which deals with the rights and legitimate interests of coastal states). If such deposits were to be found and joint exploitation seemed desirable, some practical *ad hoc* arrangement would be needed (for which there are precedents in agreements between states).

## II. Salient Features of the Authority

The 1999 article noted three salient features of the Authority: its precisely defined powers and functions;<sup>21</sup> the composition and decision-making rules of the Council and Finance Committee;<sup>22</sup> and cost-effectiveness.<sup>23</sup> There have been no major developments in these areas since the earlier article.

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<sup>20</sup> For article 82.4 see Section II 1 below.

<sup>21</sup> 1999 article, see note 1, 190-2.

<sup>22</sup> 1999 article, see note 1, 192-3.

<sup>23</sup> 1999 article, see note 1, 193-4.

## 1. Precisely Defined Powers and Functions

Some writers seem to overlook the precisely defined powers and functions of the Authority. One author, for example, asserts, despite the clear wording and intent of the Convention and Agreement,<sup>24</sup> that the “mandate” of the Authority (presumably what is meant are its powers and functions), is “already broader than is commonly believed.” He argues that the “legal condition” of the Area (i.e., that article 136 provides that the Area and its resources are the common heritage of mankind) “may have an attraction” also on non-mineral resource “matters and activities.”<sup>25</sup> But this is to overlook the clear outcome of the negotiations at the Conference and appears to be based on a controversial view of the law of international organisations, including the law concerning their powers and functions.

As regards the scope of the Authority’s role under article 82 of the Convention (distribution of certain revenues from the continental shelf beyond 200 nm), the Secretary-General’s annual report to the eighth session referred to this matter at paras 59 to 62.<sup>26</sup> When introducing this report in the Assembly the Secretary-General confirmed that the sole competence of the Authority in relation to the continental shelf was that provided for in article 82.4 of the Convention. The point was picked up and stressed in a statement dated 15 August 2002 issued by the Group of Latin American and Caribbean States,<sup>27</sup> and by delegations during the debate in the Assembly following the presentation of the Secretary-General’s report.<sup>28</sup> A number of delegates emphasised the need, if the Authority was to retain broad support and legitimacy, for it

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<sup>24</sup> Most notably in Section 1, para. 1 of the Annex to the Agreement, which itself repeats article 157.2 of the Convention, and the frequent and deliberate inclusion in the text of the Convention of limiting words such as “with respect to activities in the Area.”

<sup>25</sup> T. Scovazzi, “Some considerations on future directions for the International Seabed Authority,” in: *Tenth Anniversary Commemoration*, see note 6, 162.

<sup>26</sup> ISBA/8/A/5 and Add.1: *Selected Decisions* 8, 9 et seq.

<sup>27</sup> ISBA/5/A/14, para. 3: *Selected Decisions* 8, 33-34.

<sup>28</sup> Thus, the observer from the United States informed the Assembly on 5 August 2003 that “[l]ike the UK, New Zealand, and Australia, we see the Authority’s role as quite limited. Under article 82, paragraph 4, it is responsible only for distributing payments and contributions made by coastal states.”

to continue to act within the parameters set by its constituent instruments and to respect the limits of its jurisdiction.

It is clear from the text of the Convention, and specifically from the terms of article 82.4, that the Authority's powers and functions in relation to the continental shelf are limited to the process of distribution of certain revenues. Suggestions that article 82 is somehow part and parcel of the common heritage of mankind, and references, despite contrary negotiating history, to the desirability, if not the legal basis, of some role for the Authority beyond article 82.4, have no legal basis. Confusion is compounded by using the term "deep seabed", which normally refers to the international seabed Area, to include the continental shelf beyond 200 nm, over the resources of which the coastal state has sovereign rights.<sup>29</sup>

Two other issues that go to the scope of the powers and functions of the Authority are the living resources in or near the Area, and bioprospecting/biodiversity. It is important to keep these two matters separate, since separate legal regimes apply.<sup>30</sup> Here again it seems clear, despite occasional assertions to the contrary,<sup>31</sup> that under the Convention and Agreement the Authority's role in relation to the exploration or exploitation of resources is confined to mineral resources on or un-

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<sup>29</sup> The Tribunal in the *Barbados v Trinidad and Tobago* Arbitration stated that "there is in law only a single 'continental shelf' rather than an inner continental shelf and a separate extended and outer continental shelf," Award of 11 April 2006, para. 213, *ILM* 45 (2006), 800 et seq.

<sup>30</sup> As is pointed out by Lévy, 2005, see note 7. For recent consideration of these issues, see the report of the UN Secretary-General, Doc. A/60/63/Add. 1; the report of the 2006 meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, Doc. A/61/65; ISBA/12/A/2, paras 51-54: *Selected Decisions* 2, 11-12; and Section X of UN General Assembly resolution A/RES/61/222 see note 11, especially paras 89 to 94. The Working Group is to meet again in 2008.

<sup>31</sup> Scovazzi, see note 25, 177-185, suggests that "the Authority has a role to play in the field of bioprospecting", and suggests that bioprospecting (presumably in the Area) is part of marine scientific research, but offers no legal argument for his suggestion. See also F.M. Armas Pfirter, "The Management of Seabed Living Resources in 'the Area' under UNCLOS", *Revista Electronica de Estudios Internacionales* <www.reei.org>, 11 (2006).

der the deep seabed.<sup>32</sup> Of course, the Authority's environmental role requires it to have regard to living resources and biodiversity when organising mineral resource mining, but that is another matter.

The Authority has an important but clearly defined role in relation to the environment, set out clearly in the Convention. The Authority does not have a general mandate as regards the protection of the marine environment in the Area.<sup>33</sup> Thus, for example, article 145 does not sustain the claim that the "regulatory powers granted to the Authority are not limited to the harmful effects of those mining effects which belong to the typical field of competence of this organisation."<sup>34</sup> It is of course true that, in addition to mining, threats to seabed ecosystems may derive "from a number of activities, such as marine scientific research, bioprospecting, oil and gas exploitation, geothermal exploitation, and tourism," but (to the extent that such activities take place in the Area at all) it does not follow that the Authority is competent in relation to the environmental consequences of these activities. The basis for this claim is a selective quotation of article 145. The author omits the opening sentence and the linking introductory words to the second sentence "To this end", which together limit the article to "measures ... with respect

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<sup>32</sup> 1999 article, see note 1, 185-186; *Virginia Commentary*, see note 5, 133.10(c); Wolfrum, see note 7, 334 (MN 136); ISBA/10/A/12, para. 26: *Selected Decisions 10*, 60. See, in addition to the articles mentioned in note 21 of the 1999 article, T. Scovazzi, "Biodiversity in the Deep Seabed", *Yearbook of International Environmental Law 7* (1996), 481 et seq.; R. Wolfrum/ N. Matz, "The Interplay of the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity," in: J.A. Frowein/ R. Wolfrum (eds), *Max Planck UNYB 4* (2000), 445 et seq.; D. Leary, "Bioprospecting and the Genetic Resources of Hydrothermal Vents on the High Seas: What is the Existing Legal Position, Where are we heading, and What are our options?", *Macquarie Journal of International and Comparative Law 1* (2004), 137 et seq.; T. Scovazzi, "Mining, Protection of the Environment, Scientific Research and Bioprospecting: Some Considerations on the Role of the International Sea-Bed Authority", *International Journal of Marine and Coastal Law 20* (2004), 383 et seq.

<sup>33</sup> As may have been suggested in ISBA/8/A/14, para. 1: *Selected Decisions 8*, 33. As the observer from the United States stated in the Assembly on 5 August 2003: "[t]he Authority's mandated role, defined by the Convention and the 94 Agreement, is clearly a limited one: to protect the marine environment from mining activities. We appreciate the expert discussions of biodiversity in the context of the Authority's focused mandate to organize and control mining activities in the Area."

<sup>34</sup> Scovazzi, see note 25, 171

to activities in the Area.” And it adds nothing to the legal argument to cite article 194.5 or to suggest that “the legal condition of the Area has an attraction in granting the Authority broad competences relating to the protection of the environment of the Area as a whole.” The conclusion that “[d]ue to its competences, the Authority would be in the best position to participate in the establishment of a system of marine protected areas in the seabed beyond the limits of national jurisdiction” appears to be a statement of the author’s policy preference.

The Authority’s powers as regards marine scientific research are likewise clearly set out in the text of the Convention and Agreement. Again it distorts the Convention to suggest that “the legal condition of the Area has an attraction in granting the Authority a number of broad competences relating to the field of scientific research to be conducted in the Area.”<sup>35</sup>

Another area in which a greater role is sometimes suggested for the Authority than is warranted by the text of the Convention and Agreement concerns archaeological and historical objects in the Area.<sup>36</sup> The UNESCO Convention, not yet in force, will provide for an informational role of the Authority, which is reflected in the Authority’s Polymetallic Nodules Regulations. Regulation 8 of the Regulations provides that prospectors shall notify the Authority’s Secretary-General of any finding in the Area of an object of an archaeological or historical nature, and that he shall transmit the information to the UNESCO Secretary-General.

## 2. Powers, Composition and Decision-Making Rules of the Assembly, Council and Finance Committee

The organs of the Authority have continued to be scrupulous in respecting the allocation of powers and functions as between the Assembly, the Council, and the Finance Committee, and there have been no real issues in this respect during the period under review. When the As-

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<sup>35</sup> Scovazzi, see note 25, 176.

<sup>36</sup> Convention, article 149; *Virginia Commentary*, see note 5, 226; article 12 of the Convention on the Protection of the Underwater Cultural Heritage, adopted by the General Conference of UNESCO on 2 November 2001; M. Rau, “The UNESCO Convention on Underwater Cultural Heritage and the International Law of the Sea”, in: J.A. Frowein/ R. Wolfrum (eds), *Max Planck UNYB* 6 (2002), 387 et seq.

sembly approved the Authority's Financial Regulations on 23 March 2000, the United States made a statement for the record that the Financial Regulations did not reflect Section 3, para. 7 of the Annex to the Agreement ("Decisions of the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee") and that the language used in the Financial Regulations must be read in the context of that provision.<sup>37</sup> In practice, the Assembly has not departed from the recommendations of the Council, and the Council has not departed from the recommendations of the Finance Committee.

### 3. Cost-Effectiveness and Attendance

Close attention continues to be paid to the principle of cost-effectiveness expressly provided for in Section 1, para. 2 of the Annex to the Agreement. This is especially so in the provision made for staff and facilities (including in negotiations with the host state) and as regards the organisation of meetings. The time allocated to meetings is tailored to anticipated work. Exceptionally, in 2000, there was a reversion to a split session lasting four weeks in total, in order to complete the Nodules Regulations, but subsequent years have reverted to the single meeting formula of 1999 and there has been a single two-week session each year from 2001. A two-week session may well be unnecessarily long.<sup>38</sup> One suggestion made at the eighth session in 2002 was that the Assembly should meet every second year. The budget is now adopted every second year, and it would seem perfectly feasible for the Assembly to move to a biennial cycle, as happens with many other international organisations (including specialised agencies of the United Nations).<sup>39</sup> In 2003 it was intended that the expert bodies – the Legal and Technical

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<sup>37</sup> 1999 article, see note 1, 193.

<sup>38</sup> The twelfth session, in 2006, for example, had difficulty filling the time allotted and ended one day early. Those who argue for retaining two weeks should recall that many Member States are represented only for part of the time or not at all.

<sup>39</sup> ISBA/10/A/3, paras 12-14: *Selected Decisions 10*, 14-15. Although the Convention provides that the Assembly shall meet "in regular annual sessions" (article 159.2), this is superseded by the Agreement, Annex, Section 1, para. 2 (principle of cost-effectiveness). Rule 1 of the Assembly's Rules of Procedure provides that the Assembly "shall meet in regular annual sessions, unless it decides otherwise"; 1999 article, see note 1, 197.

Commission and the Finance Committee – should meet in the first week and the Assembly and Council only in the second week. While this did not prove to be entirely practical, there was some useful rationalisation, with meetings of the Assembly and Council being restricted to a period between the first Wednesday and second Thursday. Efforts at rationalisation continue, though it is to be noted that there is some advantage in having a degree of overlap between meetings of the Legal and Technical Commission and the Council and Assembly so that the membership at large can follow and better understand the important work of the Commission.<sup>40</sup>

One related and recurring problem is poor attendance at the Assembly.<sup>41</sup> This may reflect, and certainly gives the impression of, a certain lack of interest in the Authority's current activities, and a degree of frustration on the part of those not on the Council, who feel that there is little for them to do during a two-week session. There are relatively few meetings of the Assembly, and they tend to be largely a formality, except as regards elections (of the Council, Finance Committee and Secretary-General) and the debate on the Secretary-General's annual report, which is an occasion for general statements about the Authority's work.

Poor attendance is a serious problem. It is not good for the Authority's standing. The absence of a quorum may hamper decision-making within the Authority if any delegation raises the matter, as happened at the time of the adoption of the scale of assessments in 1998.<sup>42</sup> With increased participation in the Convention, the quorum laid down in arti-

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<sup>40</sup> One problem is the frequent need for the Assembly and Council to meet before the Finance Committee and the Legal and Technical Commission respectively, to conduct by-elections. The possibility of such decisions being taken between meetings might be explored.

<sup>41</sup> The number of delegations attending recent sessions of the Assembly (though not necessarily present at each meeting) is as follows (numbers taken from the reports of the Credentials Committee): at the 6th Sess. in March 2000, 74; at the resumed 6th Sess. in July 2000, 63; at the 7th Sess. in July 2001, 58; at the 8th Sess. in August 2002, 62; at the 9th Sess. in July/August 2003, 58; at the 10th Sess. in May/June 2004, 89; at the 11th Sess. in August 2005, 63; and at the 12th Sess. in August 2006, 65. Since the 6th Sess. there has been a quorum only during the 10th Sess., which was the anniversary session and the session when a vote took place on the election of the Secretary-General. In general, it is the same delegations who tend to be present (and absent).

<sup>42</sup> 1999 article, see note 1, 217-218.



cle 159.5 of the Convention of a majority of the members of the Assembly will become even harder to obtain. Currently (31 March 2007) there are 152 members entitled to vote,<sup>43</sup> and so the required quorum is 76.

The Secretary-General highlighted the poor attendance at the Assembly in his statement to the UN General Assembly on 8 December 2006,<sup>44</sup> and the Assembly included the following paragraph in its resolution A/RES/61/222 of 20 December 2006 (Oceans and the Law of the Sea),

“32. Urges all States parties to the Convention to attend the sessions of the Authority, and calls upon the Authority to continue to pursue all options, including the issue of dates, in order to improve attendance at Kingston and to ensure global participation.”<sup>45</sup>

### III. The Authority’s Work During the Fifth to Twelfth Sessions<sup>46</sup>

The Secretary-General’s 2004 report to the Tenth Anniversary Session provides a detailed “overview of the achievements and milestones in the life of the Authority since its establishment.”<sup>47</sup> In it, he notes that,

“[t]he organizational phase of the Authority’s work is now complete, and the Authority has entered into a new, more substantive, phase of its existence.”<sup>48</sup>

All the principal arrangements (with the exception of those concerning the Economic Planning Committee and the Enterprise) were by then in place.

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<sup>43</sup> The European Community does not have a vote in addition to those of its Member States, and it is not the practice to include it in calculating the quorum.

<sup>44</sup> Doc. A/61/PV.71, 6-7.

<sup>45</sup> As usual, the resolution was adopted by vote: 157 to 1 (Turkey), with 3 abstentions (Colombia, Libya, Venezuela).

<sup>46</sup> An outline of the Authority’s work during the period 1999 to 2006 is given, session-by-session, at the end of this article, see Annex.

<sup>47</sup> ISBA/10/A/3: *Selected Decisions 10*, 10-50.

<sup>48</sup> ISBA/10/A/3, para. 3: *Selected Decisions 10*, 12.

## 1. Organisational Matters

### a. Election of Assembly Presidents

The Presidency of the Assembly has been held as follows: at the 5th Sess. in 1999, Mr. José Luis Vallarta (Mexico); at the 6th Sess. in 2000, Dr. Liesbeth Lijnzaard (Netherlands); at the 7th Sess. in 2001, Mr. Peter Donigi (Papua New Guinea); at the 8th Sess. in 2002, Mr. Martin Bellinga-Eboutou (Cameroon); at the 9th Sess. in 2003, Mr. Josef Franzen (Slovakia); at the 10th Sess. in 2004, Mr. Dennis Francis (Trinidad and Tobago); at the 11th Sess. in 2005 Mr. Olav Mykleburst (Norway); and at the 12 Sess. in 2006, Mr. Sainivalati S. Navoti (Fiji).

The Assembly has continued to elect its President without a vote, and in accordance with a rotation among the five regional groups as follows: Asia, Africa, Eastern Europe, Latin America and Caribbean, Western Europe and Others.

### b. Rules of Procedure of the Assembly

The Rules of Procedure of the Assembly, adopted on 17 March 1995,<sup>49</sup> have not been amended. In accordance with the Convention and Agreement, and the Rules of Procedure, the Assembly has continued the practice of taking all decisions by consensus, without a vote. The sole exception during the eight-year period covered by this article was on the occasion of the contested election of the Secretary-General in 2004.

The problem of the quorum has been noted in Section II 3 above. A practice has grown up, so far only on the occasion of the election of the Secretary-General, of what may be termed “proxy voting”. This is not unknown in other organisations (even, albeit infrequently, in the United Nations General Assembly) when a Member State, which would otherwise not be represented at a critical vote, sends credentials appointing a third person (often a member of another delegation) as a member of its delegation with instructions to cast a vote on a particular matter. This is acceptable procedurally, but requires careful scrutiny by the Credentials Committee. It is important, for the orderly conduct of the voting, that a single individual casts only one vote i.e., the same person

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<sup>49</sup> ISBA/A/WP.3; ISBA/A/L.2: *Selected Decisions 1/2/3, 3; Basic Texts*, see note 4, 8-34, with commentary and documentary sources. For the development of the Rules, see 1999 article, see note 1, 196-201.

should not vote on behalf of more than one Member State in the course of a particular vote.

### c. Election of the Council (2000, 2002, 2004, 2006)

The complex provisions for the composition of the Council, and the elections in 1996 and 1998, were described at length in the 1999 article.<sup>50</sup> During the period covered by the present article, the Assembly has proceeded on four occasions to elect one half of the membership of the Council, without significant difficulty. These biennial elections of half of the members of the Council have, nonetheless, continued to be complicated, requiring extensive consultations within the various interest and regional groups (though nothing like as difficult as on the occasion of the first election).

The four partial elections, less hotly contested than on the first occasion, all took place without a vote, as is for the most part mandated in the Agreement, which provides that each of the interest groups shall be represented in the Council by those members nominated by that group.<sup>51</sup> The arrangements agreed in 1996 have essentially stood the test of time. The Secretariat prepares an informal paper containing illustrative lists of states that would fulfil the criteria for membership in certain groups in the Council. These lists are based on publicly available statistics, such as those available to the United Nations Statistical Division. The lists are an indicative guide only.<sup>52</sup>

Certain decisions were required at the fifth session in 1999 because of the cessation in November 1998 of the provisional membership of two members of the Council, the United States (in Group A) and Canada (in Group C). Their places were taken by Italy<sup>53</sup> and Australia respectively. Malta was elected to replace Italy in Group E for the remainder of Italy's term.

The regular election in 2000 proceeded smoothly. A Secretariat Note<sup>54</sup> and an indicative list of states fulfilling the criteria for the vari-

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<sup>50</sup> 1999 article, see note 1, 101-109.

<sup>51</sup> Agreement, Annex, Section 3, para. 10.

<sup>52</sup> ISBA/10/A/3, para. 22: *Selected Decisions* 10, 17.

<sup>53</sup> Italy was elected on the understanding, agreed within the Assembly, that it would relinquish its seat if the United States became a member of the Authority before Italy's term expired, but this did not happen: ISBA/5/A/14, para. 4: *Selected Decisions* 5, 39.

<sup>54</sup> ISBA/6/A/CRP.1/Rev.1.

ous groups<sup>55</sup> were circulated in advance of the election. The complex arrangements and understandings were negotiated among the members of the various interest and regional groups, and the election itself proceeded without difficulty in the Assembly.<sup>56</sup> The elections in 2002,<sup>57</sup> 2004,<sup>58</sup> and 2006<sup>59</sup> likewise proceeded smoothly.<sup>60</sup>

There are, in fact, some very difficult issues underlying the elections to the Council, flowing from the wording of the Agreement (which in this respect is similar to the original Part XI of the Convention). These have not yet had to be faced squarely. They arise particularly in connection with determining which states are qualified for election to the various groups, not least Groups A and B (the major consumers or importers; and the major investors). The interpretation of the criteria laid down in the Agreement is difficult, as is obtaining the appropriate statistics (especially in the case of the investors). In order properly to calculate which State Parties “have either consumed more than 2 per cent in value terms of total world consumption or have net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area” and are thus qualified in Group A, states would first have to agree on the meaning of each of the terms used, beginning with “the categories of minerals to be derived from the Area.”

This becomes even more complex as the resources concerned extend beyond nodules. In addition, the investment figures used within Group B for the first election<sup>61</sup> have not yet been updated, despite the obvious need to do so (a need to which the Republic of Korea has drawn attention).<sup>62</sup> When they are updated, some understanding will presumably be needed as to what precisely is covered by the term “investments in

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<sup>55</sup> ISBA/6/A/CRP.2.

<sup>56</sup> ISBA/6/A/14: *Selected Decisions* 6, 28.

<sup>57</sup> ISBA/8/A/10: *Selected Decisions* 8, 27.

<sup>58</sup> ISBA/10/A/12, paras 38 and 39: *Selected Decisions* 10, 62.

<sup>59</sup> ISBA/12/A/12: *Selected Decisions* 12, 23-25. See also ISBA/12/A/CRP.1 and ISBA/12/A/CRP.2 (informal papers prepared by the Secretariat).

<sup>60</sup> Unlike the case with many other international bodies where membership is contested, given the complexity of the arrangements and above all the fact that the election to the Council is not in practice put to a vote, there is no real scope for doing deals between voting in the Council election and voting in other elections outside the Authority.

<sup>61</sup> 1999 article, see note 1, 206 (notes 64-66).

<sup>62</sup> ISBA/10A/12, para. 27: *Selected Decisions* 10, 60.

preparation for and in the conduct of activities in the Area,” unless, possibly, it is sufficiently obvious which states qualify as the top eight without the need for a precise calculation.

So far these matters have been handled with great pragmatism. It may be possible to continue in the same way for some time, but the time may well come when it is no longer possible to avoid answering some of the difficult questions which the drafters of the Convention and Agreement left to posterity.

#### d. Election of the Secretary-General (2000, 2004)

On 31 March 2000, the Assembly re-elected Satya N. Nandan, the sole candidate recommended by the Council, for a second four-year term beginning on 1 June 2000.<sup>63</sup>

On 3 June 2004, the Assembly re-elected Satya N. Nandan for a further four-year term (beginning on 1 June 2004). Two candidates were nominated by their governments, Mr. Charles Manyang D’Awol by Sudan and Mr. Satya N. Nandan by Fiji. The Council proposed to the Assembly a list consisting of the two candidates,<sup>64</sup> and the Assembly proceeded to a vote. Mr. Nandan received 48 votes, Mr. D’Awol 29 votes.

The Finance Committee asked for a study of the terms of service of the Secretary-General, including pension arrangements at the eighth session. The Secretary-General reported back at the ninth session in 2003.<sup>65</sup> At the tenth session the Committee recommended that the Secretary-General be able to choose between joining the UN Joint Staff Pension Fund or receiving a monthly supplement to his remuneration equivalent to the contribution that would otherwise have been payable to the Fund (the so-called ICAO arrangement). This was endorsed by the Council and the Assembly.<sup>66</sup>

#### e. The Secretariat

“The Secretariat is organised on a cost-effective basis. It is compact and has 38 staff members consisting of experts, and administrative and sup-

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<sup>63</sup> Therefore a list of one name was forwarded to the Assembly, but since there was only one candidate this is not necessarily conclusive of the controversy: 1999 article, see note 1, 210.

<sup>64</sup> ISBA/10/C/9: *Selected Decisions 10*, 70.

<sup>65</sup> ISBA/9/FC/R.1.

<sup>66</sup> ISBA/10/A/8, para. 10: *Selected Decisions 10*, 55.

port staff.”<sup>67</sup> Its technical capacity has been enhanced by the recruitment of appropriately qualified scientists.<sup>68</sup> The detailed arrangements concerning the staff members, including the participation of the Authority in the Inter-Organization Agreement and access to the United Nations Administrative Tribunal, are set out in the Secretary-General’s 2004 report.<sup>69</sup>

#### f. Election of Council Presidents

Beginning with the first election the Council has elected its President without a vote. In no case was the election even contested. Indeed, on at least one occasion it proved difficult to secure a willing candidate.

The presidency of the Council has been held as follows during the period under review: at the 5th Sess. in 1999, Mr. Charles Manyang D’Awol (Sudan); at the 6th Sess. in 2000, Mr. Sakiusa Rabuka (Fiji Islands); at the 7th Sess. in 2001, Mr. Tadeusz Bachleda-Curús (Poland); at the 8th Sess. in 2002, Mr. Fernando Pardo Huera (Chile); at the 9th Sess. in 2003, Mr. Domenico da Empoli (Italy); at the 10th Sess. in 2004, Mr. Baïdy Diène (Senegal); at the 11th Sess. in 2005, Mr. Park Heekwon (Republic of Korea); and at the 12th Sess. in 2006, Mr. Mariusz-Orion Jędrysek (Poland).

The following rotation among the five regional groups has established itself: Latin America and Caribbean, Western European and Others, African, Asian, Eastern European. At the twelfth session in 2006, the Eastern European Group (which was sparsely represented) initially sought to relinquish their turn to the next in line, the Group of Latin American and Caribbean states, which declined (understandably, since presumably they had not come prepared to assume the presidency in 2006, and preferred to assume it in 2007, in accordance with the usual rotation). Eventually, the Eastern European Group did produce a candidate.

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<sup>67</sup> Nandan, see note 7, 81.

<sup>68</sup> ISBA/10/A/3, paras 39-53: *Selected Decisions 10*, 21-24.

<sup>69</sup> ISBA/10/A/3, paras 39-53: *Selected Decisions 10*, 21-24.

### g. Rules of Procedure of the Council

The Rules of Procedure of the Council, adopted on 16 August 1996,<sup>70</sup> have not been amended. Nor have any particular issues arisen in their application.

### h. Election of the Finance Committee and Organisation of Its Work

The first election of the 15 members of the Finance Committee was described in the 1999 article.<sup>71</sup> They were elected for a five-year term until 31 December 2001.<sup>72</sup> As of 16 November 1998, when the United States ceased to be a provisional member of the Authority, the US member of the Committee (Ms Deborah Wynes) automatically ceased to be a member. The Italian member, Mr. Domenico da Empoli, who would otherwise have stepped down on 1 January 1999 to be replaced by an Eastern European,<sup>73</sup> remained on the Committee in her place (Italy being then the fifth highest contributor), on the understanding that he would depart if the United States once again become a member of the Authority.<sup>74</sup> In accordance with the understanding reached at the time of the first election in 1996,<sup>75</sup> an Eastern European (Ms Maria Dragun-Gertner from Poland) was elected by the Assembly in August 1999 to complete the Committee.

The second election to the Finance Committee, held in 2001, was uneventful, there being 15 candidates for 15 seats. The members elected on that occasion held office from 1 January 2002 to 31 December 2006. The same geographical distribution of seats was respected.<sup>76</sup>

At the third election in 2006, there were again 15 candidates for 15 seats, and all were elected. However, the re-election for a third term of two candidates nominated by states which were among the five largest

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<sup>70</sup> *Basic Texts*, see note 4, 63-71, with commentary and documentary sources.

<sup>71</sup> 1999 article, see note 1, 212-213.

<sup>72</sup> The term was deemed to have started on 1 January 1997, though the members had actually been in office since August 1996.

<sup>73</sup> 1999 article, see note 1, 213.

<sup>74</sup> Cf. Italy's place in Group A of the Council.

<sup>75</sup> ISBA/A/L.13, para. 10 (b): *Selected Decisions 1, 2, 3, 31*; 1999 article, see note 1, 213.

<sup>76</sup> In the course of each five-year term, a number of members have resigned from the Finance Committee; in each case a member having the same nationality was elected at an early meeting of the Assembly.

financial contributors (and thus entitled to a seat on the Committee)<sup>77</sup> proved to be highly contentious. The question turned on the interpretation of the words “for a further term” in para. 4 of Section 9 of the Annex to the Agreement, together with the relationship between this paragraph and the right of the five largest financial contributors to a seat pursuant to para. 3.

At the eleventh session, in anticipation of the election to be held at the twelfth session, the question arose, and was left unresolved, concerning the eligibility for re-election of members of the Finance Committee (and of the Legal and Technical Commission<sup>78</sup>) who had already served two terms.<sup>79</sup> At the twelfth session itself, prior to the election, there was a protracted two-day debate over the interpretation of paras 3 and 4 of Section 9 of the Annex to the Agreement. As a result of the debate, upon the proposal of Brazil, the following language was included in the report recording the decision of the Assembly electing the fifteen members of the Finance Committee for a five-year term beginning on 1 January 2007,

“the Assembly recognized that there were perceived differences in the interpretation of the combined effect of paragraphs 3 and 4 of Section 9 of the annex to the 1994 Agreement. Following an extensive exchange of views, the Assembly proceeded to the election of the members the Finance Committee. The Assembly decided to elect all 15 nominees, on an exceptional basis, with the understanding that the election of two nominees (France and Italy) for a third term is a one-time only decision, that will not constitute a precedent for future elections and that for future elections States Parties shall indicate their candidates at least two months before the beginning of the session.”<sup>80</sup>

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<sup>77</sup> Jamaica also re-nominated their member (Mr. Coy Roache) for a third term, but withdrew his name and substituted another just prior to the election: ISBA/12/A/6/Add.1 and Corr.1; ISBA/12/A/6/Add.2.

<sup>78</sup> The issue was different as regards the Legal and Technical Commission, where there are no seats as of right. Italy nominated Mr. Rosa for a third term, but withdrew the nomination and nominated Ms Elena Sciso instead.

<sup>79</sup> ISBA/11/A/11, para. 24: *Selected Decisions 11*, 22.

<sup>80</sup> Statement of the President of the Assembly, ISBA/12/A/13, paras 32-33: *Selected Decisions 12*, 30-31.



The Finance Committee adopted its Rules of Procedure on 20 August 1999,<sup>81</sup> after considering the matter over three sessions (in 1997, 1998, and 1999) on the basis of drafts prepared by the Secretariat.<sup>82</sup>

The chairmanship of the Finance Committee has not rotated annually, or in accordance with any geographical rotation. This is not inappropriate, given that it is an expert body, the members of which sit in their personal capacity and not as representatives of their governments. The following have chaired the Committee: Mr. Rama Rao (India) from 1997 to 1998; Mr. Domenico da Empoli (Italy) from 1999 to 2002; and Mr. Hasjim Djalal (Indonesia) from 2003 to 2006.

In accordance with the Annex to the Implementation Agreement (Section 9, para. 8) and its Rules of Procedure, the Finance Committee has throughout acted by consensus on questions of substance. It has also done so on all such procedural matters as come up for decision. It has met each year at the same time as the annual meeting of the Authority, except in 1999 when there was considered to be insufficient business to justify a meeting. Its work is summarised in its reports to the Council and the Assembly, which since the fifth session in 1999 are to be found in *Selected Decisions*.

The main work of the Finance Committee is to recommend every two years to the Council and the Assembly the draft budgets of the Authority for the next two-year financial period. In addition, it proposes the scale of assessed contributions, recommends the appointment of auditors, and generally supervises all matters having budgetary implications, including staff matters.

#### **i. Budgets for 2000, 2001-2002, 2003-2004, 2005-2006 and 2007-2008**

Article 172 of the Convention refers to an annual budget. The Authority adopted its budget annually up until 2000; since then (as provided for in the Financial Regulations), it has adopted two annual budgets at the same time, for a two-year financial period. This has been done for reasons of efficiency and cost-effectiveness, so as to allow for better planning and so as to avoid the various organs having to go through a budget exercise every year. It means, for example, that the Assembly does not have to meet each year for budgetary purposes.

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<sup>81</sup> ISBA/5/FC/1: *Basic Texts*, see note 4, 63-71, with commentary and documentary sources.

<sup>82</sup> ISBA/F/WP.1; ISBA/4/F/WP.2.

The budget has continued to be relatively modest, with little growth, other than certain inevitable increases dictated by decisions of the UN General Assembly over which the Authority has no control. For the year 2000 it was the amount of US\$ 5,275,200; for the two-year financial period 2001-2002 US\$ 10,506,400; for 2003-2004 US\$ 10,509,700; and for 2005-2006 US\$ 10,800,000. The budget for 2007-2008 rose to US\$ 11,782,400, a substantial increase in real terms. This was caused entirely by changes in staff costs decided upon by the UN General Assembly, which the Authority was required to follow as part of the common system.

The procedure for the adoption of the budget has been for the Council to recommend to the Assembly the budget recommended by the Finance Committee. Neither the Assembly nor the Council has questioned the recommendations of the Finance Committee. Given the terms of the Agreement, they cannot amend the Finance Committee's recommendations, but they could of course return the draft budget to the Finance Committee (with comments) for its reconsideration. This has not happened.

Within the Finance Committee the procedure has been as follows: the Secretary-General puts forward budgetary proposals to the Committee (which are not to be distributed more widely at this stage). The Committee examines them in detail, together with the Secretary-General and other members of the Secretariat,<sup>83</sup> who then reformulate them in light of the discussion in the Committee. The Committee then reviews the revised proposals, and the Secretary-General makes any further changes requested by members of the Committee. The Committee then makes its recommendations to the Council and the Assembly. The process has been one of accommodation and agreement with the Secretary-General, with flexibility and goodwill on all sides.

#### **j. Scale of Assessment**

The adoption of the scale of assessment has continued to be largely uncontroversial. It is based upon the scale used for the regular budget of the United Nations<sup>84</sup> for the previous year (since that for the current year is not always available in time). It was this that caused the crisis in

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<sup>83</sup> The practice of having a discussion within the Committee in the absence of the Secretariat, as happens in the UN's ACABQ, has not always been followed, but can be a useful stage on occasion.

<sup>84</sup> Article 160. 2(e) of the Convention.

1998, leading to a special meeting of the Assembly in New York in October 1998.<sup>85</sup> In 2002, while certain concerns were expressed within the Finance Committee, the ceiling was lowered to 22 per cent in line with the decision of the UN General Assembly.<sup>86</sup>

The question of contributions to the budget by the European Community proved contentious. The agreed contribution of the European Community to the administrative budget of the Authority for 1998 was US\$ 75,000.<sup>87</sup> In October 1998, the Assembly, on the recommendation of the Finance Committee and the Council, decided,

“that the amount of the agreed contribution of the European Community to the administrative budget of the Authority for 1999 shall be 80,000 dollars,”<sup>88</sup>

thus reducing by that figure the amount to be shared among the other members of the Authority in accordance with the scale of assessment. It is important to note that the Community’s contribution is an “agreed contribution”, not an “assessed contribution.” In other words, it is an *ad hoc* sum agreed between the Authority and the Community. The distinction is clear in regulation 6.1 (a) and (b) of the Authority’s Financial Regulations.<sup>89</sup>

The Finance Committee has,

“recognized that [the European Community’s] contributions would be reviewed and determined from time to time by the Authority, taking into consideration the total amount of the budget.”<sup>90</sup>

The sum of US\$ 80,000 is no mere token amount (in fact, it makes the Community one of the larger contributors to the Authority’s budget), and effectively means that the Member States of the Community are - albeit indirectly - paying considerably more than their proper share under the United Nations scale. There would seem to be no good reason for this, and certainly no good reason to increase the amount ex-

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<sup>85</sup> 1999 article, see note 1, 216-218.

<sup>86</sup> ISBA/8/A/7/Rev.1-ISBA/8/C/3/Rev.1, para. 12: *Selected Decisions* 8, 25.

<sup>87</sup> ISBA/3/A/10.

<sup>88</sup> ISBA/4/A/L.21, which contains a footnote (c) reading “This contribution will be adjusted taking into account the evolution in the administrative budget and related funds.”

<sup>89</sup> *Basic Texts*, see note 4, 91.

<sup>90</sup> ISBA/5/A/8-ISBA/5/C/7, para. 7: *Selected Decisions* 5, 19; ISBA/6/A/13-ISBA/6/C/6, para. 9: *Selected Decisions* 6, 27; ISBA/8/A/7/Rev.1-ISBA/C/3/Rev.1, para. 24: *Selected Decisions* 8, 25.

cept perhaps in the event of a major increase in the Authority's budget. If, on policy grounds, the Community wished to make a larger contribution then it might be more appropriate for it to contribute to the Voluntary Trust Fund or the Endowment Fund for Marine Scientific Research in the Area.

#### k. Voluntary Trust Fund

In 2002, a Voluntary Trust Fund was established by the Secretary-General, at the request of the Assembly, to enhance the participation of members from developing countries in the Finance Committee and the Legal and Technical Commission.<sup>91</sup> The Convention and Agreement provide that the expenses of the members of these bodies should be borne by the Party which nominates them, but there was concern that some members from developing countries were not attending because of difficulties in finding the necessary funds.

Provisional terms and conditions for the use of the Trust Fund were adopted by the Assembly, on the recommendation of the Finance Committee<sup>92</sup> and the Council,<sup>93</sup> in 2003 and amended in 2004.<sup>94</sup> The Fund is made up of voluntary contributions.<sup>95</sup> A proposal made by the Japanese delegation to finance the Trust Fund from the regular budget<sup>96</sup> was unacceptable to other major contributors, not least because of the unwelcome precedent that could have been set.

To supplement the Fund, in 2004 and 2005 the Assembly, on the recommendation of the Finance Committee and the Council, authorised sums to be advanced from the interest from the registered pioneer investor account.<sup>97</sup> There was no need to do this at the twelfth session in

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<sup>91</sup> ISBA/8/A/11, paras 12 and 13: *Selected Decisions 8*, 29.

<sup>92</sup> ISBA/9/A/5-ISBA/9/C/5, para. 6 and Annex: *Selected Decisions 9*, 15-18.

<sup>93</sup> ISBA/9/C/6, paras 10-12: *Selected Decisions 9*, 28.

<sup>94</sup> ISBA/10/A/6- ISBA/10/C/7, para. 12: *Selected Decisions 10*, 52.

<sup>95</sup> As of March 2007, contributions had been received from Angola, Indonesia, Namibia, Nigeria, Norway, Oman, Trinidad and Tobago. Brazil announced that it would contribute US\$ 10,000, ISBA/12/A/13, para. 30: *Selected Decisions 12*, 29.

<sup>96</sup> ISBA/9/A/8: *Selected Decisions 9*, 19-20; ISBA/10/A/10.

<sup>97</sup> ISBA/12/A/2, paras 24-27: *Selected Decisions 12*, 5. The registered pioneer investor account was a special account consisting of the money remaining (after the processing of the applications) from the application fees paid to the Preparatory Commission by the seven pioneer investors in accordance

2006, since the Trust Fund had adequate resources for the next year. For the future, such transfers will, where necessary and possible, be made from the income of the Endowment Fund for Marine Scientific Research in the Area.

### I. Endowment Fund for Marine Scientific Research in the Area

At the twelfth session in 2006, the Assembly, acting upon the recommendation of the Council and the Finance Committee,<sup>98</sup> requested the Secretary-General to establish an Endowment Fund for Marine Scientific Research in the Area.<sup>99</sup> The Assembly resolution establishing the Endowment Fund was based on a draft prepared by the Secretariat<sup>100</sup> following discussion in the Assembly at the eleventh session.<sup>101</sup> The Secretariat's draft was simplified by the Finance Committee, having regard in particular to the fact that the Endowment Fund was to be a special account to which the Authority's Financial Regulations would apply and that further rules and procedures are to be drawn up.

The Endowment Fund is to be used primarily to promote and encourage marine scientific research in the Area, which is a function of the Authority by virtue of article 143 of the Convention, and moreover one highlighted in the Agreement. The Fund is to be used in particular to support the participation of personnel from developing countries in the

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with Resolution II of the Third United Nations Conference on the Law of the Sea (1999 article, see note 1, 226-227). These fees had been placed in a trust account administered by the United Nations, and the balance was transferred to the Authority upon its establishment. The balance, together with interest, had been kept separate from the Authority's budget (see ISBA/12/A/2, paras 28-30: *Selected Decisions 12*, 5-6).

<sup>98</sup> The Council modified the proposal of the Finance Committee by replacing the words "to the extent necessary" in para. 7 of the draft resolution by the words "where possible and to the extent necessary." The Council is not empowered under the Agreement to modify a proposal of the Finance Committee. But this modification was essentially a drafting one, and (as was essential for this departure from the letter of the Agreement) the modified resolution was adopted by consensus in both the Council and the Assembly.

<sup>99</sup> ISBA/12/A/11: *Selected Decisions 12*, 22-23.

<sup>100</sup> ISBA/12/FC/L.1.

<sup>101</sup> ISBA/11/A/11, paras 6-16: *Selected Decisions 11*, 20-21; and see also the 2005 Report of the Secretary-General: ISBA/11/A/4 and Corr.1, para. 64: *Selected Decisions 11*, 13-14; and the 2006 Report of the Secretary-General: ISBA/12/A/2 and Corr.1, paras 28-30: *Selected Decisions 12*, 5-6.

activities concerned. A subsidiary use for the Fund is, “where possible and to the extent necessary”, and up to US\$ 60,000 in any year, to make allocations to the Voluntary Trust Fund (in the same way as was done over the last couple of years with advances from the registered pioneer investor account).

The initial capital of the Endowment Fund consists of the balance remaining in the registered pioneer investor account on 18 August 2006.<sup>102</sup> States and private persons are invited to contribute. Only the interest may be disbursed for the purposes of the Fund.

The Endowment Fund will only become operational (except for allocations to the Trust Fund) upon the approval by the Assembly of rules and procedures for the administration and utilisation of the Fund. These rules and procedures are to be prepared by the Secretary-General, and (like all matters having financial implications) will be considered in turn by the Finance Committee, Council and Assembly.

#### **m. Financial Regulations**

The preparation of the Financial Regulations was a lengthy process.<sup>103</sup> The starting point was article 171 to 175 of the Convention. The Finance Committee prepared a draft during the third and fourth sessions in 1997 and 1998,<sup>104</sup> which was considered at some length by the Council at the fifth session in 1999. The Secretariat then prepared a revised draft,<sup>105</sup> and on 26 August 1999, upon the recommendation of the Finance Committee, the Council adopted and applied the draft Regulations provisionally.<sup>106</sup> The Assembly, acting on the recommendation of

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<sup>102</sup> The use of the registered pioneer investors account for the Endowment Fund was proposed by the Secretary-General, after consultations with the states of the pioneer investors and Finance Committee members. It was widely seen as a good solution to the problem of the effective use of the interest on the sizable amount involved (US\$ 2,660,958, as of 31 December 2005).

<sup>103</sup> 1999 article, see note 1, 218; *Virginia Commentary*, see note 5, 531 and 645. Pending the adoption of its own Financial Regulations, the Authority applied those of the United Nations.

<sup>104</sup> ISBA/4/C/L.3.

<sup>105</sup> ISBA/5/C/L.3.

<sup>106</sup> ISBA/5/C/10.

the Council, approved the Financial Regulations of the Authority on 23 March 2000, during the sixth session.<sup>107</sup>

The Secretary-General has not yet established the more detailed rules and procedures provided for in Regulation 10.1(a), because the United Nations itself is currently reviewing its own Financial Rules. Pending the establishment of its own rules, the Authority is applying the UN Rules *mutatis mutandis*. This has not caused any difficulty in practice.

The Introductory Note to the Financial Regulations recalls that adjustments and additions will be needed when the Authority has sufficient income to meet its administrative expenses from sources other than assessed contributions.

#### **n. Staff Regulations and Rules**

The Staff Regulations of the Authority largely follow those of the United Nations, with additions required by the special nature of the Authority and by the provisions of the Convention.<sup>108</sup>

The Finance Committee completed its work on the Staff Regulations during the fifth session in 1999, and submitted them to the Council. The Council then adopted them on 13 July 2000, during the sixth session, and decided that they should be applied provisionally pending approval by the Assembly.<sup>109</sup> They were finally adopted by the Assembly on 10 July 2001, upon the recommendation of the Council.<sup>110</sup>

The Secretary-General, as the chief administrative officer, is to provide and enforce such (more detailed) staff rules consistent with the Staff Regulations, as he considers necessary. The Secretary-General issued Staff Rules in November 2001, which followed the UN Staff Rules. Amended Staff Rules, reflecting changes that have been made to the UN Staff Rules, are to be promulgated in the course of 2007.

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<sup>107</sup> ISBA/6/A/3: *Selected Decisions* 6, 1. The Financial Regulations are also reproduced in *Basic Texts*, see note 4, 87-100, with commentary and documentary sources.

<sup>108</sup> For the text of the Staff Regulations, see ISBA/6/C/10, Annex. (The Annex is not reproduced in *Selected Decisions* 6, 83, but may be found on the Authority's website, see note 8).

<sup>109</sup> ISBA/6/C/10: *Selected Decisions* 6, 83.

<sup>110</sup> ISBA/7/A/5: *Selected Decisions* 7, 16.

#### **o. Election of the Legal and Technical Commission and Organisation of Its Work**

At the seventh session in 2001 there were 24 candidates nominated by their states for election to the Legal and Technical Commission. The Council decided, as it had already done at the first election in 1996,<sup>111</sup> and “without prejudice to future elections”, to use the power given to it under article 163.2 of the Convention to enlarge the size of the Commission, this time from 15 to 24, and then to elect all 24 candidates.<sup>112</sup> Once again, concerns were voiced both as to the enlargement itself and as to the qualifications required and the imbalance in regional representation among the membership of the Commission.<sup>113</sup>

In 2006, and despite similar concerns, which this time also included the possible additional costs, the Council again used its powers under article 163.2 to increase the size of the Commission. There were 25 candidates, and all were elected, again “without prejudice to future elections.” On this occasion, however, the Council requested the Secretary-General,

“to prepare, for consideration by the Council, at its next session, a report on considerations relating to the future size and composition of the Legal and Technical Commission and the process for future elections.”<sup>114</sup>

In effect, the Council (and the wider membership of the Authority) have not yet reached an accommodation on the question of the composition of the Legal and Technical Commission. While it was perhaps understandable that in 1996, exhausted by the struggle over the composition of the Council itself, states took the easy way out provided by article 163.2, this was really an abuse of that provision and the continued use of this provision cannot really be justified.

As with the other organ composed of experts, the Finance Committee, originally the chair of the Legal and Technical Commission did not change annually, but in 2006 the Commission decided on annual rotation, with the Vice-Chairman becoming Chairman the subsequent year. So far the chairmen have been Mr. Lenoble (France) from 1997 to 1999; Ms Inge Zaamwani (Namibia) from 2000 to 2001; Mr. Bjølykke (Nor-

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<sup>111</sup> 1999 article, see note 1, 219.

<sup>112</sup> ISBA/7/C/6: *Selected Decisions* 7, 35-6.

<sup>113</sup> ISBA/7/C/7, paras. 4 -7: *Selected Decisions* 7, 37.

<sup>114</sup> ISBA/12/C/11: *Selected Decisions* 12, 39.



way) in 2002; Mr. Hoffmann (South Africa) from 2003 to 2004; Mr. Diène (Senegal) in 2005; and Mr. Lindsay Parson (United Kingdom) in 2006.

The Commission adopted its Rules of Procedure on 26 August 1998 as an “informal revised text.”<sup>115</sup> This was submitted to the Council for approval in accordance with article 163.10 of the Convention. Following a detailed examination by the Council, the Secretariat prepared a revised draft.<sup>116</sup> After further debate, the Council approved the Rules of Procedure on 26 August 1999, with the exception of rule 6 (meetings) and rule 53 (participation by members of the Authority and entities carrying out activities in the Area).<sup>117</sup> These rules were controversial because of the insistence of some delegations that the Commission’s meetings be open to them. Rule 6 as eventually adopted in 2000 requires the Commission to take into account the desirability of holding open meetings when issues of general interest to members of the Authority, which do not involve the discussion of confidential information, are being discussed. Rule 53 enables any member of the Authority to send a representative to attend the Commission when a matter particularly affecting that member is being discussed. The Council approved the Rules of Procedure of the Commission on 13 July 2000.<sup>118</sup> Early controversy about the possibility of having open meetings of the Commission<sup>119</sup> seems to have died away. The Commission has decided to hold open meetings when it discusses matters of general interest, though not of course when confidential matters are under consideration.

The regular work of the Commission includes consideration of the reports from contractors, the drafting of rules and regulations relating to activities in the Area, as well as recommendations for the guidance of contractors on such matters as environmental data collection.

Although there is no formal requirement for the Chairman of the Commission to report to the Council, a practice has developed, whereby the Chairman prepares an agreed report on the work of the Commission. The reports made each session by the Chairman to the Council are normally reproduced in *Selected Decisions*.

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<sup>115</sup> ISBA/5/C/L.1; 1999 article, see note 1, 220.

<sup>116</sup> ISBA/5/C/L.1/Rev.1.

<sup>117</sup> ISBA/5/C/L.2.

<sup>118</sup> *Basic Texts*, see note 4, 72-86, with commentary and documentary sources.

<sup>119</sup> 1999 article, see note 1, 219-220; ISBA/10/A/3, paras 31-2: *Selected Decisions* 10, 19.

#### p. Relations with the United Nations, ITLOS and Other Bodies

The Authority is an autonomous international organisation, not in any sense part of the United Nations. A Relationship Agreement with the United Nations was concluded and entered into force in 1997.<sup>120</sup>

The Authority has continued to participate in the work of the United Nations General Assembly, with which it has observer status, in accordance with the invitation extended in 1996. The Secretary-General addresses the Assembly each year under the item on Oceans and Law of the Sea. The UN Secretary-General's annual report on Oceans and the Law of the Sea, and the General Assembly's annual resolution, include a section on the Authority. The Secretary-General and the Secretariat maintain personal links with the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations Secretariat.

The Authority participates, having regard to its "specific" mandate, in the Oceans and Coastal Areas Network (UN-Oceans);<sup>121</sup> is collaborating in the United Nations Atlas of the Oceans;<sup>122</sup> and participates in the Steering Group of the UN General Assembly Task Force to establish a regular process for a global marine assessment.<sup>123</sup>

The Authority uses the conference-servicing facilities of the United Nations to service its annual sessions, in accordance with the Relationship Agreement. The corresponding payments to the United Nations are a significant part of the Authority's budget each year. While the quality of the UN conference-servicing is high, the costs are also high, despite efforts to keep them down.

Both in their negotiating history and in the Convention as adopted, there are close links between the Authority and the International Tribunal for the Law of the Sea in Hamburg. As the Secretary-General said on the occasion of the Tenth Anniversary Ceremony of the Tribunal, "the Seabed Disputes Chamber is an essential part of the regime for the deep seabed mining in the international area."<sup>124</sup>

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<sup>120</sup> *Basic Texts*, see note 4, 143-154, with commentary and documentary sources.

<sup>121</sup> ISBA/12/A/2, para. 14: *Selected Decisions 12*, 3.

<sup>122</sup> ISBA/12/A/2, paras 15-16 and 57: *Selected Decisions 12*, 3-4.

<sup>123</sup> ISBA/12/A/2, paras 17-18: *Selected Decisions 12*, 4.

<sup>124</sup> S. Nandan, "The Work of the International Seabed Authority and its Relationship with the Tribunal," statement at the Tenth Anniversary Ceremony

The Preparatory Commission had made some not entirely satisfactory recommendations concerning the establishment of a Relationship Agreement between the Authority and the Tribunal.<sup>125</sup> Following discussions between the Secretariat and the Registry of the Tribunal,<sup>126</sup> an administrative arrangement on cooperation between the Secretariat and the Registry was concluded by exchange of letters in 2003.<sup>127</sup> Subject to the requirements of confidentiality of each institution, cooperation takes place in respect of the following: regular and free exchange of information, publications and reports of mutual interest; exchange of information relating to seminars, training courses and internships organised by each institution; provision of conference services and facilities; and personnel matters. An illustration of this cooperation is the workshop held by the Tribunal at the Authority's headquarters in April 2007, with administrative assistance from the Secretariat and a presentation on the technical and legal aspects of the work of the Authority.

In May 2000, the Secretary-General and the Executive Secretary of the Intergovernmental Oceanographic Commission (IOC/UNESCO) signed a Memorandum of Understanding concerning cooperation in promoting the conduct of marine scientific research in the Area.<sup>128</sup>

The following intergovernmental bodies have observer status with the Authority: the Secretariat of the Convention on Biological Diversity; the Permanent Commission of the South Pacific; and the South Pacific Applied Geoscience Commission. Certain non-governmental organisations are observers at the Assembly, pursuant to rule 82.1(e) of the Assembly's Rules of Procedure: Greenpeace International; the International Association of Drilling Contractors; the International Ocean Institute; the Law of the Sea Institute; and the Center for Ocean Law and Policy, University of Virginia.

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of the International Tribunal for the Law of the Sea, Hamburg, 29 September 2006.

<sup>125</sup> ISBA/10/A/3, para. 78: *Selected Decisions* 10, 29-30; 1999 article, see note 1, 221-222.

<sup>126</sup> ISBA/4/A/11, para. 14: *Selected Decisions* 4, 54; ISBA/5/A/1, para. 11: *Selected Decisions* 5, 2.

<sup>127</sup> Letter from the Registrar dated 4 July 2003; letter in reply from the Secretary-General of 16 July 2003.

<sup>128</sup> ISBA/6/A/9, para. 13: *Selected Decisions* 6, 15; *Basic Texts*, see note 4, 155-156, with commentary and documentary sources.

#### q. Protocol on Privileges and Immunities

The Protocol on the Privileges and Immunities of the International Seabed Authority<sup>129</sup> was adopted by the Assembly on 26 March 1998, and was open for signature at the headquarters of the Authority from 17 to 28 August 2000 (with a formal signing ceremony on 26-27 August 1998) and remained open until 16 August 2000. Thereafter it remains open for accession. Only 28 members of the Authority had signed by 16 August 2000. It entered into force on 31 May 2003, when 10 states had ratified. As of 31 March 2007 there were only 22 Parties (including, importantly, the host country, Jamaica). The main reason for the slow adherence to the Protocol would appear to be bureaucratic inertia, rather than objection to its terms.

#### r. Headquarters Agreement and Relations with the Host State

After arduous negotiations, the Headquarters Agreement between the Authority and the government of Jamaica<sup>130</sup> was signed on 26 August 1999, having been approved by the Assembly on 25 August 1999.<sup>131</sup> The Agreement entered into force on 26 August 1999.<sup>132</sup> The Agreement largely follows precedent, but a point of some difficulty in the negotiations was the right of the Authority to decide on the precise location within Jamaica of its headquarters site and the right to move within Jamaica.<sup>133</sup>

The permanent headquarters have now been established in Kingston, and are located within a building adjacent to the Jamaica Confer-

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<sup>129</sup> 1999 article, see note 1, 221-223; *Basic Texts*, see note 4, 127-138, with commentary and documentary sources.

<sup>130</sup> Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority; ISBA/5/A/11: *Selected Decisions* 5, 22-38; *Basic Texts*, see note 4, 104-126, with commentary and documentary sources.

<sup>131</sup> ISBA/5/A/11: *Selected Decisions* 5, 21.

<sup>132</sup> Article 54.1 of the Agreement provides for it to enter into force on its approval by the Assembly and the Government of Jamaica. Signature of the Agreement signified the Government of Jamaica's approval (cf. the position under the Supplementary Agreement: ISBA/11/A/4/Corr.1; since the Assembly had already approved the Agreement it entered into upon signature and there was no period of provisional application as foreshadowed in article 54.2.

<sup>133</sup> 1999 article, see note 1, 225. See article 2 of the Agreement.

ence Centre by the harbour in downtown Kingston. Difficult and protracted negotiation on a Supplementary Agreement continued. Finally, on 2 June 2004, the Assembly was able to approve, upon the recommendation of the Council (which itself acted upon the recommendation of the Finance Committee),<sup>134</sup> a Supplementary Agreement between the Authority and the government of Jamaica regarding the headquarters of the Authority and the use of the Jamaica Conference Centre complex.<sup>135</sup> The Supplementary Agreement had been provisionally applied from the date of its signature (17 December 2003) and entered into force on the date of its approval by the Assembly. Under the Agreement the government grants the Authority free of rent and all other charges (except as provided for in the Agreement) premises in the block 11 building at 14-20 Port Royal Street, Kingston, together with guaranteed use of the Jamaica Conference Centre at rates no less favourable than those applied to the government of Jamaica and other local organisations.

At the eleventh session, tribute was paid to Dr. Kenneth Rattray, who had passed away on 3 January 2005. Dr. Rattray, a former Solicitor-General of Jamaica, had been one of the leading participants at the Third United Nations Conference on the Law of the Sea (and General Rapporteur of the Conference), and in the Secretary-General's Informal Consultations which led to the adoption of the Implementation Agreement. At the twelfth session, the Honourable G. Anthony Hylton, Minister of Foreign Affairs and Foreign Trade of Jamaica, announced in the Assembly that the main room of the Jamaica Conference Centre, in which the Assembly meets, would henceforth be known as the "The Dr. Kenneth Rattray Conference Room."<sup>136</sup>

#### s. Five-Year Review (2000, 2005)

Article 154 of the Convention (Periodic Review), unlike article 155 (The Review Conference),<sup>137</sup> was not directly affected by the Imple-

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<sup>134</sup> ISBA/10/C/5: *Selected Decisions 10*, 68.

<sup>135</sup> ISBA/10/A/2-ISBA/10/C/2: *Selected Decisions 10*, 1-10; ISBA/10/A/11: *Selected Decisions 10*, 55

<sup>136</sup> ISBA/12/A/13, para. 16: *Selected Decisions 12*, 27.

<sup>137</sup> See *Virginia Commentary*, see note 5, 318. Article 155, as it originally appeared in the Convention, would have provided for a Review Conference 15 years after the commencement of commercial production. The Conference would have been empowered to adopt amendments to the system of exploration and exploitation (the so-called parallel system), which could

mentation Agreement, though it is, of course, subject to the overriding principle of cost-effectiveness set forth in Section 1 para. 2, of the Annex to the Agreement. Article 154 provides that the Assembly shall undertake every five years,

“a general and systematic review of the manner in which the international regime of the Area has operated in practice,”

and that in the light of the review the Assembly may take, or recommend that other organs take,

“measures in accordance with the provisions and procedures of [Part XI and the Annexes related thereto] which will lead to the improvement of the operation of the regime.”

No additional powers are conferred upon any organ of the Authority upon the occasion of the review; the emphasis is upon conformity to the “provisions and procedures” of Part XI and the Annexes relating thereto.

The first five-year review happened at the sixth session in July 2000, on the basis of a report prepared by the Secretary-General<sup>138</sup> and in conjunction with the consideration by the Assembly of the Secretary-General’s annual report. In the report, the Secretary-General proposed that in the light of the very short experience that the Authority had had in implementing the regime, it would be premature for the Assembly to take or recommend any measures. The Assembly agreed.<sup>139</sup> The second five-year review in 2005, for which the Secretary-General’s comprehensive 2004 report provided useful background material,<sup>140</sup> likewise passed uneventfully.

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come into force for states without their consent. As such it was one of the principal obstacles for industrialised countries, and was disapplied by the Implementation Agreement, Annex, Section 4. Section 4 provides instead that the Assembly, on the recommendation of the Council, may undertake a review at any time of the matters referred to in article 155.1. Any resulting amendments are subject to the general provisions of the Convention concerning amendments (arts 314, 315 and 316).

<sup>138</sup> ISBA/6/A/8, Annex: *Selected Decisions* 6, 12.

<sup>139</sup> ISBA/6/A/19, Annex: *Selected Decisions* 6, 68.

<sup>140</sup> ISBA/10/A/3, para.5: *Selected Decisions* 10, 12.

#### t. Official Seal, Flag and Emblem

On 14 August 2002, the Assembly, on the basis of a report by the Secretary-General,<sup>141</sup> adopted the official seal, flag and emblem of the Authority.<sup>142</sup> The emblem is similar to that used in connection with the Third United Nations Conference on the Law of the Sea and the Office of the Special Representative of the UN Secretary-General for the Law of the Sea, as well as that adopted by the International Tribunal for the Law of the Sea.

“Apart from representing justice governing the oceans, the emblem also reflects the strong links between the United Nations Division of Ocean Affairs and the Law of the Sea, the International Tribunal for the Law of the Sea and the Authority.”<sup>143</sup>

In the decision adopting the official seal, emblem and flag, the Assembly recommended that the members of the Authority take such legislative or other appropriate measures as may be necessary for the protection of the emblem, official seal and name of the International Seabed Authority. This follows the practice in the United Nations and other international organisations. As in those cases, states may find it difficult to implement this recommendation by adopting legislative or other appropriate measures. But hopefully serious problems will not arise in practice.

## 2. Substantive Work

The substantive functions of the Authority are set out in the Convention and in the Agreement. Pending the approval of the first plan of work for exploitation the Authority is to concentrate on the eleven areas of work listed in para. 5 of Section 1 of the Annex to the Agreement. These eleven areas mostly concern plans of work for exploration, the protection and preservation of the marine environment, and the promotion and encouragement of marine scientific research with respect to activities in the Area.

In the four years covered by the 1999 article, the main achievements were the approval of the plans of work for exploration for the seven

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<sup>141</sup> ISBA/8/A/4: *Basic Texts*, see note 4, 101-103, with commentary and documentary sources.

<sup>142</sup> ISBA/8/A/12: *Selected Decisions* 8, 30-31.

<sup>143</sup> *Basic Texts*, see note 4, 103.

registered pioneer investors,<sup>144</sup> and work on the draft Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.<sup>145</sup>

During the period 1999 to 2004, the Council and Assembly adopted the Nodules Regulations. The Secretariat, Legal and Technical Commission, and Council began work on draft Regulations on Prospecting and Exploration for Polymetallic Sulphides and Cobalt-rich Ferromanganese Crusts in the Area. Contracts were concluded with the seven registered pioneer investors, as well as with a German governmental body, and work proceeded in various ways to enhance knowledge of the Area and its resources (through studies, data-gathering, workshops etc.).

A detailed work programme of the Authority for the three-year period 2005-2007 was approved by the Assembly at the tenth session, which focuses on the implementation of para. 5(c), (d), (f), (g), (h), (i) and (j) of Section 1 of the Annex to the Agreement, in particular the following main areas:

- (a) The supervisory functions of the Authority with respect to existing contracts for exploration for polymetallic nodules;
- (b) The development of an appropriate regulatory framework for the future development of the mineral resources of the Area, particularly hydrothermal polymetallic sulphides and cobalt-rich crusts, including standards for the protection and preservation of the marine environment during their development;
- (c) Ongoing assessment of available data relating to prospecting and exploration for polymetallic nodules in the Clarion-Clipperton zone;
- (d) The promotion and encouragement of marine scientific research in the Area through, inter alia, an ongoing programme of technical workshops, the dissemination of the results of such research and collaboration with Kaplan, the Chemosynthetic Ecosystem Group and the Seamounts Group;
- (e) Information-gathering and the establishment and development of unique databases of scientific and technical information with a view to obtaining a better understanding of the deep ocean environment.<sup>146</sup>

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<sup>144</sup> 1999 article, see note 1, 226-7.

<sup>145</sup> 1999 article, see note 1, 228-234.

<sup>146</sup> ISBA/12/A/2, para. 78: *Selected Decisions 12*, 18.



A further work programme for the three-year period 2008 to 2010 will be proposed for approval at the thirteenth session of the Authority in 2007.<sup>147</sup>

#### a. Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area

In July 2000, at the resumed sixth session, the Council adopted by consensus<sup>148</sup> and applied provisionally, pursuant to article 162.2 of the Convention, the Regulations on the Prospecting and Exploration for Polymetallic Nodules in the Area (Nodule Regulations).<sup>149</sup> Thereafter, on 13 July 2000, the Assembly, acting upon the recommendation of the Council, approved the Regulations without amendment. The Regulations have been analysed in detail elsewhere.<sup>150</sup>

As the Secretary-General said in his 2006 report,

“Given the dearth of knowledge of the marine environment of the Area and the potential impact of mineral exploration and exploitation on its biodiversity, the regulations have a strong environmental focus. In addition, they are flexible in that they allow the Legal and Technical Commission to issue guidance to contractors with the Authority relating to such matters as environmental impact assessments and the standardization of relevant environmental data and information.”<sup>151</sup>

The Legal and Technical Commission has issued “recommendations for guidance” for contractors on the assessment of possible environmental impacts.<sup>152</sup>

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<sup>147</sup> ISBA/12/A/2, para. 79: *Selected Decisions 12*, 18.

<sup>148</sup> As required by article 161.8(d) of the Convention.

<sup>149</sup> ISBA/6/A/18, Annex: *Selected Decisions 6*, 31; *Basic Texts*, see note 4, 226-270. The Nodules Regulations used sometimes to be referred to as the Mining Code, though they are only a part of the Code because they deal only with one of the mineral resources of the deep seabed and they do not deal with exploitation.

<sup>150</sup> Lodge, see note 7, 2002 and 2005; Nandan, see note 7, 86-89.

<sup>151</sup> ISBA/12/A/2 and Corr. 1, para. 37: *Selected Decisions 12*, 8.

<sup>152</sup> ISBA/7/LTC/1/Rev.1. Similar recommendations are foreshadowed in the draft regulations on prospecting and exploration for polymetallic sulphides and for cobalt-rich ferromanganese crusts in the Area.

### **b. Draft Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area**

When Part XI of the Convention and the Agreement were drafted, the negotiators had chiefly in view the eventual commercial exploitation of manganese nodules (polymetallic nodules). Lack of knowledge of the deep seabed, and perhaps the unrealistic expectations of untold wealth to be derived from nodules, meant that little thought was given to the possible exploitation of any other mineral resources of the Area (though article 162.2 (o) (ii) of the Convention provides that regulations for any other resource “shall be adopted within three years” of a request by a member of the Authority). While most provisions of Part XI and the Agreement were drafted in seemingly general terms, much of Annex III of the Convention appears to have been drafted only with polymetallic nodules in mind, and its provisions are not necessarily appropriate for other resources. Issues such as the size of the contract area, anti-monopoly provisions, and the participation of the Enterprise go to the heart of the system as set out in the Convention (and modified by the Agreement), and the drafting of regulations for resources other than polymetallic nodules has the potential for reopening these matters.

The Legal and Technical Commission thus faced very real practical and legal difficulties when they were called upon to address polymetallic sulphides and cobalt-rich ferromanganese crusts, difficulties which have still not been resolved. The relationship between the regulations and the terms of the Convention and Agreement would require careful consideration. Knowledge of these resources in the Area is far from complete. Moreover, it seems very likely that these resources will first be exploited in areas within national jurisdiction. It would therefore make sense to await greater knowledge (not least as regards the size and distribution of the deposits), and experience of exploitation within national jurisdiction, before seeking definitively to resolve these difficult issues within the Authority. But the terms of article 162.2 (o) (ii) of the Convention, together with the strong pressure at the time, initially appeared not to leave open that option. However, the pressure now seems to have lessened, and there is growing appreciation on the part of the members of the Authority that time is available before the regulations have to be in place and of the need for more information before coming up with a final draft of the regulations.

It was the then representative of the Russian Federation who, in August 1998, requested that the Authority adopt regulations on cobalt-

rich crusts and polymetallic sulphides.<sup>153</sup> Matters moved slowly. By general agreement, the three-year deadline in article 162.2 (o) (ii) passed. The Secretariat, Legal and Technical Commission and Council began work on draft regulations covering both cobalt-rich crusts and polymetallic sulphides, and it was not until 2006 that the decision was taken to divide the draft into two.

A workshop on these resources was held in June 2000, and in 2001 a document was placed before the Council summarising the workshop and indicating the considerations to be borne in mind in elaborating regulations.<sup>154</sup> After extensive discussions, the Council decided to ask the Legal and Technical Commission to prepare draft regulations. The Legal and Technical Commission, with much assistance from the Secretariat, did a great deal of work on a first draft in 2003 and 2004.<sup>155</sup> During the eleventh session in 2005, the Council completed a first reading of the draft Regulations on Prospecting and Exploration for Polymetallic Sulphides and Cobalt-rich Crusts, prepared by the Secretariat and the Legal and Technical Commission.<sup>156</sup>

The Council then asked the Secretariat for clarification of certain points, and the Secretariat submitted two technical information papers to the Council in 2006.<sup>157</sup> The four matters on which further information was sought from the Secretariat were the relationship between prospecting and exploration;<sup>158</sup> the system for participation by the Authority (the Enterprise); the environmental provisions; and the allocation of exploration areas. The Secretariat's response also considered the question whether the Assembly may impose new and additional obligations on prospectors, going beyond those set forth in the Convention.

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<sup>153</sup> 1999 article, see note 1, 235.

<sup>154</sup> ISBA/8/LTC/2.

<sup>155</sup> The interchange between the Commission and the Council is described in the Secretary-General's 2004 report: ISBA/10/A/3, paras 111-113: *Selected Decisions 10*, 37-8.

<sup>156</sup> ISBA/10/C/WP.1. After the first reading, the Secretariat prepared a slightly revised version (ISBA/10/C/WP.1/Rev.1), which formed the basis for a second reading that commenced at the 12th Session. Nandan, see note 7, 89-91.

<sup>157</sup> ISBA/12/C/2; ISBA/12/C/3.

<sup>158</sup> While it is clear, as a matter of legal definition, from the text of the Convention that "prospecting" does not fall within the term "activities in the Area", which is defined clearly and deliberately in the Convention to exclude prospecting, the line between the two is not necessarily clear-cut in practice.

Also at the 2006 session the Council had before it a summary of the results of the workshop that took place just before the session,<sup>159</sup> and a paper by the Russian delegation.<sup>160</sup>

At the twelfth session, a particular point of controversy was the size of the contract area to be awarded in respect of cobalt-rich ferromanganese crusts. At the workshop held just before the session, there was a general move to agree that the area should be small, but China, in particular, wanted to stick with the Legal and Technical Commission's higher figure. It was because of this issue, among others, that the Council decided to split the draft regulations into two, and deal separately with polymetallic sulphides and cobalt-rich ferromanganese crusts, giving priority to the sulphides regulations.<sup>161</sup>

In light of the first reading and the discussions in the 2006 workshop and in the Council in 2006, and after consulting the members of the outgoing Legal and Technical Commission, the Secretariat will submit a revised draft of the sulphides regulations for consideration by the Council at the 2007 session. Among the key issues to be dealt with are the formula for determining the size of the exploration area; the possibility of a progressive fee per block system; the relinquishment schedule; and the provisions concerning the participation of the Authority (joint venture arrangements).

#### **c. Draft Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts in the Area**

As noted above, the Council in 2006 decided to split off the regulations on ferromanganese crusts, so as to concentrate in the first place on those concerning polymetallic sulphides. The Legal and Technical Commission intends to review the draft regulations for cobalt-rich ferromanganese crusts and submit them to the Council for consideration in 2008.

#### **d. Plans of Work and Contracts**

The Authority has issued eight exploration contracts. Following the adoption in 2000 of the Nodule Regulations, in 2001 and 2002 the Authority entered into contracts with entities sponsored by China, France,

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<sup>159</sup> ISBA/12/C/7.

<sup>160</sup> ISBA/12/C/6.

<sup>161</sup> ISBA/12/C/12, para.15: *Selected Decisions 12*, 43.

Japan, and the Russian Federation, with the governments of India and the Republic of Korea, and with a consortium based in Poland and sponsored by a number of states.<sup>162</sup>

In 2005, the Council, acting on the recommendation of the Legal and Technical Commission, approved an application for a plan of work for exploration of polymetallic nodules submitted by Germany, represented by the Federal Institute for Geosciences and Natural Resources (BGR).<sup>163</sup> The Secretary-General was requested to issue the plan of work in the form of a contract between the Authority and Germany, and the contract was signed on 19 July 2006.<sup>164</sup> This is the first plan of work/contract to be issued to an applicant other than a registered pioneer investor. In his annual report for 2006, the Secretary-General noted that this was the first new application for a plan of work since the Convention entered into force and “[a]s such, it represented confidence in the International Seabed Authority and the system established to administer the resources of the Area.”<sup>165</sup>

The reporting requirement is important. Each contractor’s annual report (which remains confidential) is examined by the Commission, which reports (in very general terms) to the Council.<sup>166</sup> A more detailed report, including any clarifications or remedial action requested (for example, additional data), is sent to each contractor in the form of a letter from the Secretary-General.

#### e. Promotion of Marine Scientific Research

Promoting and encouraging marine scientific research in the Area, and collecting and disseminating information about the deep seabed, have

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<sup>162</sup> China (China Ocean Mineral Resources Research and Development Association–COMRA); France (Institut français de recherche pour l’exploitation de la mer – IFREMER); India (Government of India); Japan (Deep Ocean Resources Development Company); Republic of Korea (Government of the Republic of Korea); Russian Federation (Yuzhmorgeologiya); Interoceanmetal (a consortium formed by Bulgaria, Cuba, Czechoslovakia – now the Czech Republic and Slovakia, Poland, and the Union of Soviet Socialist Republics – now the Russian Federation).

<sup>163</sup> ISBA/11/C/10.

<sup>164</sup> Press Release 17/07/2006; also *ISA Handbook 2006*, 30.

<sup>165</sup> ISBA/12/A/2, para. 8; *Selected Decisions 12*, 2.

<sup>166</sup> For a general description of the reporting requirements, see ISBA/1/A/2, paras 42-44; *Selected Decisions 12*, 9-10. See also ISBA/12/C/8, paras 4-7; *Selected Decisions 12*, 23-33; ISBA/12/LTC/ 2.

become increasingly important areas of the Authority's work. Details are to be found in the Authority's documentation<sup>167</sup> and on its website,<sup>168</sup> and will not be repeated here. The various scientific and technical workshops which have been held by the Authority are described below in the Annex.

As explained in Section III 1 l above, at the twelfth session, in 2006, on the basis of a proposal by the Secretary-General, an Endowment Fund for Marine Scientific Research in the Area was established by the Assembly. The object of the Fund is to promote and encourage scientific research in the Area, and in particular to support the participation of personnel from developing countries in the activities concerned. It will become operational when the Assembly approves rules and procedures for its administration and utilisation.

The Authority itself is playing an increasingly important role in relation to the promotion of scientific research concerning the Area. It has in particular developed a strategy of engaging in cooperative projects aimed at broadening understanding of the deep seabed. These include the Kaplan project and other activities described in the Secretary-General's 2006 report.<sup>169</sup> The geological model for the Clarion-Clipperton fracture zone is also described at length in that report.<sup>170</sup> The Secretariat is developing a Central Data Repository across a whole range of areas, and is to contribute to the United Nations Atlas of the Oceans.<sup>171</sup>

#### **f. Scientific and Technical Workshops**

Beginning in 1998, a series of scientific and technical workshops has been organised by the Secretariat, in Kingston and elsewhere. The themes are chosen to complement the substantive work of the Authority. The workshops have been important in assisting the Legal and Technical Commission, and the Council, in their work, and have also led to an impressive series of publications. A list of workshops and publications is to be found at the end of this article.

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<sup>167</sup> See, in particular, the relevant sections of the Secretary-General's annual reports to the Assembly and Council, most recently ISBA/12/A/2, paras 55-77: *Selected Decisions 12*, 12-18.

<sup>168</sup> See note 8.

<sup>169</sup> ISBA/12/A/2, paras 69-77: *Selected Decisions 12*, 16-18.

<sup>170</sup> ISBA/12/A/2, paras 58-68: *Selected Decisions 12*, 13-16.

<sup>171</sup> ISBA/12/A/2, paras 55-56: *Selected Decisions 12*, 12.

There has also developed a practice of arranging technical briefings for the representatives of members of the Authority present in Kingston on matters relevant to the work of the Council and the Assembly. For example, there was a one-day seminar by invited experts on the status and prospects for polymetallic nodules and cobalt-rich ferromanganese crusts during the eighth session in 2002. Such briefings enable delegates to gain greater understanding of highly technical matters that are so important for the work of the Authority, and are much appreciated.

#### IV. Conclusions

The International Seabed Authority has many positive achievements to its credit, not least in relation to the promotion of knowledge and scientific research in the Area.<sup>172</sup> Yet the Authority's current role remains quite modest, which is inevitable in the absence of significant commercial interest in the development of deep seabed mineral resources. It is believed that the three objectives suggested in the 1999 article, reproduced above,<sup>173</sup> remain valid.

No one knows when exploitation of the mineral resources of the deep seabed will take place on a commercial basis. This uncertainty may make it harder to justify the financial contributions required from the parties to the Convention to maintain an autonomous international organisation, the Authority, on the same basis as at present. It must, however, be remembered that support for the Authority is a legal obligation under the Convention and indeed an important part of the overall package embodied in the Convention.

Thought may need to be given to imaginative ways of further rationalising the Authority's position so as to ensure that the necessary operations under the Convention are fully cost-effective. Cost-effectiveness is, after all, one of the principles enshrined in the Implementation Agreement.<sup>174</sup> At the very least, consideration needs to be

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<sup>172</sup> Nandan, see note 7. Nandan concludes (at page 92) by saying that "the Authority has begun to play a critical catalytic role in promoting international cooperation aimed at the development of the resources of the deep seabed for the benefit of mankind as a whole."

<sup>173</sup> See note 9.

<sup>174</sup> Implementation Agreement, Annex, Section 1, para. 2, reads: "In order to minimize costs to States Parties, all organs and subsidiary bodies to be es-

given to further steps aimed at rationalising and reducing the length and frequency of meetings. The move to biennial meetings of the Assembly, suggested in 2002, should again be considered.

Much of the ideological passion that characterised the debates in the First Committee of the Third United Nations Conference on the Law of the Sea, and to some degree also in the Preparatory Commission, have now subsided. The difficulties encountered in the initial establishment of the Authority, especially as regards the first elections to the Council and (to a somewhat lesser degree) the Finance Committee, also lie mostly in the past, though the composition of the Legal and Technical Commission remains problematic. In the course of its first 12 years, the Authority has successfully established itself as a lean and cost-effective organisation. Its budget is modest. The Authority has proved to be a responsible and reliable institution. Neither the Authority nor the modified regime for the mineral resources of the deep seabed should be seen as an obstacle to universal participation in the United Nations Convention on the Law of the Sea. For this, the Secretary-General and his staff, and delegates from all regional groups, deserve great credit.

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established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.”



## **Annex:**

### **Fifth to Twelfth Sessions of the Authority: Overview**

#### *Fifth Session, 1999 (9-27 August 1999)*

- Council adopts and provisionally applies Financial Regulations
- Assembly approves Headquarters Agreement with Jamaica
- Assembly elects two members of Council (to replace Canada and the United States)

#### *Sixth Session, 2000*

##### *First part (20-31 March 2000)*

- Assembly approves Financial Regulations
- Assembly re-elects Satya N. Nandan as Secretary-General

##### *Second part (resumed sixth session) (3-14 July 2000)*

- Council approves Rules of Procedure of the LTC
- Council provisionally applies Staff Regulations and recommends them to Assembly
- Council adopts Nodules Regulations
- Assembly approves Nodules Regulations
- Assembly adopts budget for 2001-2002
- Assembly elects half the Council

#### *Seventh Session, 2001 (2-13 July 2001)*

- Council elects LTC
- Assembly elects Finance Committee
- Assembly approves Staff Regulations
- LTC issues "Recommendations for Guidelines"

*Eighth Session, 2002 (5-16 August 2002)*

- Assembly adopts budget for 2003-2004
- Assembly elects half the Council
- Assembly requests Secretary-General to establish Voluntary Trust Fund

*Ninth Session, 2003 (28 July-8 August 2003)*

- Assembly adopts decision concerning Voluntary Trust Fund

*Tenth Session, 2004 (24 May-4 June 2004)*

- Tenth anniversary commemorative special session
- Assembly adopts budget for 2005-2006
- Assembly elects half the Council
- Assembly re-elects Satya N Nandan as Secretary-General
- Assembly approves Supplementary Headquarters Agreement

*Eleventh Session, 2005 (15-26 August 2005)*

- Council approves Germany's application for a plan of work
- Council's first reading of draft Regulations for polymetallic sulphides and cobalt-rich ferromanganese crusts

*Twelfth Session, 2006 (7-18 August 2006)*

- Assembly adopts budget for 2007-2008
- Assembly establishes Endowment Fund for Marine Scientific Research in the Area
- Assembly elects half the Council
- Assembly elects Finance Committee
- Council elects Legal and Technical Commission
- Council decides to separate draft Regulations on polymetallic sulphides from those on cobalt-rich ferromanganese crusts, requesting the Secretariat to revise the former and returning the latter to the Legal and Technical Commission

### Workshops organised by the International Seabed Authority

Deep Seabed Polymetallic Nodule Exploration: Development of Environmental Guidelines (China, 1998)<sup>175</sup>

Proposed Technologies for Deep Seabed Mining of Polymetallic Nodules (Kingston, Jamaica, 3-6 August 1999)<sup>176</sup>

Minerals other than Polymetallic Nodules of the International Seabed Area (Kingston, Jamaica, 26-30 June 2000)<sup>177</sup>

Standardization of Environmental Data and Information: Development of Guidelines (Kingston, Jamaica, 25-29 June 2001)<sup>178</sup>

Prospects for International Collaboration in Marine Environmental Research to Enhance Understanding of the Deep-Sea Environment (Kingston, Jamaica, 29 July-2 August 2002)<sup>179</sup>

Establishment of a Geological Model of Polymetallic Nodule Resources in the Clarion-Clipperton Zone (CCZ) of the Equatorial North Pacific Ocean (Nadi, Fiji, 13-20 May 2003)

Establishment of Environmental Baselines at Deep Seafloor Cobalt-Rich Crusts and Deep Seabed Polymetallic Sulphide Mine Sites in the Area for the Purpose of Evaluating the Likely Effects on the Marine Environment (Kingston, Jamaica, 16-20 September 2004)

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<sup>175</sup> *Deep Seabed Polymetallic Nodules Exploration: Development of Environmental Guidelines*: Proceedings of the International Seabed Authority's Workshop held in Sanya, Hainan Island, People's Republic of China, 1-5 June 1998 (ISA, Kingston, 1999).

<sup>176</sup> *Proposed Technologies for Mining Deep Seabed Polymetallic Nodules*: Proceedings of the International Seabed Authority's Workshop held in Kingston, Jamaica, 3-6 August, 1999 (ISA, Kingston, 2002).

<sup>177</sup> *Minerals Other than Polymetallic Nodules of the International Seabed Area*: Proceedings of the International Seabed Authority's Workshop held in Kingston, Jamaica, 26-30 June 2000 (ISA, Kingston, 2004). A summary of the workshop was before the Council in 2001, included in ISBA/7/C/2.

<sup>178</sup> *Standardization of Environmental Data and Information – Development of Guidelines*: Proceedings of the International Seabed Authority's Workshop held in Kingston, Jamaica, 25-29 June 2001 (ISA, Kingston, 2002).

<sup>179</sup> *Prospects for International Collaboration in Marine Environmental Research to Enhance Understanding in the Deep-Sea Environment*: Proceedings of the International Seabed Authority's Workshop, 29 July-2 August 2002, Kingston, Jamaica (ISA, Kingston, 2006).

Cobalt-Rich Crusts and the Diversity and Distribution Patterns of Seamount Fauna (Kingston, Jamaica, 27-31 March, 2006)

Mining of Cobalt-Rich Crusts and Polymetallic Sulphides – Technological and Economic Considerations (Kingston, Jamaica, 31 July-4 August 2006)<sup>180</sup>

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<sup>180</sup> The results of the 2006 workshop were summarized in ISBA/12/C/7.