



Finance Committee

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Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement

Development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement

Report of the Secretary-General

I. Introduction

1. From 2019 to 2021, the Finance Committee studied the development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. In 2021, having considered the various reports prepared for its consideration and after internal discussion, the Committee reached the conclusion that it was time to report its initial findings and considerations to the Council and Assembly with a view to seeking guidance on how to proceed further. The Committee noted that several issues required clear policy guidance from the Assembly and that it would not be appropriate for the Committee to continue to develop rules, regulations and procedures for equitable sharing without such guidance.

2. The Committee submitted a comprehensive report on this matter at the twenty-sixth session, in July 2021, in which it set out its main conclusions and recommendations and provided a series of guiding questions for consideration by the Council and the Assembly.¹

3. The present report contains a summary and review of the discussions in the Council and the Assembly in response to document [ISBA/26/A/24-ISBA/26/C/39](#), as well as an outline of a proposed programme of work for the Committee for 2022 and 2023.

* [ISBA/27/FC/L.1](#).

¹ [ISBA/26/A/24-ISBA/26/C/39](#), sect. VIII and annex II.



II. Consideration by the Council and the Assembly

4. The Council considered document [ISBA/26/A/24-ISBA/26/C/39](#) at its 269th meeting, on 8 December 2021. The Assembly considered the report at its 190th meeting, on 14 December 2021. The present report contains a summary of the views expressed in the Council and the Assembly on the guiding questions put forward by the Finance Committee.

A. Views on the concept of a seabed sustainability fund

5. In general, members of the Council and the Assembly supported the concept of a global seabed sustainability fund as an alternative or adjunct to the direct distribution of monetary benefits as recommended by the Committee. Some delegations noted that such a fund would provide an appropriate mechanism for addressing intergenerational equity by evening out the flow of disbursements, delinking disbursements from the dynamics of resource revenue (such as price and revenue procyclicality) and minimizing uncertainty regarding the overall wealth to be shared. A number of delegations considered a fund to be an appropriate tool for avoiding the potential complexities in equitable sharing formulae.

6. The Council and the Assembly endorsed the view of the Committee that an evolutionary approach should be taken on issues relating to the governance and management of the fund and that there was a need to scale up the internal capacity of the International Seabed Authority to manage such a fund over time. They also agreed that, wherever possible, existing institutional mechanisms should be used instead of creating new institutions.

7. With regard to the suggested purposes of the fund, delegations largely supported the recommendation of the Committee that the fund be used to: (a) advance marine scientific research, with a view to promoting increased knowledge of and the sustainable use of the resources of the ocean and the protection and preservation of its biodiversity; and (b) enhance available technology for the effective protection of the marine environment and for capacity-building and the transfer of technology. Delegations also generally supported the idea of a regional approach, including through regional marine scientific and technological centres, as reflected in articles 276 and 277 of the United Nations Convention on the Law of the Sea. Some delegations emphasized the importance of considering economic and social factors, as well as the vulnerability of specific groups of States, such as landlocked States or small island developing States. A number of delegations and groups considered that the fund should be more broadly conceived for the purpose of financing global public goods, such as climate change mitigation and the eradication of infectious diseases. Others emphasized the priority objective of increasing the knowledge and protection of marine biodiversity in areas beyond national jurisdiction, including through enhanced deep-sea research programmes and activities.

8. Many delegations stressed that the seabed sustainability fund must be distinct from the environmental compensation fund currently under consideration in the context of the draft regulations on mineral exploitation in the Area, the purposes of which were completely different. Some delegations also reiterated that the burden of the rehabilitation and restoration of the Area should rest with contractors.

9. Several delegations requested the Committee to formulate more detailed proposals for the fund and supported its finding that the fund should include appropriate mechanisms for performance evaluation, transparency in decision-making, capacity-building, and the use of blended finance involving the private sector.

B. Views on the evolution of the budget

10. Different views were expressed on the proposal of the Committee whereby increases in the administrative budget beyond zero real growth, needed to allow the Authority to evolve into an effective regulator of exploitation activities, could be treated as advances against future revenue, which would be repaid pro rata and progressively once revenue from mineral exploitation began to flow. Several delegations requested a more detailed proposal for consideration. Some delegations noted that the priority should be to ensure that funds were available for distribution, and such a proposal would diminish the financial benefits available. This matter is not considered further in the present report but may be taken up by the Committee in the context of the budget of the Authority for the financial period 2023–2024.

C. Views on the criteria for access to the economic assistance fund

11. Delegations agreed that the Economic Planning Commission (and in the interim, the Legal and Technical Commission performing the functions of the Commission) should begin to address the criteria for access to the future economic assistance fund under article 151, paragraph 10, of the Convention. Different views were expressed as to whether this was a priority or whether the issue could be addressed after the approval of the first plan of work for exploitation.²

D. Other views expressed

12. Although the Council and the Assembly welcomed the detailed study prepared by the Committee, relatively few delegations expressed detailed positions on other aspects of the document [ISBA/26/A/24-ISBA/26/C/39](#) beyond the guiding questions proposed by the Committee. Some delegations did, however, welcome the consideration by the Committee of issues relating to article 82, paragraph 4, in section VII of the Report. During the consideration of this matter by the Assembly, the delegation of Austria reminded the Assembly that the function of the Authority under article 82 was to serve only as a conduit for the transmission of payments and that it could not use those payments for its own purposes. In view of the limited administrative role of the Authority, the delegation recalled that the suggestion, made at the Third United Nations Conference on the Law of the Sea, that the Authority should have the power to take appropriate measures if a State failed to comply with its revenue-sharing obligation had encountered opposition. The international community was thus wholly dependent on the readiness of the coastal States concerned to faithfully discharge that legal obligation, in line with article 300 of the Convention. In the view of the delegation, that might be easier to achieve if a voice were given to those States regarding the distribution and use of the payments.

13. As an alternative to direct distribution, the delegation of Austria therefore suggested that the Authority establish a fund, administered by the Secretary-General, with the task of distributing the payments received from coastal States under article 82, paragraph 4. The monies paid into the new fund could be used for specific projects in developing countries, such as infrastructure projects for improving the access of developing landlocked countries to and from the sea. In addition, projects designed to safeguard the global commons in the interest of humanity could be envisaged. Decisions regarding the distribution and use of payments under article 82,

² With regard to the establishment of the Economic Planning Commission, which is to be separate from the Legal and Technical Commission, the Council requested the Secretary-General to prepare a report for consideration at the twenty-seventh session.

paragraph 4, could be made by the Secretary-General upon consultation with the contributing and recipient States. In this process, the Secretary-General might also seek advice from a small group of renowned experts from all geographical regions, to be appointed by him or her in consultation with the Assembly. The Secretary-General would have to report on the payments received and their distribution and use in the context of his or her annual report to the Assembly, thus allowing Member States to express their views on the matter and, if so desired, make suggestions for the future.

14. With regard to priority groups of recipients from among the developing countries, the delegation of Austria noted that precedence should be given to the least developed countries, including those landlocked, and to small island developing States. It also noted that both least developed countries and landlocked least developed States were specifically referred to in article 82, paragraph 4, of the Convention.

III. Suggested action by the Finance Committee

15. On the basis of the feedback received from the Council and the Assembly, it is suggested that the Finance Committee proceed to organize its future work on the question of equitable sharing as follows:

(a) During 2022 and 2023, the Committee will prepare a more detailed proposal for the establishment of a seabed sustainability fund as an alternative or adjunct to the direct distribution of monetary benefits. This proposal, which should be presented at the twenty-eighth session of the Assembly, will include recommendations on the objectives, purposes and governance of the fund, its governance on and appropriate mechanisms for performance evaluation and transparency in decision-making;

(b) The Committee will initiate a specific track of work on rules, regulations and procedures for the distribution of funds received pursuant to article 82, paragraph 4, taking into account its previous work on that matter and the discussions in the Assembly during the twenty-sixth session.

16. If the Committee agrees to the organization of work suggested above, the secretariat will prepare the following reports to support its work:

(a) A draft framework for financial regulations on the treatment of funds received from activities in the Area;

(b) A draft proposal for the establishment of a seabed sustainability fund;

(c) A study on options for the distribution of funds received pursuant to article 82, paragraph 4.
