

October 6, 2020

To: Members of the International Seabed Authority Finance Committee

Delivered by email to: andrzej.przybycin@mos.gov.pl; cc. mlodge@isa.org.jm

Re: Possible Introduction of Fees for Observers in the International Seabed Authority

Dear Members of the Finance Committee,

We note that the Finance Committee Provisional Agenda ([ISBA/26/FC/L.1](#)) includes an item "11. Costs of participation in meetings of the International Seabed Authority by observers."¹

We are writing to you because we believe that a proposal to charge observers fees (1) is inconsistent with the principle of common heritage underpinning Part XI of the Convention itself as well as is out of step with international law and most practice on transparency; (2) would dissuade observers from participation, to the detriment of the Authority; (3) would bring in very small amounts of revenue; and (4) would cost the ISA to administer.

The role of civil society was affirmed in the Principle 10 of the Rio Declaration² and was reaffirmed in the 2012 Rio+20 Outcome document *The Future We Want*,³ where transparency was a recurring theme and States emphasized that the framework for sustainable development should be "inclusive, transparent and effective" (paragraph 75) and should "enhance the participation and

¹ In the International Seabed Authority (ISA) [Finance Committee Report for 2019](#), it was noted that:

IX. Other matters

A Possible contributions from observers of the Authority to the budget of the Authority

34. The Committee considered the question of possible financial contributions to cover the costs of participation in meetings of the Authority by observers, in particular States that were not yet members of the Authority. The Committee recognized that services provided to observers had costs, but expressed concern about the implications a fee could have, including for attendance by observers. The Committee recognized that some observers had already made contributions to several funds and encouraged observers to make voluntary contributions to the voluntary trust funds and the endowment fund of the Authority. It was noted that guidelines for requests for observer status were also included in the agenda of the Assembly at the current session and included references to contributions made by an applicant (see ISBA/25/A/7, annex II, para. 5 (a), and enclosure 2, para. 5). The Committee requested the secretariat to prepare information on the practices followed by other organizations on that matter for its following session.

² Rio Declaration. A/CONF.151/26 (Vol. I) 12 August 1992. At https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf. Principle 10: Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

³ The Future We Want. June 2012. At <https://sustainabledevelopment.un.org/futurewewant.html>.

effective engagement of civil society and other relevant stakeholders in the relevant international fora and in this regard promote transparency and broad public participation and partnerships to implement sustainable development.”⁴

We also note that the Aarhus Convention,⁵ which is incorporated in the Clarion Clipperton Zone Environmental Management Plan, and which is widely considered to be best international practice, recognizes that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them.⁶ The Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums⁷ state that participation of the public concerned should be as broad as possible⁸ and that an international forum, or a process within it, should in principle be open to the participation of the public.⁹

Most significantly, the Area is the common heritage of mankind under Article 136 of the Convention. The objective of Part XI of UNCLOS, as stated in Article 140, is to carry out activities in the Area for the benefit of mankind as a whole, not only member States. Ambassador Arvid Pardo, the architect of common heritage, called the system of management involving all the users, “whereby everybody participates in management” “one of the revolutionary bases of the common heritage concept.”¹⁰

Burdening participation by non-party states, and scientific, academic, and civil society observers is contrary to this fundamental purpose of the Part XI regime. . A fee for NGOs would discourage participation by NGOs. There are already significant barriers for NGOs, notably the cost of coming to and attending meetings in Jamaica. NGOs provide information and support to the work of the Authority and its members. We believe this should not be undermined.

⁴The Future We Want. Paragraph 76(j).

⁵ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Done at Aarhus, Denmark, on 25 June 1998. (Aarhus Convention). At <http://www.unece.org/env/pp/treatytext.html>.

⁶ Aarhus Convention Preamble para. 12.

⁷ Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums. ECE/MP.PP/2005/2/Add.5. June 2005. At <https://www.unece.org/index.php?id=21464>.

⁸ Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Decision 11/4 Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted at the second meeting of the Parties held in Almaty, Kazakhstan, on 25-27 May 2005. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Done at Aarhus, Denmark,, On 25 June 1998. Almaty Guidelines, para. 30.

⁹ Almaty Guidelines, para. 31.

¹⁰ Jon Van Dyke, ed. [Freedom for the Seas in the 21st Century: Ocean Governance and Environmental Harmony](#). 1993. Page 39.

Some outliers notwithstanding, the United Nations does not charge a fee¹¹ and the normal practice of Multilateral Environmental Agreements (MEAs) is not to charge fees for NGO observers.¹² A few at most charge token or nominal fees: CITES, for instance charges USD 600 for the first delegate and \$300 for additional delegates,¹³ and the International Whaling Commission (IWC) does charge a fee for NGO observers, but the IWC is a notable exception in this respect and should not be seen as setting a precedent. The fee discourages attendance, as it is chargeable upon attendance of the IWC Commission and [refundable](#) if the meeting is not attended. The other main exceptions are three tuna RFMOs, which¹⁴ charge \$500 for the first two delegates. CCSBT, SPRFMO, SIOFA and SEAFO do not charge observers fees; nor does CCAMLR.¹⁵

We note that in 2019, the Secretary-General proposed highly restrictive guidelines¹⁶ which the DSCC noted in a [briefing](#)¹⁷ were out of step with international practice on transparency and, which would likely have excluded most NGOs then in observer status.¹⁸ Following a debate in Assembly, where many delegates found the original version of the guidelines overly restrictive,¹⁹ considerably modified guidelines were adopted by the Assembly.²⁰ This debate underlined the importance with which ISA Members viewed observers and transparency.

¹¹ ECOSOC Resolution 1996/31, Consultative Relationship Between the United Nations and NonGovernmental Organizations (17 April 1996), paras 22, 23 and 33–38,

At https://www.unov.org/documents/NGO/NGO_Resolution_1996_31.pdf and see <https://www.un.org/development/desa/dspd/civil-society/ecosoc-status.html>.

¹² “Typically, most conventions try to be cost-neutral, in that although NGOs must pay their own accommodation and travel costs, there are no participation fees for attending the meetings.” Alexander Gillespie, “Facilitating and Controlling Civil Society in International Environmental Law.” 15 RECIEL (2006), 327, 332, at 334.

¹³ https://cites.org/sites/default/files/notif/E-Notif-2016-020_0.pdf and see <https://www.fws.gov/international/pdf/factsheet-become-observer-to-cites-meeting.pdf>

¹⁴ IATTC, IOTC and WCPFC. See <https://www.iattc.org/meeting-registration-2020-08-03/>, <https://www.wcpfc.int/file/111238/download?token=czxbpmjK> and <https://www.wcpfc.int/file/338920/download?token=db8yBiPp>

¹⁵ <https://www.wcpfc.int/file/111238/download?token=czxbpmjK>

¹⁶ Guidelines for observer status of NGOs with the ISA, Assembly document ISBA/25/A/7. At https://isa.org.jm/files/files/documents/isba_25_a_7-e.pdf. 4 June 2019.

¹⁷ DSCC Briefing on ISA Observer Status. July 10. At <http://www.savethehighseas.org/wp-content/uploads/2019/07/DSCC-Briefing-on-ISA-Observer-Status-July2019.pdf>. DSCC noted that the proposed guidelines:

- laid down 5 restrictive guidelines which must all be satisfied;
- would have required an undertaking that the NGO will both support the activities of the ISA and promote and disseminate its work;
- for existing NGO observers, proposed that the Assembly could withdraw observer status from any NGO that did not make a substantial contribution to the work of ISA, or if any conflict of interest arises or even is likely to arise between the activities of the ISA and those of the NGO concerned; and
- implemented a five-year review, with new provisions on removal of observer status.

¹⁸ Guidelines for observer status of NGOs with the ISA, Assembly document ISBA/25/A/7. At https://isa.org.jm/files/files/documents/isba_25_a_7-e.pdf.

¹⁹ See ENB, 22 July 2019 at <https://enb.iisd.org/oceans/isa/2019-2/22jul.html>.

²⁰ Decision of the Assembly on the guidelines for observer status of non-governmental organizations with the International Seabed Authority. ISBA/25/A/16. At https://isa.org.jm/files/files/documents/isba_25_a_16-e.pdf.

In conclusion, we the undersigned consider that the introduction of a fee for observers attending the International Seabed Authority would be inconsistent with the common heritage of mankind, with most international practice, with international obligations of transparency and with the positive contribution of observers to the Authority .

Signed,

Official ISA Observers



Non-Observer Civil Society Groups

