

ADVANCE OUTLINE OF EXPERT GROUP STATEMENT TO THE WORKING GROUP OF THE PARTIES TO THE AARHUS CONVENTION, RELATING TO THE INTERNATIONAL SEABED AUTHORITY

As a group of independent experts in the fields of deep-sea mining regulation, law of the sea, ocean governance, and international environmental law, we wish to make a statement to the Working Group of the Parties to the Aarhus Convention (July 2024), in the thematic session on the promotion of the principles of the Convention in international forums to include a focus on the **International Seabed Authority**.

The statement will be made in the context of Article 3(7) of the Aarhus Convention (“*Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.*”)

The [ISA](#) is the intergovernmental organisation established by the [UN Convention on the Law of the Sea](#), with a mandate to oversee deep-seabed mineral exploration and exploitation beyond national jurisdiction on behalf of and for the benefit of humankind as a whole. The mandate includes a requirement to take necessary measures to ensure effective protection for the marine environment from harmful effects which may arise from deep-seabed mineral activities permitted by the ISA. Those measures should include the prevention, reduction and control of pollution and of interference with the ecological balance of the marine environment; and the prevention of damage to the flora and fauna of the marine environment [Article 145 UNCLOS].

The ISA has numerous ongoing activities relevant to its environmental mandate. These involve information flow and decisions relating to environmental matters with potentially global significance ([including transboundary impact, biodiversity loss, and risk to ecosystem services such as carbon cycling and fisheries](#)), and which relate to natural resources that are the common heritage of humankind.

The human rights of access to information, public participation in decision-making and access to justice in environmental matters should be paramount in this context, but the ISA (or its organs) have received criticism for a perceived lack of:

- transparency (e.g. [Ardron 2016](#); and [Ardron, Ruhl, Jones 2018](#));
- participatory processes (e.g. [Morgera and Lily 2022](#); and [Ardron, Lily, Jaeckel 2023](#)); and
- accountability (e.g. [Bosco, Jaeckel, Singh 2023](#)),

both in practice during decision-making procedures, and in terms of the rules, regulations and procedures of the ISA. Processes for environmental impact assessment have received particular examination (e.g. [Craik and Gu 2021](#); [Guilhon et al 2022](#); [Lily et al 2023](#)).

Specific issues that have been raised, detailed here in line with main principles covered by the Aarhus Convention, include:

Article 4 – Access to Environmental Information

- Restrictive confidentiality or commercial protection rules inhibiting release of environmental information.
- Closed and under-reported meetings of ISA organs relating to environmental issues.

Article 5 – Collection and Dissemination of Environmental Information

- Gaps and [limits on access to data](#) on the [ISA's public database for environmental data](#).
- Mandatory far-reaching non-disclosure rules for experts engaged in ISA processes.

Article 6 – Public Participation on Specific Activities

- An [inadequate and incomplete institutional stakeholder engagement policy](#).
- Lack of routine institutional public comment or enquiry processes.

- Lack of public participation opportunities in award and oversight of deep seabed mineral exploration contracts.
- Right to participate at ISA sessions contingent on adherence to [restrictive meeting rules](#) not agreed by the State membership
- Restriction to media access at ISA sessions.

Article 7 – Public Participation concerning Plans, Programmes and Policies

- No institutional environmental policy in place at the ISA.
- Data management policy not published or opened to consultation.
- No standardised procedures, and high-bar entry qualifications that exclude certain groups, for participation in processes and workshops focused on the development of environmental policy and plans (e.g. regional environmental management plans).
- Lack of public participation for historically marginalised groups, such as Indigenous Peoples and local communities.¹
- Consultation comments submitted on a draft ISA stakeholder engagement policy not published nor incorporated.
- Inconsistent approach to and opportunity for stakeholder consultation between different policies and programmes.

Article 9 – Access to Justice

- No public complaints procedure or whistle-blower protections.
- No independent Ombudsperson or other oversight office.
- Lack of decision review or administrative appeal processes.

Positive examples can also be seen, e.g.

Article 8 – Public Participation during the Preparation of Regulations

- Livestreaming of formal session and informal working groups for Regulations negotiation.
- Open and inclusive ad hoc online consultations for development of draft Exploitation Regulations, with stakeholder contributions published online.

Moves to publish [ISA exploration contracts](#), and to share environmental data via a web-based portal ([ISA DeepData](#)) are also positive, though not yet effectively achieved.

The workload of the ISA is significant, both in volume and importance to the protection of the environment. Current activities at the ISA include:

- The oversight of [30 contracts for exploration for deep-sea minerals](#), and the review of [contractors' annual reports](#) and [environmental data reporting](#).
- The assessment of [new applications for exploration for deep-sea minerals](#).
- Oversight of [environmental impacts assessments](#).
- The development of five '[regional environmental management plans](#)', which may include identification of protected areas.
- The negotiation of [Regulations that will govern future deep-sea mining](#).
- Attempts to [value the ecosystems of the deep ocean, to inform the financial payment regime for deep-sea mining](#).
- The establishment of [thresholds that will set prohibited or permitted environmental impacts from deep-sea mining](#).

A [world-first application for a deep sea mining contract is anticipated this year](#), for the ISA's review and decision (notwithstanding the absence of the regulations intended to govern such

¹ Please see: Surabhi Ranganathan, *The Participatory Scope of the Common Heritage Principle*; and Elisa Morgera, *Participation of Indigenous Peoples in Decision-making over Deep-seabed Mining* both forthcoming in American Journal of International Law Unbound (2024, in press)

decisions and activities). A recent [report on ISA response to environmental protests \(and response\)](#) is also on the ISA's agenda for discussion in 2024.

The Aarhus Convention was expressly referenced in one ISA instrument in 2011 ([a regional environmental management plan](#) – see paragraph (13)(f)). More recently some Aarhus Convention States Parties have been engaged in relevant work at the ISA (e.g. [a UK-led working group on stakeholder consultation in the ISA regulations](#)). Most States Parties to the Aarhus Convention actively participate in the ISA's negotiations.

We believe it is timely and critical for States Parties to discuss now, as the ISA contemplate a move from deep seabed mineral exploration to exploitation, how the principles of the Aarhus Convention can be better promoted and applied in the ISA's decision-making processes and legal and policy framework, as envisaged in Article 3(7) of the Convention.

Prepared by and on behalf of the following Group of Experts:

- Dr. Jeff A. Ardron, Independent Expert.
- Prof. Dr. Neil Craik, University of Waterloo.
- Dr. Aline Jaeckel, Australian National Centre for Ocean Resources and Security (ANCORS) University of Wollongong.
- Hannah Lily, Independent Consultant and Lawyer.
- Prof. Dr. Elisa Morgera, Director One Ocean Hub, and University of Strathclyde.
- Prof. Dr. Surabhi Ranganathan, University of Cambridge.
- Pradeep Singh, Research Institute for Sustainability, Potsdam.