



SESSION REPORT

*Please know you may design the structure of this report to better suit the session.
It's important to capture the key outcomes and solutions proposed for the future.*

Session Title: Anti-corruption: The New Burden of Proof to Deep Sea Exploitation

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Report prepared by:

María de los Ángeles Estrada

Anticorruption Professor

Executive Director of the Transparency, Anti-corruption and Digitalization Initiative.

Tecnológico de Monterrey

Moderated by:

María de los Ángeles Estrada

Anticorruption Professor

Executive Director of the Transparency, Anti-corruption and Digitalization Initiative.

Tecnológico de Monterrey

Panelists:

- Ana Fierro
Law Professor and National Director of International Development School of Social Sciences and Government, Tecnológico de Monterrey
- Gabriela Rodríguez
Full-time professor and researcher at the Law Department
Instituto Tecnológico Autónomo de México (ITAM)
- Stephen Kohn
Whistleblower Attorney, Advocate & Author
National Whistleblower Center (Chairman) & Kohn, Kohn & Colapinto, LLP (Founding Partner)
- Jorge Aguilera
Lecturer in Public International Law

Tecnológico de Monterrey

- Paulina Araiza
Research Assistant
Instituto Tecnológico Autónomo de México (ITAM)

Summary.

In this workshop, we explored the multiple anti-corruption and transparency challenges currently faced by the International Seabed Authority and their direct impact on deep-sea mining exploration and future exploitation. By applying the theory of wicked problems, we examined the intricate challenges posed by corruption in this field and discussed integrating anti-corruption measures into the precautionary principle. Emphasis was placed on prioritizing transparency and ethical conduct in seabed mining operations beyond national jurisdiction.

The thematic focus of this workshop was on including anti-corruption criteria and standards within the framework of Global Governance, specifically applicable to the public international arena of deep-sea mining.

Deep-sea exploration and exploitation involve intricate technical and legal frameworks with limited public scrutiny. Information on licensing, environmental impact assessments, and contractual arrangements is often not readily available, creating opportunities for corrupt practices such as bribery, favoritism, or undue influence in the decision-making process. These operations occur in areas beyond national jurisdiction, governed by international law and agreements. This global scope complicates the enforcement of anti-corruption measures, as it involves multiple stakeholders, jurisdictions, and regulatory frameworks. The complexity can create ambiguity and loopholes, allowing corruption to go unchecked. Traditional anti-corruption strategies, primarily designed for domestic contexts where state sovereignty and legal authority are well-defined, are not suitable for addressing illegal or unethical actions in this international context.

I. Challenges Exposed: Conflict of Interest, Lack of Transparency and Accountability

1. ISA's Structure.

The structure of the International Seabed Authority (ISA) creates inherent conflicts of interest due to its dual role as both a regulator and a promoter of deep-sea mining. This duality raises concerns about whether the ISA can effectively maintain objectivity and prioritize environmental and societal considerations over corporate profits.

a) ISA's Appointment Process

At the international level, appointments for the Secretary-General and the 41 members of the Legal and Technical Commission lack transparency and are not merit-based, undermining the credibility of the process. There is no clear definition of conflict of interest, leading to potential biases. Civil society is excluded from the ISA's appointment processes, resulting in a lack of diverse perspectives. Decisions made are not well-justified, reflecting a lack of accountability and transparency.

An egregious example is the ISA's Secretary General. The ISA has been accused of having close relationships with mining companies, which could compromise its neutrality. For instance, Michael Lodge, the Secretary-General, has been reported to have strong links

with executives of DeepGreen Metals, a mining company. An investigation by the LA Times revealed that Lodge promoted exploration and exploitation alongside DeepGreen's executives, causing concern among ISA staff and scientists who believe that deep-sea mining ventures are highly problematic (Woody and Harper, 2022).

b) ISA's "Enterprise"

The ISA is crafting regulations for deep-sea mining while proposing the creation of a seabed mining company called "Enterprise" to share profits and technology with developing nations. This initiative has sparked concerns about conflicts of interest, particularly regarding accountability and transparency.

2. ISA's Contract Awarding

The ISA has granted a total of 31 contracts for prospection and exploration, although it has yet to issue any contracts for extraction or exploitation. The absence of comprehensive regulation and the potential lifting of moratoriums create a broad scope for possible acts of corruption. This vulnerability exists in the relationships between the ISA and the states, the countries, and the companies, and within the ISA itself.

a) Small Island Developing States (SIDS)

There is notable cross-listing of SIDS that sponsor or engage in deep seabed exploration, including the Cook Islands, Cuba, Jamaica, Kiribati, Nauru, Singapore, and Tonga. Contrary to the proper implementation of the "common heritage of mankind" principle, agreements between transnational mining companies and these nations are often kept confidential.

SIDS face unique challenges that increase their vulnerability to corruption, including limited financial and human resources, hindering robust governance and anti-corruption mechanisms. Furthermore, SIDS economies typically rely heavily on a few sectors, such as tourism, fisheries, and natural resources, creating concentrated opportunities for corruption within these industries. The economic vulnerability of SIDS often necessitates heavy reliance on foreign aid and investment. Without proper oversight, management, and auditing, this reliance can further open the door to corrupt practices. The confidentiality of agreements between mining companies and SIDS exacerbates these issues, undermining transparency and accountability, and compromising the equitable implementation of the common heritage of mankind principle.

b) Consultation and Participation of Local Communities

The lack of consultation and participation of local communities when seabed exploration contracts are granted compounds these problems. Local communities, who are most directly impacted by such activities, are frequently excluded from the decision-making process. This exclusion undermines their rights and interests, leading to decisions that do not reflect their needs and concerns. It weakens the social license to operate and raises significant ethical and legal questions regarding the legitimacy of the contracting process.

c) ISA's External Audit

The ISA has faced criticism for insufficient or defective external audits. Effective external audits are crucial for ensuring transparency and accountability in the management of seabed exploration and exploitation activities. Inadequate audits obscure the process and allow potential mismanagement and corruption to go unchecked. This lack of rigorous external oversight undermines trust in the ISA's operations and the fair implementation of the common heritage of mankind principle.

3. Whistleblowing Process

Whistleblowers are essential for enhancing transparency and combatting corruption within the ISA and the deep-sea mining industry. In March 2024, during its twenty-ninth session, and in response to criticisms about the lack of transparency and regulatory structure, the ISA presented the document "Elements to be Relocated from the Draft Regulations on Exploitation of Mineral Resources in the Area to the Standards and Guidelines and Other Rules," which includes a draft whistleblower policy. Although this is a commendable effort, the draft policy is insufficient in addressing critical aspects related to anonymity, compensation, and enforcement.

4. Civic Participation

Thirty-seven Non-Governmental Organizations (NGOs) hold Observer Status before the ISA, representing interests primarily in environmental protection, the mining industry, and academia. Notably absent, however, are NGOs focused on transparency or anti-corruption. This glaring omission undermines the governance framework by neglecting critical oversight in these areas.

II. Key recommendations for the future and concrete follow-up actions

We designed recommendations for the ISA in nine key areas that, if adopted and enforced, will establish what we believe to be the minimum Transparency and Accountability Standards for the ISA and Deep Sea Exploration.

1. Because of the importance of its faculties and the effects that their decisions have upon the common heritage of humankind that is the deep sea, the appointment processes for the Secretary-General (SG) and the members of the Law and Technical Commission (LTC), must include the next characteristics:
 - i. ISA should have minimum requirements of eligibility for the appointment of individuals in LTC, SG, and "The Enterprise"
 - ii. ISA should require States to implement transparent national mechanisms for the selection of candidates.
 - iii. Appearance of the candidates before an international independent panel of experts.
 - iv. Non-governmental organizations with observer status should be part of the international independent panel of experts.
 - v. Transparency International (TI) should be part of the Observers.
 - vi. The Extractive Industries Transparency Initiative (EITI) should be part of the Observers.
 - vii. A panel of independent experts should evaluate each candidate and extend a recommendation.
 - viii. Mechanisms that ensure stakeholder feedback is genuinely considered and incorporated into ISA decisions.
2. Elements that should be part of the national procedure of appointment:
 - i. There must be minimum requirements of eligibility established by the ISA.
 - ii. The national mechanisms for candidate selection, should be transparent, and include the participation of civil society, academia, and other experts.
 - iii. States must deliver a reasoned decision supporting the nomination of each candidate presented.

3. Measures for preventing conflicts of interest in the ISA decision-making:
 - i. Declaration of potential conflicts of interest for every decision-maker.
 - ii. Procedure for not hearing a case because of a conflict of interest (excuse).
 - iii. Procedure for denouncing an authority in cases of conflicts of interest (recuse)
 - iv. Criteria for conflicts of interest
 - v. Development and use of technological tools for reviewing conflict of interest.
4. Minimum ISA reports that should be transparent and accessible to the public, are:
 - i. Environmental Impact Assessment
 - ii. Scientific reports
 - iii. Report of Corporations and Beneficial Ownership
 - iv. Report of investigated and sanctioned companies for other reasons (e.g. human rights)
 - v. Exploration contracts
 - vi. External audit reports
 - vii. Strategic Plans
 - viii. Annual Report (already public)
 - ix. Work reports (some are already public)
 - x. States' reports on their sponsorship of companies
5. Community participation mechanisms:
 - i. Prior and informed consultations before granting permits for exploration or exploitation contracts.
 - ii. Participatory mechanisms to determine the sharing of benefits.
 - iii. Reporting mechanisms in case of damages (e.g. hotlines)
 - iv. National legislation mechanisms in cases of states sponsoring companies
6. Measures for strengthening transparency within the ISA:
 - i. A platform of public information
 - ii. Adoption of IETI Standards
 - iii. Having clear guidelines on the classification of information
 - iv. Having standardized reporting formats
 - v. Publish the criteria and rationale for accepting, rejecting, or suspending Observers.
 - vi. Open Data criteria
7. Elements of due diligence that enterprises should adhere to:
 - i. Environmental Impact Assessment
 - ii. Respect for Human Rights
 - iii. Financial capabilities
 - iv. Technical capabilities
 - v. Scientific knowledge
 - vi. Best environmental practices
 - vii. Insurances, securities, or compensation funds (e.g. such as FIDAC)
 - viii. Compliance policies
8. Whistleblower measures and procedures that the ISA should have:
 - i. Expanded public education on existing state-run transnational whistleblower programs with anonymity and reward protections.
 - ii. Whistleblower program and policy.

- iii. Independent investigations on ISA whistleblower's complaints.
 - iv. Anonymous whistleblower reporting mechanism.
 - v. Whistleblower rewards framework.
 - vi. Public advertisement of whistleblower policies by all contractors/sub-contractors/agents
9. Elements that should be taken into account to disqualify or sanction private corporations.
- i. Records check on the history of environmental damage.
 - ii. Records check based on whistleblower retaliation.
 - iii. Defining "effective control"
 - iv. Requiring that the ultimate Beneficial Ownership of contracts in reserved areas be held by a developing nation.
 - v. Records check for companies who have engaged in bribery.
 - vi. Records check for ISA personnel with conflict of interest.

III. What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

To create opportunities for scaling up the solutions discussed in the session, several strategic actions can be taken by different stakeholders. For instance:

Actions	Actors
1. Strengthening Institutional Frameworks and Processes <ul style="list-style-type: none"> Establish Minimum Eligibility Requirements: Ensure the ISA has clear, transparent criteria for the eligibility and selection of individuals for key positions such as the Secretary-General, members of the Legal and Technical Commission (LTC), and "The Enterprise". Enhance Selection Transparency: Implement transparent national mechanisms for the selection of candidates, involving civil society, academia, and other experts. 	<ul style="list-style-type: none"> International Seabed Authority (ISA): Develop and enforce the criteria and processes. Member States: Adopt transparent national procedures and ensure civil society participation. Non-Governmental Organizations (NGOs): Advocate for and monitor the implementation of these processes.
2. Promoting Transparency and Accountability <ul style="list-style-type: none"> Public Access to Key Reports: Make environmental impact assessments, scientific reports, corporate reports, beneficial ownership details, and external audit reports publicly accessible. Adopt Transparency Standards: Implement standards such as those 	<ul style="list-style-type: none"> ISA: Establish and maintain a public information platform and adopt transparency standards. Transparency International (TI) and EITI: Provide guidance and oversight. NGOs, Civil Society, and Journalists: Monitor and report on compliance with transparency measures.

from the Extractive Industries Transparency Initiative (EITI).	
<p>3. Enhancing Community Participation</p> <ul style="list-style-type: none"> • Consultation Before Permits: Conduct prior and informed consultations with local communities before granting exploration or exploitation permits. • Benefit Sharing Mechanisms: Develop participatory mechanisms to ensure fair sharing of benefits from deep-sea mining. 	<ul style="list-style-type: none"> • ISA: Facilitate and enforce community consultation processes. • Local Communities, NGOs, and Journalists: Actively participate in consultations and benefit-sharing discussions. • Member States: Legislate and support community participation mechanisms.
<p>4. Implementing Robust Whistleblower Protections</p> <ul style="list-style-type: none"> • Whistleblower Policy: Develop and enforce comprehensive whistleblower policies that ensure anonymity, protection, and rewards for whistleblowers. • Independent Investigations: Conduct independent investigations of whistleblower complaints. 	<ul style="list-style-type: none"> • ISA: Create and enforce whistleblower policies. • Contractors and Subcontractors: Publicly advertise and comply with whistleblower protections. • Independent Bodies: Conduct investigations and provide oversight.
<p>5. Ensuring Corporate Accountability Actions</p> <ul style="list-style-type: none"> • Due Diligence: Require companies to adhere to environmental, human rights, financial, and technical standards. • Disqualification Criteria: Establish clear criteria for disqualifying or sanctioning corporations based on their history of environmental damage, bribery, or other misconduct. 	<ul style="list-style-type: none"> • ISA: Develop and enforce due diligence and disqualification criteria. • Member States: Support and comply with ISA regulations. • NGOs, Civil Society, and Journalists: Monitor corporate compliance and report violations.
<p>Opportunities for Scaling Up Solutions. By whom?</p> <ul style="list-style-type: none"> • International Collaboration: Engage international bodies and coalitions to adopt best practices and standards globally. • Capacity Building: Provide training and resources to member states and local communities to implement and monitor these solutions effectively. • Public Awareness Campaigns: Increase public awareness and advocacy for transparent and accountable deep-sea mining practices. 	

IV. Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists, or any other stakeholder that should be noted? Please specify if relevant.

Transparency International (TI):

- Campaign for the adoption and enforcement of transparency measures and anti-corruption standards within the ISA and national governments.
- Actively participate in consultations and decision-making processes related to deep-sea mining and other relevant activities.
- Establish mechanisms to monitor compliance with transparency and accountability measures. Report violations and advocate for corrective actions.

Young People:

- Use social media and other platforms to raise awareness about the importance of transparency, accountability, and ethical conduct in deep-sea mining and other sectors.
- Participate in advocacy campaigns and initiatives aimed at promoting transparency and combating corruption.
- Educate peers and communities about the significance of these issues and empower them to take action.

Journalists:

- Conduct investigative journalism to uncover and report on issues related to transparency, corruption, and ethical conduct in deep-sea mining and other sectors.
- Use media platforms to inform the public about the importance of transparency and accountability and the impact of corruption on society and the environment.
- Hold governments, businesses, and other stakeholders accountable for their actions by reporting on their compliance with transparency and anti-corruption measures.

Rapporteur's name

María de los Ángeles Estrada

Anticorruption Professor

Executive Director of the Transparency, Anti-corruption and Digitalization Initiative.

Tecnológico de Monterrey

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