



**APPLICATIONS FOR EXPLORATION CONTRACTS; HISTORIC  
ADVISORY OPINION ON THE RESPONSIBILITIES AND OBLIGATIONS  
OF SPONSORING STATES AMONG SUBSTANTIVE ISSUES IN CROWDED  
AGENDA OF SEABED AUTHORITY 17TH SESSION  
(Kingston, Jamaica, 11-22 July 2011)**

- **Other topics include finalization of regulations for exploration of cobalt-rich crusts in Area; and election of members of two bodies**

Action on four pending applications for exploration contracts in the seabed Area, and a landmark advisory opinion on responsibilities and obligations of States sponsoring activities in that area are among substantive issues on the extensive agenda of the seventeenth session of the International Seabed Authority in Kingston, Jamaica, from 11 to 22 July 2011.

Eight such exploratory contracts have been issued by the Authority since its establishment in 1994 with the entry into force that year of the 1982 United Nations Convention on the Law of the Sea as refined by the 1994 Agreement relating to the Implementation of the Convention's Part XI (seabed provisions). The advisory opinion in response to a request by the Authority's 36-member Council, was delivered by the Seabed Disputes Chamber of the Hamburg-based International Tribunal for the Law of the Sea on 1 February 2011.

The Council will resume work on formulating rules, regulations and procedures for prospecting and exploration for cobalt-rich ferromanganese crusts that occur on seamounts in the deep oceans. It is planned to align the instrument with the text of the Regulations on prospecting and exploration for polymetallic sulphides in the Area which the Authority adopted at its sixteenth session 2010.

Other matters on the agenda include: elections of members of the Legal and Technical Commission and the Finance Committee for the period 2012 to 2016; special funds maintained by the Authority; reports of the eight exploration contractors and the annual report of the Authority's Secretary-General, Nii Allotey Odunton (Ghana).

The International Seabed Authority is an intergovernmental body which is mandated under the Convention to organize and control all mineral-related activities in the international seabed beyond the limits of national jurisdiction (the Area).

These activities are carried out in accordance with the regime for seabed mining established in Part XI and other provisions of the Convention. Under specified provisions of the Convention, the Authority is also empowered to establish global rules, regulations and procedures for the protection and conservation of the marine biological diversity associated with activities in the Area.

### **Pending exploration applications**

The four new applications to be considered by the session include two for exploration of reserved areas by private sector entities sponsored by developing States – Nauru and Tonga. The first such application to have been made, they represent, according to the Authority's Secretary-General, "a new milestone in the life of the Authority and for the regime for deep seabed mining under the Convention and the 1994 Agreement".

The Secretary-General also told a meeting of States Parties to the Convention in New York that the other two applications to be considered, sponsored by China and the Russian Federation, respectively, were "ground-breaking in nature", as they represent the first applications for contracts for exploration for polymetallic sulphides for which regulations had been adopted at the sixteenth session (2010).

### **Council**

Much of the work of the seventeenth session will be done in the Council and its organ the Legal and Technical Commission, composed of experts who serve in their personal capacity. It is the turn of Eastern European Group to nominate a candidate for the Council presidency. The African Group is expected to designate the member of the Council that will participate in the deliberations without the right to vote in 2011 in order for equitable geographical representation to be achieved in the Council.

On 14 July, the Council will resume work on the text of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (document ISBA/16/C/WP.2) with the view to finalizing it at this session. Further work is required on such issues as the appropriate size and configuration of areas for exploration by contractors.

Ferromanganese crusts contain iron and manganese and are specially enriched in cobalt, lead, tellurium and platinum. It is planned to align the instrument with the text of the Regulations on prospecting and exploration for polymetallic sulphides in the Area.

As at previous sessions, the Council will receive a report on the work of the Legal and Technical Commission, including its evaluation of four applications for approval of plans of work for exploration in the Area. The applicants are:

- Nauru Ocean Resources Inc for exploration for polymetallic nodules in a reserved area submitted on 10 April 2008 and updated in 2011.
- Tonga Ocean Mining Ltd. for exploration for polymetallic nodules in a reserved area submitted on 10 April 2008 and updated in 2011.
- China Ocean Minerals Resources Research and Development Association (COMRA) for polymetallic sulphides submitted on 7 May 2010.
- Ministry of Natural Resources and the Environment of the Russian Federation for polymetallic sulphides submitted on 24 December 2010.

### **Seabed Disputes Chamber Advisory Opinion**

The Council will review the Advisory Opinion rendered by the Seabed Disputes Chamber on three legal questions, it had submitted to it, relating to the “Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area”.

In its historic unanimous advisory opinion, the Chamber listed important direct obligations of sponsoring States, among which were assistance to the Authority in the exercise of control over activities in the Area; the obligation to apply a precautionary approach; as well as applying the best environmental practices. In addition, they have obligation to take measures to ensure the provision of guarantees in the event of an emergency order by the Authority for the protection of the marine environment. The Chamber also stated that sponsoring States have an obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution, as well as an obligation to conduct environmental impact assessments.

The case was brought before the Chamber by the Council in May 2010 (document ISBA/16/C/13) under article 191 of the Convention in response to a request by the delegation of Nauru. Nauru and Tonga are sponsoring a commercial entity -- Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd., respectively, for activities in reserved areas. Fifteen States Parties, as well as intergovernmental and non-governmental organizations made written or oral statements to the Chamber at its public hearings.

The Chamber, a separate judicial body within the International Tribunal for the Law of the Sea, was established in accordance with Part XI, section 5 of the United Nations Convention on the Law of the Sea and article 14 of the Statute. The Chamber has jurisdiction in disputes concerning activities in the Area..

A seminar was organized by the International Seabed Authority at United Nations headquarters in New York on 7 April 2011 to facilitate a better understanding of the Chamber's Advisory Opinion for Authority's members.

## **Elections**

The election of members of the Legal and Technical Commission is deemed very important as the Commission is moving into a more substantive and technical phase of its work. Members of the Commission must possess qualifications relevant to the exploration, exploitation and processing of mineral resources, oceanography, economic and/or legal matters relating to ocean mining and related fields. For the election, the size of the Commission may be increased up to 25 members without prejudice to future elections.

In another election, 15 members of the Finance Committee will be chosen by the Assembly. Due account will be taken for the need for equitable geographic distribution and the representation of special interests. The membership of the Committee will also include representatives of the five largest financial contributors to the Authority's administrative budget.

## **Legal and Technical Commission**

The Legal and Technical Commission, at its meetings prior to the Authority's main session, from 4 to 8 July, will review the annual reports of the eight exploration contractors submitted in accordance with the regulations for prospecting and exploration for polymetallic nodules in the Area. It will have before it a detailed analysis by the secretariat of the exploration and environmental work actually carried out by each contractor. There had been concerns about the slow pace of exploration work and apparent lack of raw data provided by contractors despite numerous requests for such information from both the Commission and the Authority's Secretary-General.

As part of its work to ensure the protection of the marine environment from harmful effects arising from activities in the Area, the Commission will examine recommendations from a workshop organized by the Authority for an environmental management plan at the regional scale for the Clarion-Clipperton Zone. Other proposals include the management of chemosynthetic environments in the global ocean.

## **Finances**

An administrative budget of \$13,014,700 for the financial period 2011-2012 was approved by the Assembly at the sixteenth session. This represented a 3.9 per cent increase over the budget for the previous financial period.

As at 31 May 2011, 58.6 per cent of the value of contributions to the 2011 budget due from member States of the Authority and the European Union had been received. Outstanding contributions for prior periods (1998-2010) totalled \$249,628. As at the same date, 43 members of the Authority were in arrears for two years or more. Also by the same date, the balance of the Authority's Capital Working Fund stood at \$459,868 against an approved ceiling of \$560,000.

The **Voluntary Trust Fund** established in 2002 to enhance the participation of members of the Finance Committee and the Legal and Technical Commission from developing countries is in crisis. No contributions have been made to the Fund since December 2009, according to a draft report of the Secretary-General. As at 30 April 2011, the balance of the Fund stood at \$74,321, including accrued interest of \$6,652. Since the average annual expenditure from the Fund is approximately \$50,000, it is expected that the current resources in the Fund will be substantially depleted following the seventeenth session. The report indicates that unless further voluntary contributions are made, there might not be funding to support participation in the eighteenth session in 2012 for delegates from poor countries.

The **Endowment Fund for Marine Scientific Research in the Area** has \$88,025 available for disbursement in 2011. Established by Assembly resolution ISBA/12/A/11 of 16 August 2006, the Fund promotes and encourages the conduct of marine scientific research in the Area for the benefit of mankind as a whole. It particularly supports the participation of qualified scientists and technical personnel from developing countries in marine scientific research programme, including through training, technical assistance and scientific cooperation programmes.

A total of \$275,614 has been disbursed by the Fund through seven separate awards for activities that promote capacity building. Thirty scientists from developing countries have benefited from the Fund. It is supporting three research fellowships at the National Oceanographic Institute of India. The Fund has also for the past two years been supporting the Rhodes Academy for Oceans Law and Policy.

Applications for assistance from the Fund may be made by any developing country or by any other country if the purpose of the grant is to benefit scientists from developing countries. The applications are evaluated by a panel established in March 2008 and composed of permanent representatives to the Authority, representatives of educational institutions or international organizations and individuals closely associated with the work of the Authority. Members of the panel who serve for three years are appointed with due regard to equitable geographic representation. A new panel will be selected in 2011.

The Finance Committee will examine the status of these special funds, including the Authority's Working Capital Fund. It will make a recommendation on the appointment of an independent auditor for 2011 and 2012. The Council will review the Committee's recommendations before final action by the Assembly.

## **Assembly**

It is the turn of the Asian Group to nominate a candidate for the presidency of the Assembly. After electing the President and Vice-Presidents, as well as adopting its agenda for the session, the Assembly will consider a request for observer status submitted by the Centre for Oceans Law and Policy at the University of Virginia, United States. Founded in 1976, the Centre supports research, education and discussion of policy and legal issues relating to the oceans.

Other matters to be considered by the Assembly are the annual report of the Secretary-General which reviews the Authority's activities since the last session, and outlines its plans and projects under the current work programme (2011-2013). The programme continues to focus primarily on the scientific, technical, legal, and policy work to enable the Authority carry out its functions under the Convention and the 1994 Agreement.

### **Proposed study on exploitation code**

As part of the work programme, the secretariat plans to commission a preliminary study of some of the issues associated with developing an exploitation code, and will also hold a workshop or seminar to review and discuss the issues raised by such a study. It is proposed to carry out this activity during the second quarter of 2012.

The secretariat also intends to produce a user's guide to the regulatory regime for deep seabed mining, accessible to general users, including prospective applicants for licences, representatives of member States, delegates to the Authority's meetings and staff.

### **Members of the Authority**

The list of members of the Authority is as follows: *Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Chad, Chile, China, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Estonia, European Union, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Serbia, Romania, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint*

*Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad & Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Vanuatu, Vietnam, Yemen, Zambia, Zimbabwe.*

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