



理事会

Distr.: General
3 January 2019
Chinese
Original: English

第二十五届会议

理事会会议，第一部分

2019年2月25日至3月1日，金斯敦

临时议程* 项目14

关于企业部有关事项的报告

2018年12月17日国际海底管理局秘书长企业部特别代表给国际海底管理局秘书长的信

根据2018年8月29日签发给我的合同中的职权范围，我谨提交我关于波兰政府与企业部组建联合企业的提案的报告(见附件)。

国际海底管理局秘书长企业部特别代表

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* ISBA/25/C/L.1。



2018年12月17日国际海底管理局秘书长企业部特别代表给国际海底管理局秘书长的信的附件

国际海底管理局秘书长企业部特别代表关于波兰政府与企业部组建联合企业的提案的报告

一. 引言

1. 2018年4月27日，国际海底管理局秘书长收到波兰政府环境部国务秘书马里乌什·奥里翁·捷得里塞克就与企业部组建联合企业开展谈判提出的一份意向书。

2. 理事会主席在2018年7月25日第二十四届会议上表示理事会注意到该报告，指出希望在理事会2019年议程中包括与企业部组建联合企业的完整提案，并请秘书长就此作出一切必要安排。

3. 鉴于理事会希望在2019年议程中列入关于联合企业的完整提案，并在理事会于2018年7月进行讨论之后，秘书长临时任命伊登·查尔斯为秘书长企业部特别代表，负责履行2018年8月29日合同职权范围规定的具体任务，就与企业部组建联合企业的意向与波兰政府有关代表联络，并向理事会作出报告。

4. 特别代表将对提案进行独立评估，以确保联合企业的有关条款符合《公约》第一五三条第2(a)款、第一七零条以及附件四第2条第2款的规定和1994年《关于执行1982年12月10日联合国海洋法公约第十一部分的协定》（《1994年协定》）的有关规定。特别代表还应：

(a) 确保在最后确定的任何提案中，考虑到《1994年协定》附件第2节第5段的要求，包括因执行《1994年协定》附件第2节可能产生的法律和财务风险；

(b) 分析商业提案，确保提案符合健全的商业原则；

(c) 编写一份包含适当建议的报告，提交理事会第二十五届会议第一部分（2019年2月25日至3月1日）审议。

5. 根据其任务规定，特别代表于2018年12月11日和12日在海管局纽约联合国办事处会见了波兰代表团，讨论在2018年12月6日一份非正式文件中转递的与拟议联合企业有关的事项，该文件载于本报告附文一。¹ 代表团由下列人员组成：代表团团长Piotr Nowak、环境部法律司律师Michael Kobylinski、地质和地质特许权部律师Michael Wiercinski、地质和地质特许权部专家Barosz Jasinski。

6. 经过两天的紧张谈判，特别代表提出了提案，以确保非正式文件符合《公约》第十一部分的要求和《1994年协定》的有关规定，并建立在健全的商业原则之上。虽然波兰代表团在须进一步审核的前提下认为这些初步提案基本可以接受，但仍有一些段落需要进一步谈判，本报告附文二¹ 所载联合企业提案草案将此类内容放在括号内。

¹ 附文仅以提交语文分发，未经正式编辑。

7. 通过谈判，达成了以非正式文件为基础的联合企业提案草案，这表明谈判者愿意真诚地采取行动，根据其当局采取的行动与海管局合作，确保企业部的独立运作。联合企业提案草案第三部分的表述也证明了这一点，其中要求联合企业在双方签字后启动。然而，仍有一些仍待解决的问题，以确保一些重要要求得到满足，建立符合有关法律标准的联合企业。

8. 特别代表相信，这些未决问题将在第一次会议谈判期间表现出的友好、灵活和合作精神下得到解决，同时不损害有关法律和条例。

二. 企业部的法律地位

9. 在谈判中有人提出，如果拟议的联合企业不符合有关此类安排的相关法律，企业从一开始就将是失败的。在审议非正式文件时多次指出，需要确保该文件符合《1994年协定》附件第2节所载的法律，并以健全的商业原则为基础。波兰代表团同意，这是使理事会能够根据《公约》第一七零条和附件四发布适当指示的唯一依据，以使企业部能够独立于秘书处运作，并除了运输、加工和销售在“区域”内开采的矿物以外，在“区域”内直接开展活动。

三. 联合企业的条款

10. 谈判尽管是初步性的，但努力为拟设联合企业的条款提供可接受的措辞，包括组建联合企业的商业条款。在这方面，考虑到 ISBA/19/C4 号文件第 2(d)段所载的建议，特别代表和波兰代表团同意，提案除其他外应体现以下内容：

- (a) 参与权益；
- (b) 财政和技术贡献；
- (c) 联合企业的管理；
- (d) 工作方案和预算；
- (e) 联合企业产品的营销与销售；
- (f) 以健全的商业原则为基础；
- (g) 与项目相关的风险和费用事项；
- (h) 符合《公约》第二九三条适用法律和包括企业部特权和豁免条款在内的《公约》附件四第 13 条的规定；
- (i) 解决争端的措施；
- (j) 保密和信息披露事项。

四. 作业区域

11. 为了使拟设的联合企业符合相关法律，应在考虑到《1994年协定》附件第2节第5款的规定以及《“区域”内富钴铁锰结壳探矿和勘探规章》的情况下，指明联合企业将开展作业的保留区块。还应注明联合企业的期限。应该指出的是，正

如联合企业提案草案第十三部分的措辞所显示的，草案认为此类事项对最后确立联合企业至关重要。

五. 商业提案/协议纲领

12. 联合企业草案第四部分考虑了拟定商业提案/协议纲领的问题，以为联合企业的有效运作提供指导。商业提案将涵盖每隔 5 年进行一次的为期 15 年的工作方案、与进行勘测有关的问题、地质研究、研究方法、工作方案的变动及其他事项。所有这些事项预计将在闭会期间拟订，并在下一轮谈判中讨论。在考虑联合企业问题时，理事会还应处理商业提案是否充分有效的问题。

13. 应指出，理事会同意采取这一办法组建联合企业。考虑到鸚鵡螺矿业公司于 2013 年提出的提案，以与企业部就建立联合企业开展谈判，建议对波兰的提案采取类似做法。

六. 就“区域”内活动作出规定的国家立法

14. 在谈判期间，特别代表还询问波兰是否已颁布立法，履行《公约》关于防止、减少和控制“区域”内活动对海洋环境污染的第二零九条规定的义务，以及波兰根据《公约》附件四第 13 条第 1 款和第 2 款承担的义务，即企业部在该国领土行使其职能和实现其宗旨的法律行为能力。波兰代表团说，该国有关当局正在对这些立法进行积极和及时审议。

七. 意见

15. 特别代表认识到，随着“区域”内矿物开采管理条例的制定，以及人们对独立于秘书处的企业部投入运作重新表现出兴趣，理事会应根据《公约》和《1994 年协定》的有关段落提供有利环境，以确保企业部作为国际法设立的一个独特实体，能够直接在保留区从事商业采矿活动，从矿产资源角度，这些区域是企业部的资产。这种有利环境将有助于执行《公约》第一三六条，即“区域”及其资源是人类共同继承财产，并建立《公约》第一五三条概述的相应制度。这还将为发展中国家创造渠道，这些国家既不能直接参与《公约》和《1994 年协定》规定的“区域”内活动，也不能作为担保国参与。

16. 此外，根据法律并作为海管局的一个机关，企业部在开始运作时将获准在“区域”内从事采矿活动，以及运输、加工和销售从“区域”内获得的矿物。这种安排符合企业部的独特作用，因为虽然企业部必须按照大会的一般政策和理事会的指示行事，但在开展业务方面则享有自主权。

17. 此外，企业部无法运作将直接影响到《公约》第三一一条第 6 款所体现的国际法强制性规范——人类共同财产原则的执行。

18. 大会为根据《公约》第一五四条定期审查“区域”国际制度而设立的委员会的最后报告(ISBA/23/A/3, 附件)也强调了企业部的重要性，委员会在报告中建议请法律和技术委员会考虑到深海采矿方面的发展，继续将企业部的运作问题作为重要事项加以处理。

19. 应当指出，提案草案中涵盖 15 年勘探活动的拟议工作方案包括几个阶段。进一步确立并由理事会最终接受这些阶段也符合上述第一五四条审查报告的建议。由于关于企业部运作的《1994 年协定》对《公约》的适用作出了修改，理事会必须确定是否存在使企业部独立的两种可能的触发因素之一，即理事会收到与企业部建立联合企业的申请，或为另一实体核准采矿工作计划。

20. 理事会在评估拟议的联合企业时还应回顾，如果在企业部独立运作之前执行了某些程序，批准联合企业将不会要求对这些既有程序进行任何根本性的修改。这涉及到企业部作为利益攸关方参与关于采矿法规的谈判，因为根据《1994 年协定》，承包者承担的义务也适用于企业部，而且同其他承包者一样，企业部也必须申请采矿工作计划。因此，特别代表认为，在自主的企业部没有机会作为“区域”内矿物开采重要利益攸关方提交材料的情况下通过采矿法规，将给采矿法规造成严重不足。在讨论与保留区有关的问题时，也存在重大差距。在采矿法规通过之前使企业部投入运作符合《公约》和《1994 年协定》的精神和内容。应当再次指出，理事会在最后确定同意设立拟议的联合企业时，将触发海管局这一采矿机构的运作。

21. 双方同意，联合企业应以健全的商业原则为基础。然而，从谈判中可以明显看出，这一表述的确切含义并不清楚。虽然“健全的商业原则”没有在必要的法律文件中得到界定，但理事会必须确定对这一表述的理解，使联合企业的组建考虑到《公约》和《1994 年协定》的目的和宗旨。尽管未能界定这一重要标准，但建议在理解这一概念时考虑到以下因素：

(a) “‘区域’资源是人类的共同继承财产”是利用“区域”资源的总体和基本原则；

(b) 企业部在不受政治干预的情况下作出有效商业决策的自主权；

(c) 成本效益，即企业部应能够产生足够收入以支付其运作费用并高效运作，不需要海管局成员提供补贴；

(d) 在企业部的人员配置、初步运作和住宿等方面，对企业部的运作采取循序渐进的办法；

(e) 商业可行性，包括管理结构的健全、是否拥有对其架构至关重要的技术，以及开展工作所需的资金。

22. 在审议联合企业提案草案时发现，对满足健全商业原则要求至关重要的一些因素已列入提案，应进一步扩充有关内容，以将其他因素包含在内。

23. 理事会应处理的另一事项是，考虑到企业部将投入运作，企业部的一名代表需要参加大会和理事会的会议。根据《1994 年协定》，要求从海管局工作人员中任命一名临时总干事，以监督《协定》为企业部规定的有限职能。² 自履行该职

² 在审议《公约》第一五四条的背景下，大会于 2017 年决定，当时不宜任命一名临时总干事，因此秘书长决定任命一名特别代表，以编写本报告。

位相关职能的工作人员 2013 年退休以来，并未任命临时总干事；此外，一旦成功组建联合企业，企业部将开始独立运作，但大会或理事会议事规则中并没有为企业部代表积极参与这些机构的会议作出规定。因此，需要修订大会和理事会的议事规则，使临时总干事和最终的实际总干事能够参加这些机构的会议。

24. 鉴于上述情况，并回顾理事会希望在其议程中列入关于联合企业的完整提案，供理事会在 2019 年下一届会议上审议，兹请理事会：

(a) 表示注意到本报告；

(b) 考虑到理事会希望在 2019 年将完整提案列入其议程，并为了及时最后敲定提案，延长组建联合企业提案草案的谈判时限和拟订促进联合企业运作的商业提案的时限，其中部分内容已商定并等待进一步核准；

(c) 同意联合企业提案定稿应符合《1994 年协定》附件第 2 节的规定，并应以健全的商业原则为基础，以便理事会能够通过一项关于企业部独立运作的指示，同时铭记非洲国家集团在 2018 年 7 月 6 日给海管局秘书处的说明中呼吁企业部投入运作；海管局在理事会上届会议期间得到了跨区域支持；

(d) 鉴于 ISBA/19/C/6 号文件第 17 和 18 段中提出的关于在企业部独立于秘书处运作之前的治理安排建议，请秘书长延长特别代表的合同和职权范围，并提供与特别代表工作有关的必要资金，同时考虑到需要最后确定与波兰建立的联合企业，允许特别代表参加关于拟定“区域”内矿物开采规章和与保留区有关的其他相关事项的谈判，并促进与其他国家、区域集团和其他实体讨论与企业部运作有关的事宜。秘书长“关于与波兰政府提出的可能与企业部经营联合企业的建议书相关的审议工作”的报告(ISBA/24/C/12)第 16 和 17 段强调了这些问题，这涉及到维护企业部在名义上的独立性，旨在避免因设立临时总干事一职造成任何利益冲突(临时总干事将由秘书长从秘书处工作人员中任命)，以及需要向理事会提供客观咨询意见，特别是有关企业部在过渡期间的运作问题；

(e) 启动对理事会议事规则修正案的讨论，以考虑到企业部的参与。

附文一

**Draft Framework
for
cooperation on the Joint Venture operation
between
Government Plenipotentiary for National Raw Materials Policy of the Republic of
Poland
and
International Seabed Authority Secretary General**

I. PARTIES

**Government Plenipotentiary for National Raw Materials Policy
Chief National Geologist
Secretary of State in the Ministry of the Environment of the Republic of Poland**

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Secretary General**

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II. BACKGROUND

1. Government Plenipotentiary of the Republic of Poland for National Raw Materials Policy (Government Plenipotentiary) intend to commercially explore the ocean floor for cobalt-rich ferromanganese crusts.
2. The International Seabed Authority (ISA) is an autonomous international organization established under United Nations Convention on the Law of the Sea of 10 December 1982 (*UNCLOS*) and the Agreement relating to the Implementation of Part XI of the UNCLOS of 28 July 1994 (*1994 Agreement*) through which parties to the UNCLOS shall, in accordance with the regime for the Area established in Part XI of UNCLOS and the 1994 Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

3. The Enterprise is created only when the ISA Council issues a directive providing for the functioning of the Enterprise independent of the secretariat of the ISA following the approval by the ISA Council of a business proposal for a joint venture based on sound commercial principles (as defined in paragraph 2 of section 2 of the annex to the 1994 Agreement).
4. In accordance with the provisions of article 170 of the UNCLOS and paragraph 1 of section 2 of the annex to the 1994 Agreement, the secretariat of the ISA shall perform the functions of the Enterprise until it begins to operate independently of the secretariat. Such functions include, inter alia, the assessment of approaches to joint venture operations.
5. This draft Framework for cooperation records the basis upon which Government Plenipotentiary and the Secretariat of the ISA, performing the functions of the Enterprise pursuant to section 2 of the annex to the 1994 Agreement, shall agree a business proposal for the formation of a joint venture between the Enterprise and Government Plenipotentiary in respect of the Reserved Areas (Business Proposal) for the purpose of exploring and developing the Reserved Areas. (Joint Venture).
6. If the joint venture fails for any reason, Government Plenipotentiary reserves the exclusive right to resubmit the application to the same Reserved Area jointly with the developing state. This right is due within 2 (two) years of the end of negotiations in scope of establishing JV.

III. EFFECTIVE DATE

7. Effective Date: This draft Framework for cooperation shall be effective and in force on signature by both parties.

IV. PROGRAMME FOR DEVELOPMENT OF BUSINESS PROPOSAL

8. The proposed exploration programme is designed to cover exploration activities for the next fifteen years.
9. I stage of the programme (5 year)
 - (a) geological exploration, environmental surveying, ore processing technology development, and preliminary economic evaluation.
 - (b) selection of sites for more detailed survey during next 5 year stage
 - (c) reporting to ISA
10. II stage of the programme (5 year)
 - (a) survey in the selected sites: exploration, environmental surveying, mining technology development, ore processing technology development and revision of economic evaluation and reporting to ISA .
11. III stage of the programme (5 year)
 - (a) select sites (blocks) for potential exploitation within the identified cobalt crust fields and to identify cobalt crust deposits appropriate for development with a due consideration to the seabed slope and ruggedness, physical obstacles, physical and mechanical properties of the substrate and other relevant factors, geological documentation and reporting to ISA.

12. The surveys to be carried out each year will be adjusted in accordance with the economic and financial situation, survey progress and the analyses of outcomes of previous 5-year stage.
13. Changing the object of action requires the written consent of both parties to the contract.
14. Government Plenipotentiary and ISA have the exclusive right to manage the result of geological research and the priority right to mine minerals in the area under explore, in accordance with separate regulations.
15. The rights referred to in point 13 may be disposed of or leased by Government Plenipotentiary on the basis of the concluded contract.
16. ISA has the right to share the results of geological surveys upon the consent of Government Plenipotentiary.
17. In the case of the establishing the joint venture operations by ISA with other states or entities, Government Plenipotentiary shall have the right to change the terms of its agreement with ISA in the way not less favorable for Government Plenipotentiary than for these other states and entities in their agreements.
18. Government Plenipotentiary reserves the right not to disclose the research methods used, except as provided for in international law.

V. COSTS

19. Government Plenipotentiary shall bear the risk and any and all costs associated with completing the programmes described in clauses 8 to 10, excluding any costs incurred by the ISA in the ordinary course of holding its annual session of the ISA Council.
20. Government Plenipotentiary estimate of the costs of completing the programmes described in clauses 8 to 10 is as follows:

(...)

21. Government Plenipotentiary shall provide the ISA with an annual report outlining the costs incurred in respect of the programmes described in clauses 8 to 10, which report shall be prepared according to the ISA financial expenditure guidelines.
22. Subject to clause VII, any and all costs incurred by Government Plenipotentiary in connection with the Reserved Areas, undertaking the programs described in clauses 8 to 10 and developing the Business Proposal, shall be credited toward any financial contribution that Government Plenipotentiary may be required to make to the Joint Venture.
23. The Republic of Poland will take up 95% of shares in the project. ISA receives a 5% interest.

VI. COMMUNICATION

24. Government Plenipotentiary and the ISA will maintain regular dialogue during the programs described in clause IV to ensure all parties are fully informed and that any issues that might affect the Joint Venture can be addressed prior to the consideration of the Business Proposal by the ISA Council.

VII. ORIGINAL CONTRACTOR RIGHTS

25. The parties acknowledge and agree that the finalization of the terms of the Joint Venture will trigger an Obligation of the Enterprise under paragraph 5 of section 2 of the annex to the 1994 Agreement to offer the original contractor which contributed the Reserved Areas the right of first refusal to enter into a joint venture agreement.
26. In the event the original contractors which contributed the Reserved Areas exercise such right of first refusal the Enterprise must make it a condition of any joint venture agreement executed between the Enterprise with that original contractor that Minister of the Environment and the Enterprise be reimbursed based on cost multiplied by three for the programs undertaken by Government Plenipotentiary and the Enterprise respectively as described in clauses IV and V Above.

VIII. COMMITMENT TO JOINT VENTURE

27. The ISA agrees to negotiate with Government Plenipotentiary in good faith, and with priority, to develop the Business Proposal and to form the Joint Venture and shall do all things reasonably necessary, to enable the Joint Venture to be formed in a timely manner.
28. In the event any applications are received by the ISA from any third parties in respect of the Reserved Areas prior to the approval of the Business Proposal by the ISA Council, the ISA agrees to deal with such applications in accordance with the provisions of UNCLOS and the 1994 Agreement.
29. Each party shall ensure that its employees, agents and advisers comply with the undertakings in this clause as if they were the relevant party.

IX. CREATING AUXILLIARY UNITS TO IMPLEMENT THE SUBJECT OF THE CONTRACT.

30. The Enterprise branch for the implementation of this undertaking will be registered in Poland as a company of Polish commercial law.
31. All matters related to the organization of the Branch and ongoing projects will be subject to the law of the Republic of Poland and the jurisdiction of Polish courts.
32. Appoints five (five) personal supervisory board of the company, composed of four (four) persons on behalf of the Republic of Poland and one (one) person on behalf of ISA.
33. A 3-person Board composed of two (two) persons from the Plenipotentiary of the Republic of Poland and one (one) person from ISA is appointed.
34. As part of the project management, the Republic of Poland finances 2 (two) jobs, the character of which will be determined by both parties to the contract. The first position will be determined on the day of signing this agreement, the second after signing the joint venture agreement.
35. The amount of salary of persons employed in positions referred to in point 31 and 32, will correspond to the standards of salary in the Republic of Poland.

X. MUTUAL INDEMNIT

36. To the extent permitted under Legislative Requirements, the ISA releases, holds harmless and indemnifies Government Plenipotentiary and its Affiliates and their respective officers, servants, agents and employees from and against all claims, losses, damages, costs, expenses and liabilities in respect of loss or damage to any property and in respect of any injury or death to the officers, servants, agents and employees of the ISA and its Affiliates arising directly or indirectly from the performance by Government Plenipotentiary of its obligations under this Agreement.
37. To the extent permitted under Legislative Requirements, Government Plenipotentiary releases, holds harmless and indemnifies the ISA and its Affiliates and their respective officers, servants, agents and employees from and against all claims, losses, damages, costs, expenses and liabilities in respect of loss or damage to any property and in respect of any injury or death to the officers, servants, agents and employees of Government Plenipotentiary and its Affiliates arising directly or indirectly from the performance by ISA of its obligations under this Agreement.

XI. RESOLUTION OF DISPUTES

38. The parties agree that the law applicable to the resolution of disputes arising from this agreement shall be the law of the Republic of Poland. All disputes are subject to they will be within the jurisdiction of the courts of the Republic of Poland.
39. With the consent of the parties, the possibly disputes may be referred to the arbitration; the place of arbitration in a state not involved in the project forming the subject of this agreement.

XII. CONFIDENTIAL INFORMATION**A) Use and disclosure**

1. Each party (Recipient):
 - (a) may use Confidential Information of a Disclosing Party only for the purposes of this Agreement; and
 - (b) must keep confidential all Confidential Information of the other parties (each a Disclosing Party) except:
 - (i) for disclosures permitted under clause XII
 - (c); and (ii) subject to clause XII
 - (d), to the extent (if any) the Recipient is required by law or the rules of any stock exchange to disclose any Confidential Information.
2. Permitted disclosure

A Recipient may disclose Confidential Information of a Disclosing Party to persons who:

 - (a) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (b) before disclosure
 - (i) in the case of the Recipient's officers and employees, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party; and
 - (ii) in the case of other persons approved in writing by the Disclosing Party, have agreed in writing with the Recipient to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Recipient under this Agreement.

3. Recipient's obligations

A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause XII(b) complies with a direction given under clause XII(b)(ii); and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a direction given under clause XII(b)(ii).

4. Disclosure by law

If a Recipient is required by law or the rules of any stock exchange to disclose any Confidential Information of a Disclosing Party to a third person (including, but not limited to, government) the Recipient must:

(a) before doing so:

- (i) notify the Disclosing Party; and
- (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (iii) notify the third person that the information is confidential information of the Disclosing Party.

XIII. SCHEDULE 1 - RESERVED AREA

Coordinates and Reserved Area Map

XIV. SIGNATURE PAGE

Authority	Government Plenipotentiary	International	Seabed
	of the Republic of Poland	Secretary General	
	for National Raw Materials Policy		

Non-paper – this draft framework is not an official proposal of the Government of the Republic of Poland – the future final proposal is required to be properly agreed and approved by the respective Polish authorities.

附文二

Draft Joint Venture
between
the Government of the Republic of Poland
and
the International Seabed Authority

I. PARTIES**The Government of the Republic of Poland**

Address:

Ministry of the Environment of the Republic of Poland

Wawelska Street 52/54

00-922 Warsaw

POLAND

Tel.: (48 22) 36 92 900

Fax.: (48 22) 36-92-460

International Seabed Authority

Address:

International Seabed Authority

Secretary General

14-20 Port Royal Street

Kingston

JAMAICA

Tel.: (876) 922 9105

Fax.: (876) 967 7487

II. BACKGROUND

1. The Government of the Republic of Poland intends to commercially explore the ocean floor for cobalt-rich ferromanganese crusts.
2. The International Seabed Authority is an autonomous international organization established under United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the UNCLOS of 28 July 1994 through which parties to the UNCLOS shall, in accordance with the regime for the Area established in Part XI of UNCLOS and the 1994 Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

3. The Enterprise is operationalized only when the ISA Council issues a directive providing for the functioning of the Enterprise independent of the Secretariat of the ISA following the approval by the ISA Council of a business proposal for a joint venture based on sound commercial principles (as defined in paragraph 2 of section 2 of the annex to the 1994 Agreement).
4. In accordance with the provisions of article 170 of the UNCLOS and paragraph 1 of section 2 of the annex to the 1994 Agreement, the Secretariat of the ISA shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. Such functions include, inter alia, the assessment of approaches to joint venture operations.
5. This draft Framework for cooperation establishes the basis upon which the Government and the Secretariat of the ISA, performing the functions of the Enterprise pursuant to section 2 of the annex to the 1994 Agreement, shall agree a business proposal for the formation of a joint venture between the Enterprise and the Government in respect of Reserved Area as described in schedule I (Business Proposal) for the purpose of exploring and developing the Reserved Areas (Joint Venture).
6. If the joint venture fails for any reason, the Government reserves the exclusive right to resubmit the application to the same Reserved Area jointly with a developing state. This right is due within 2 (two) years of the end of negotiations in scope of establishing Joint Venture.

III. EFFECTIVE DATE

7. Effective Date: This draft Joint Venture shall be effective and in force on signature by both parties.

IV. PROGRAMME FOR DEVELOPMENT OF BUSINESS PROPOSAL/HEADS OF AGREEMENT

8. The proposed exploration programme of work is designed to cover exploration activities for cobalt-rich ferromanganese crusts in the Reserved Area described in schedule I over the next fifteen years.
9. I. stage of the programme (5 year)
 - (d) geological exploration, environmental surveying, ore processing technology development, and preliminary economic evaluation,
 - (e) selection of sites for more detailed survey during next 5 year stage,
 - (f) reporting to ISA/Special Representative.
10. II. stage of the programme (5 year)
 - (a) survey in the selected sites: exploration, environmental surveying, mining technology development, ore processing technology development and revision of economic evaluation and reporting to ISA.
11. III. stage of the programme (5 year)
 - (a) select sites (blocks) for potential exploitation within the identified cobalt crust fields and to identify cobalt crust deposits appropriate for development with a due consideration to the seabed slope and ruggedness, physical obstacles, physical and mechanical properties of the substrate and

other relevant factors, mining technology development, geological documentation and reporting to ISA.

12. The surveys to be carried out each year will be adjusted in accordance with the economic and financial situation, survey progress and the analyses of outcomes of previous 5-year stages.
13. Changing the programme of work requires the written consent of both parties to the contract.
14. The Government and the Enterprise have the exclusive right to manage the result of geological research and the priority right to mine minerals in the Area under exploration, in accordance with the UNCLOS, the 1994 Agreement and the relevant regulations.
15. The rights referred to in paragraph 14 may be disposed of or leased by the Government on the basis of the concluded contract.
16. The Enterprise has the right to share the results of geological surveys with the consent of the Government.
17. In the case of the conclusion of joint venture operations by the Enterprise with other States or entities, the Government shall have the right to change the terms of its agreement with the Enterprise in a way no less favorable to the Government than in the case of the agreements concluded with these other States and entities.
18. The Government reserves the right not to disclose the research methods used, except as provided for in international law.

V. COSTS

19. The Government shall bear the risks and any and all costs associated with completing the programmes described in clauses 9 to 11, and the personnel described in paragraph 34, excluding any costs incurred by the ISA in the ordinary course of holding its annual session of the ISA Council.
20. The Government estimates of the costs of completing the programmes described in clauses 9 to 11 to be as follows:
 - (a) 1st stage - ...
 - (b) 2nd stage - ...
 - (c) 3rd stage - ...
21. The Government shall provide the [Enterprise/ISA] with an annual report outlining the costs incurred in respect of the programmes described in clauses 9 to 11, which report shall be prepared according to the ISA financial expenditure guidelines.
22. Subject to Clause VII, any and all costs incurred by the Government in connection with the Reserved Areas, undertaking the programs described in clauses 9 to 11 and developing the Business Proposal, shall be credited toward any financial contribution that the Government may be required to make to the Joint Venture.
23. [The Government will take up 95% of shares in the project. ISA receives a 5% interest.]

VI. COMMUNICATION

24. The Government and the [ISA/Enterprise] will maintain regular dialogue during the programs described in clause IV to ensure all parties are fully informed and that any issues that might affect the Joint Venture can be addressed prior to the consideration of the Business Proposal by the ISA Council.

VII. ORIGINAL CONTRACTOR RIGHTS

25. The parties acknowledge and agree that the finalization of the terms of the Joint Venture will trigger an obligation of the Enterprise under paragraph 5 of section 2 of the annex to the 1994 Agreement to offer the original contractor which contributed the Reserved Areas the right of first refusal to enter into a Joint Venture agreement.

26. In the event the original contractors which contributed the Reserved Areas exercise such right of first refusal the Enterprise must make it a condition of any joint venture agreement executed between the Enterprise with that original contractor that the Government and the Enterprise be reimbursed based on cost multiplied by three for the programs undertaken by the Government and the Enterprise respectively as described in clauses IV and V Above.

VIII. COMMITMENT TO JOINT VENTURE

27. The ISA through the Special Representative agrees to negotiate with the Government in good faith, and with priority, to develop the Business Proposal and to form the Joint Venture and shall do all things reasonably necessary, to enable the Joint Venture to be formed in a timely manner.

28. In the event any applications are received by the ISA from any third parties in respect of the Reserved Areas prior to the approval of the Business Proposal by the ISA Council, the ISA agrees to deal with such applications in accordance with the provisions of UNCLOS and the 1994 Agreement.

29. Each party shall ensure that its employees, agents and advisers comply with the undertakings in this clause as if they were the relevant party.

IX. CREATING AUXILLIARY UNITS TO IMPLEMENT THE SUBJECT OF THE CONTRACT

30. The Enterprise branch for the implementation of this undertaking will be registered in Poland as a company of Polish commercial law.

31. All matters related to the organization of the Branch and ongoing projects will be subject to the law of the Republic of Poland and the jurisdiction of Polish courts.

32. Appoints 5 (five) personal supervisory board of the company/Joint Venture, composed of four (four) persons on behalf of the Republic of Poland and one (one) person on behalf of ISA.

33. Appoints 3-person Board of the company/Joint Venture composed of two (two) persons from the Government and one (one) person from ISA is appointed.

34. As part of the project management, the Government finances 2 (two) jobs, the character of which will be determined by both parties to the Joint Venture. These two jobs will be determined on the day of signing of Joint Venture.

35. The amount of salary of persons employed in positions referred to in points 32-34 will correspond to the standards of salary in the Republic of Poland.

X. RESOLUTION OF DISPUTES AND THE GOVERNING LAW

36. The parties shall use all reasonable endeavours acting in good faith to resolve any dispute arising from the interpretation and application of the provisions of this agreement through negotiations and other diplomatic means of settlement of disputes.

37. With the consent of the parties, any dispute may be referred to arbitration; the arbitration should take place in a state not involved in the project forming the subject of this agreement.

38. [The law applicable to the resolution of disputes arising from this agreement and the law governing this agreement shall be the law of the Republic of Poland.]

XI. CONFIDENTIAL INFORMATION

XV. Use and disclosure

Each party (Recipient):

(a) may use Confidential Information of a Disclosing Party only for the purposes of this Agreement; and

(b) must keep confidential all Confidential Information of the other parties (each Disclosing Party) except:

(i) for disclosures permitted under paragraph 41; and

(ii) subject to paragraph 42 to the extent (if any) the Recipient is required by law to disclose any Confidential Information.

39. Permitted disclosure

A Recipient may disclose Confidential Information of a Disclosing Party to persons who:

(c) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and

(d) before disclosure

(i) in the case of the Recipient's officers and employees, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party; and

(ii) in the case of other persons approved in writing by the Disclosing Party, have agreed in writing with the Recipient to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Recipient under this Agreement.

40. Recipient's obligations

A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause 40 complies with a direction given under paragraph 40 (b)(ii); and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a direction given under paragraph 40 (b)(ii).

41. Disclosure by law

If a Recipient is required by law to disclose any Confidential Information of a Disclosing Party to a third person (including, but not limited to, government) the Recipient must before doing so:

- (a) notify the Disclosing Party;
- (b) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) notify the third person that the information is confidential information of the Disclosing Party.

XII. DEFINED TERMS

42. In this Agreement including all of its schedules, the following terms have the following meaning unless the context otherwise requires:

- (a) *1994 Agreement* means the Agreement relating to the implementation of Part XI of UNCLOS,
- (b) *Area* means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction which are controlled by the ISA,
- (c) *Dispute* means any dispute, disagreement, controversy or claim arising out of or relating to this Joint Venture, or the interpretation or application of provisions of this Joint Venture or the breach, termination or validity thereof, that the parties are unable to resolve by mutual agreement within a reasonable time, other than any dispute that is a question of the interpretation of Part XI and the Annexes relating thereto of the UNCLOS with respect to activities in the Area,
- (d) *Government* means the Government of the Republic of Poland,
- (e) *ISA* means the International Seabed Authority,
- (f) *Special Representative* means...,
- (g) *UNCLOS* means the United Nations Convention on the Law of the Sea 1982.

XIII. RESERVED AREA

43. The coordinates and the Reserved Area map are included as annex 1 to the Joint Venture.

SIGNATURE PAGE

For the Government
of the Republic of Poland
Authorized Representative

For the International Seabed Authority
Secretary General
Authorized Representative
