



MODULE 1, LESSON 6

THE ENTERPRISE

LECTURE NOTES

PART I: HISTORICAL BACKGROUND

On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, in a speech to the United Nations General Assembly asked the nations of the world to consider a looming conflict that could devastate the oceans, the lifeline of man's very survival. He ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". He stated, "It is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue".

In 1970, the General Assembly in Resolution 2749(XXV) approved the **Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction**.

Operative paragraph 1 solemnly declared that "*The seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the Area), as well as the resources of the area, are the common heritage of mankind*".

Rationale for the Enterprise

The 1971 Paper from the thirteen members of the Group of Latin American and Caribbean Countries that introduced the idea of the Enterprise enunciated the rationale for the creation of the new entity in these terms:

"In keeping with the principle of common heritage, the co-sponsors of the working paper envisage the establishment of a system in which mankind, in the capacity of owner, would participate directly in the administration and management of the Area and the exploitation of its resources. Although in its initial stages it may not be possible under the system for mankind by itself to undertake activities in the Area, it may none the less enter into arrangements with third parties for the attainment of its objectives."

The Paper made clear that the Enterprise was to give effect to the principle of 'common heritage' and any agreed arrangements for the exploitation of the Area must be consistent with this objective. It would be at variance with this central principle of the Convention if the operationalization of the Enterprise were to result in a regime in which an exclusive group of States or private persons derives inequitable benefits above others, particularly developing States and land-locked States.

The International Seabed Authority (ISA), headquartered in Jamaica, administers the regime for the exploitation of the Area as set out in Part XI of the UNCLOS, as modified by 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 (1994 Agreement).

The Authority possesses three principal organs, an Assembly, made up of all members of the Authority with power to set general policies, a Council, with powers to make executive decisions, made up of 36 members elected from among the members of the Authority, and a Secretariat headed by a Secretary-General. The Enterprise is the commercial organ of the ISA, established under, Part XI, and Article 170 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), otherwise known as the Montego Bay Convention.

Justification for early commencement of the Enterprise as an independent organ of the ISA

The Enterprise, in accordance with the provisions of Article 170 and Annex IV to the Convention, is the organ of the Authority that is entrusted with directly carrying out activities in the Area as well as the transporting, processing and marketing of minerals recovered from the Area. In addition to these functions, the Enterprise has the crucial role of facilitating the participation of developing countries in activities in the Area. States Parties have an obligation to implement the relevant provisions of the Convention and the 1994 Implementation Agreement and to ensure that this unique vehicle that is responsible for implementing the 'common heritage' principle is suitably resourced to enable it to discharge the tasks assigned to it under the Convention and the 1994 Agreement.

It is important to note that the 1994 Agreement, modifying Part XI of UNCLOS, downgraded the Enterprise making it part of the ISA Secretariat. It however makes provision for the independent operation of the Enterprise when either of two possible trigger events occur.

PART II: CURRENT STATUS OF THE ENTERPRISE AND FUTURE INDEPENDENT OPERATION

Section 2 paragraph 1 of the annex to the 1994 Agreement:

“1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

- (a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends, and prospects.
- (b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;
- (c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;
- (d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- (e) Evaluation of information and data relating to areas reserved for the Authority;
- (f) Assessment of approaches to joint venture operations;
- (g) Collection of information on the availability of trained manpower;

(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

According to the provisions of Section 2, paragraph 2 of the Annex to the 1994 Agreement:

The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

Pending the independent operation of the Enterprise the Secretary-General of the ISA is to appoint from within the staff of the ISA an interim Director-General to oversee the performance of the Enterprise during its interim status as part of the Secretariat.

Workload and capacity constraints have impaired the Secretariat's ability to perform the functions assigned to the Secretariat until the Enterprise begins to operate independently. There is a need to avoid the conflicts of interest that arise as long as the Secretariat continues to act as the Enterprise, as pointed out by the Secretary-General in 2013, and reiterated in the 'Final Report on the periodic review of the International Seabed Authority pursuant to article 154 of the United Nations Convention on the Law of the Sea' (ISBA/23/A/3). During the period 2018-2023, the Secretary-General appointed a Special Representative with a very limited mandate to look after the interests of the Enterprise.

In recognizing the need to move towards the independent operation of the Enterprise based on a step by step approach, the Council in its decision [ISBA/28/C/10](#) of 31 March 2023, adopted a recommendation made by the Legal and Technical Commission to establish the position of interim Director-General of the Enterprise.

Following an international recruitment process conducted in accordance with the practices and standards of the United Nations, Mr. Eden Charles (Trinidad and Tobago) was appointed as interim Director-General of the Enterprise. He took up his post from 20 January 2024, at the headquarters of the Authority. When either one of the triggers outlined in Section 2, paragraph 2 of the 1994 Agreement are met, the Convention provides that the Assembly shall upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise.

PART III: WORK OF THE INTERIM DIRECTOR-GENERAL OF THE ENTERPRISE

1. The functions of the interim Director-General are based on the functions set out in Section 2 of the Annex to the 1994 Agreement, namely:
 - a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;
 - c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

- d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
 - e) Evaluation of information and data relating to areas reserved for the Authority;
 - f) Assessment of approaches to joint-venture operations;
 - g) Collection of information on the availability of trained manpower;
 - h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.
2. In addition, as agreed by the Council, the interim Director-General represents the interests of the Enterprise regarding the development of the regulatory regime for activities in the Area.

III. Some of the activities of the interim Director-General since assuming office

A. Participation in discussions on the draft regulations for exploitation of marine minerals in the Area

3. The interim Director-General attended the first part of the twenty-ninth session of the Council and participated in discussions on the draft regulations for exploitation of marine minerals in the Area. The purpose of such participation was to provide the Council with the views of the Enterprise on topics relevant to its interests as well as making comments and offering textual suggestions in relation to the draft regulations.
4. Some of the topics on which the interim Director-General intervened were those under draft Regulations 13, 14, 19, 20, 21, 23, 27, 29, 33, 53, 59, 60, 63, 66, 71, 73, 75, 79 *inter alia*; in addition to proposals made by delegations concerning the possibility of streamlining the draft regulations and on the possible inclusion of a provision introducing a certificate of origin for resources of the Area as proposed by the Legal and Technical Commission.¹ The Council is invited to recall that, following the adoption of the 1994 Agreement, the Enterprise is in most cases subject to the same obligations as contractors.²

B. Study of managerial policy options and the availability of trained manpower

5. It should be noted that based on the evolutionary approach to the operationalisation of the Enterprise, an important part of the functions of the interim Director-General is to take the necessary steps to prepare for the independent operation of the Enterprise. As the appointment of both a permanent Director-General and the Governing Board³ is envisaged in the Convention, in particular in Articles 4 to 7 of Annex IV, a proper managerial structure should be in place by the time of the full independence of the Enterprise from the Secretariat, in particular a framework of managerial rules for the Enterprise in case either of the above-mentioned triggers takes place.
6. The deep-sea mining industry is a developing field. Technology is constantly evolving, along with market conditions and environmental considerations. By proactively studying policy options, it can be assured that the Enterprise will have the managerial structure best suited for these changing circumstances.
7. Studying policy options up front also helps ensure the Enterprise operates with clear guidelines that balance commercial viability with environmental protection and equitable benefit sharing. **Additionally, a well-defined managerial policy framework fosters transparency and builds trust with stakeholders. Knowing the Enterprise will be managed effectively according to pre-determined policies would attract qualified personnel and potential partners.**

C. Monitoring and review of trends in deep seabed mining activities

8. The interim Director-General has begun and will continue to monitor and review trends and developments relating to deep seabed mining activities and conduct analysis of world metal market conditions and metal prices, trends and prospects, by studying and examining reports on the demand for critical minerals, from relevant sources including the International Energy Agency, World Bank, International Renewable Energy Agency, International Copper Study Group, International Nickel Study Group, among others, and where possible follow the meetings of these bodies, with a view to:
 - a) Tracking key trends and developments in DSM activities worldwide, including exploration, technology advancements, and environmental considerations.
 - b) Analysing global metal market conditions and metal prices relevant to DSM, including trends, forecasts, and potential impacts on DSM feasibility.
 - c) Generating reports summarizing findings and insights, with clear visualizations and data analysis.
 - d) Preparing reports to inform decision-making and stakeholder engagement.
9. Following the work of the aforementioned bodies, which includes their monthly publications, monthly bulletins, yearbooks and online statistical databases, is useful as they would assist the interim Director-General in obtaining accurate and timely information on capacities, production, usage, trade, stocks, prices, technologies, research development and in other areas that may influence the supply and demand of metals.

D. Assessment of available data relating to reserved areas

10. In keeping with the provisions of Section 2 paragraph 1(e) of the Annex to the 1994 Agreement, the interim Director-General's duties and responsibilities also include "*evaluation of information and data relating to areas reserved for the Authority*". The legal regime of reserved areas is provided for in Articles 8 and 9 of Annex III to the Convention as amended by the relevant provisions of the 1994 Agreement, providing for what has been defined as *site-banking system*.

Conclusion

The Enterprise is indispensable to safeguard the 'common heritage' and benefit to mankind principles set enshrined in Part XI of the Convention and the 1994 Agreement. The independent operation of the Enterprise will present developing countries with much needed opportunities for participation in activities in the Area, including exploration and marine scientific research, as well as future deep seabed mining. Therefore, a failure to achieve the independent operationalization of the Enterprise will not only leave the 'common heritage of mankind' as a dream deferred, will not only undermine the letter and spirit of the Convention, but will destroy the carefully constructed balance of rights and obligation as they pertain to the Area.