

International Seabed Authority

Press Release



**Seventeenth Session
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Council (AM)

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LEGAL AND TECHNICAL COMMISSION IN REPORT TO SEABED COUNCIL RECOMMENDS APPROVAL OF APPLICATIONS FOR EXPLORATORY CONTRACTS

**Also recommends adoption of draft decision by Council on environmental management plan for
Clarion-Clipperton Zone**

The Legal and Technical Commission, an expert organ of the Authority, has recommended the approval by the Seabed Council of plans of work for exploration in the Area submitted by four applicants including two for polymetallic nodules in reserved areas in the Clarion-Clipperton Zone.

The latter two applicants are Nauru Ocean Resources Inc., sponsored by Nauru, and Tonga Offshore Mining Limited, sponsored by Tonga. They submitted their applications on 10 April 2008. The Commission's report and recommendations on their applications are contained in documents ISBA/17/C/9 and ISBA/17/C/10 respectively.

The other two entities, China Ocean Minerals Resources Research and Development Association, and the Ministry of Natural Resources and the Environment of the Russian Federation submitted their applications on 7 May 2010 and on 24 December 2010 respectively, for approval of their plan of work for exploration for polymetallic sulphides in the Area. The Commission's reports on them are contained in documents ISBA/17/C/11 and ISBA/17/C/12 respectively.

Pursuant to the applicable Regulations, these applications were examined by the Commission to determine in each case if the applicant has given the undertakings and assurances specified in the relevant provisions; possesses the financial and technical capability to carry out the proposed plan of work for exploration; and has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

The Commission also determined whether the proposed plan of work for exploration would provide for effective protection of human health and safety, effective protection and preservation of the marine environment, and ensured that installations were not established that might interfere with the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

The summary report of the Commission's Chairman on its 2011 session (document ISBA/17/C/13) included two annexes: one on data management protocol, and the second, a draft decision to be adopted by the Council relating to an environmental management plan for the Clarion-Clipperton Zone.

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The report was presented to the Council by David Billett, who was elected chairman at the outset of the Commission's session. Elected Vice-Chair was Frida Armas-Pfirter.

During the 4-13 July session, a week ahead of the Authority's seventeenth session, the Commission dealt with a range of issues, including evaluation of the annual reports of the contractors prospecting and exploring for nodules in the international seabed Area. It also considered information on the periodic review of implementation of plans of work for exploration for polymetallic nodules; and examined four applications for approval of plans of work for exploration for polymetallic nodules and polymetallic sulphides in the Area.

Other matters on its agenda were a draft environmental management plan for the Clarion-Clipperton Fracture Zone; and recommendations from the workshop entitled "Environmental management of deep-sea chemosynthetic ecosystems: justification of and considerations for a spatially based approach".

Report of the Legal and Technical Commission

Activities of contractors

In its evaluation of the annual reports of the contractors, the Commission noted that the majority largely followed the general format it had prescribed, and that the contractors generally confined themselves to work carried out during the reporting year under consideration. This was in accordance with suggestions the Commission had made after previous evaluations. A few contractors limited themselves in their reports to reviewing work that had been carried out in earlier years.

On other topics related to the work of the contractors, the Commission said that no uniformity existed in the classification of nodules based on morphology, shape or size and that a standard needed to be evolved at the earliest opportunity. It also said that progress still needed to be made on technology-related issues, particularly with respect to mining and metallurgical processing of nodules. A few contractors had yet to begin to develop their technological capacity, and it might therefore be beneficial if they made a concerted effort to pool their resources, the report stated.

Environmental monitoring and assessment

The Commission affirmed that the environmental work reported by contractors in 2010 was generally of better quality than in previous years. However, there was still a lack of raw data being provided by the contractors, and the Commission strongly urged them to do so in digital format for inclusion in the Authority's database.

On financial matters, the Commission observed that not all contractors provided a breakdown of expenditure, as it had recommended (ISBA/15/LTC/7), and that this was required to help the Authority evaluate their reported expenditure and compare them. It recommended that the Secretary-General of the Authority should request sponsoring States to indicate the correct authority for certification of financial statements.

On other matters, the Commission noted the positive trend it had observed in some contractors starting to analyze data on the economic feasibility of nodule mining, thereby generating analysis on market trends, metal values, investments required and expected returns.

Information on periodic review of plans of work

With respect to the implementation by the contractors of their plans of work, the Commission expressed concern over the lack of raw data associated with resource assessment and environmental baseline studies. It noted that the lack of such data was an impediment to the assessment of activities in

the Area by the Authority. The Commission's recommendations on this matter are contained in annex I of its report.

It noted significant variations in reported financial expenditure between the contractors. It also reiterated the difficulty in making any evaluation of actual and direct exploration expenditure when the contractors had not followed the recommendations for guidance on financial reporting issued by the Commission in 2009. The Commission suggested the organization of a meeting by the secretariat with the contractors in which a specific provision would be included in the agenda concerning financial appraisal as a component of future reporting.

Environmental implications of activities in the Area

The Commission requested the secretariat to prepare for its adoption at its next session an updated version of the draft recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from exploration for polymetallic sulphides. A protocol should be put in place without delay which contractors would be advised to follow on the collection and management of data.

In the light of the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on the responsibilities and obligations of States sponsoring activities in the Area, the Commission noted that the following issues needed to be incorporated into its future work plan:

- (a) Adjustments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area to bring them in line with the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area with respect to environmental practices and protection of biodiversity, as well as the further development of the precautionary approach. A list of such necessary revisions to the Nodules regulations should be prepared by the secretariat for its consideration next year.
- (b) The Authority should be tasked, as part of its work programme, and subject to availability of resources, with preparing model legislation to assist sponsoring States to fulfill their obligations as outlined in the advisory opinion of the Seabed Disputes Chamber.
- (c) The Commission should take up in due course the suggestion by the Chamber that mechanisms should be considered to compensate for damage for which neither the contractor nor the sponsoring State was responsible.
- (d) Implementations of monitoring programmes and provision of staff of inspectors.

Consideration of the draft environmental management plan for CC Zone

The Commission noted that it was particularly timely to establish an environmental management plan for the Clarion-Clipperton Zone because of the increased interest in deep seabed mining in that area. The Commission noted that the draft plan had been prepared at a workshop convened by the Authority in November 2010 in which a broad range of stakeholders participated. The Commission expressed the view that the plan was comprehensive, based on the best available data, including those supplied by contractors.

Recommendations of workshop on chemosynthetic ecosystems

The Commission considered the report of the workshop on "Environmental management of deep-sea chemosynthetic ecosystems: justification of and considerations for a spatially based approach", held in Dinard, France from 31 May to 4 June 2010. (International Seabed Authority Technical Study No.9).

The Commission took note of the guidelines proposed by the workshop as an important contribution to its work.

Exchange of views on priority actions for Commission

Observing that this session marked the last for the current membership, the Commission shared views on the anticipated future workload and its effects on the organization of the Commission's work. It was suggested that the secretariat should be requested to prepare a report, including an indicative five-year work programme, for the incoming members in 2012 as that would provide them with a context and framework for their work.

The Commission noted the responsibility of sponsoring States to enact laws and regulations and to take administrative measures appropriate and necessary for securing compliance.

Some Commission members suggested the holding of two sessions per year in the future because of the increased workload of the Commission. It was recalled that this had been the practice in the past when the Authority convened "two or even three sessions per year". The report noted that the practice of holding a separate meeting of the Commission several months in advance of the meetings of the Council and Assembly would enable the Commission to work more efficiently. It would also mean that its recommendations on key issues could be circulated to member States well in advance.

The report observed that the Commission's deliberations was fundamental to the substantive work of the Authority and that all its meetings should be fully serviced and funded as part of the regular conference servicing requirements of the Authority.

The Commission emphasized the importance of full participation in its work by all its members and urged Governments to ensure that their nominee participated in all the Commission's meetings. It also suggested that the Secretary-General should report back to Governments on the attendance of those members whose participation in the Commission's meetings was supported by the Voluntary's Trust Fund.

The report said it was noted that the Commission also needed to be aware of the work of the United Nations General Assembly Ad Hoc Open-ended Informal Working Group which studied issues relating to the conservation and sustainable use of marine biological diversity beyond national jurisdiction. The Authority must pay special attention to those issues as they related to activities in the Area.

Annexes

In Annex I of its report, the Commission stresses the urgent and timely need for the Authority to update its data management requirements with regard to acceptable data format(s) for submission to the secretariat of scientific and technical data collected by contractors. That applied equally to resource assessment activities as well as environmental baselines studies.

The Commission stated that new scientific and technical data management procedures surrounding the submission by contractors of data and information resulting from resource assessments and environmental studies should address both: the capturing of all historic data, and future fieldwork. As a way forward, the Commission recommended two courses of action for the Secretary-General: appearance by contractors before the Commission to present their annual report and respond to questions as well as provide further data; secondly, the organization, as a matter of priority, of a workshop on data management for contractors, sponsoring States, the secretariat and members of the Commission.

Recommended draft decision by Council

Annex II of the Commission's report contains a draft decision by which the Council would decide that for five years from the date of the decision or until further review by the Commission or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in the nine areas of particular environmental interest referred to in the text.

The Council would also decide to apply the decision in accordance with the United Nations Convention on the Law of the Sea, the Agreement, the Regulations and the terms of the contracts on exploration for polymetallic nodules issued in respect of the Clarion-Clipperton Zone.

By the draft decision, the Council would welcome the recommendations of the Legal and Technical Commission on an environmental management plan for the Clarion-Clipperton Zone as contained in document ISBA/17/LTC/7 to be implemented over an initial three-year period. This included the designation, on a provisional basis, of a network of nine areas of particular environmental interest, and gives effect to the precautionary approach as called for by the Regulations.

The Council would decide to encourage further dialogue with all stakeholders to ensure complementarity with regard to the nine areas of particular environmental interest, the precise location of which may be reviewed as described in the environmental management plan.

Furthermore, it would note that the plan would be applied in a flexible manner so that it might be improved as more scientific, technical and environmental baseline and resource assessment data are supplied by contractors and other interested bodies. The Commission would be requested to report to the Council on its implementation.

The Council would encourage the conduct of marine scientific research in the nine areas of particular environmental interest in accordance with article 143 of the Convention, and the dissemination of the results of such research through the Authority.

The Authority's Secretary-General would be requested to take steps to encourage the development of programmes for marine scientific research in the Clarion-Clipperton Zone, including the nine areas of particular environmental interest. The Secretary-General would also be requested to communicate the decision as widely as possible, including to members of the Authority, observers to the Authority and relevant international organizations.

Discussion of Commission's Report

In an exchange of views on the Commission's report, several Council members, including Egypt, India, Indonesia and the Netherlands, said they needed to examine the reports and recommendations on the applications (ISBA/17/C/9, C/10, C/11 and C/12) before approval could be given. The Secretary-General assured the Council that these documents would be available in all languages by later this afternoon.

Some Council members - Brazil, India, Mexico and Nigeria - welcomed suggestions by the Commission that consideration should be given to its holding two sessions a year in view of its anticipated future work load. The representative of Cote d'Ivoire went further to say that it would be useful for the Legal and Technical Commission members to remain for the full two-week session so that the Council could call on their expertise.

Several delegations, including Brazil, France, Japan, Mexico, and the Netherlands, expressed full agreement with the need for the Commission to be aware of the work of the United Nations General Assembly Ad Hoc Open-ended Informal Working Group as noted in the Commission's report. The

Working Group studies issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Trinidad and Tobago suggested that the Chairman or another member of the Commission should attend the Working Group meetings.

On the matter of the draft environmental management plan for the Clarion-Clipperton Fracture Zone (ISBA/17/LTC/7), the President said the Council would consider the recommendations of the Commission next week.

Contractors

Regarding the annual reports of the eight exploration contractors submitted in accordance with the regulations for prospecting and exploration for polymetallic nodules in the Area, delegations commented on the lack of adequate data and details on contractor activities, and the need for uniformity in the classification of nodules, as well as for a breakdown of expenditure. Brazil, Côte d'Ivoire, Mexico, Netherlands, and Nigeria suggested that guidelines and reporting standards should be formulated for contractors to follow. India said detailed reporting on the financial activities of contractors was unnecessary, and could be regarded as a micro-management approach. China said the suggestion by the Legal and Technical Commission for financial appraisal as a component of future reporting might not be practical.

Advisory Opinion

In the debate on priority actions for the Commission's future work plan, many delegations commented on aspects of the report concerning the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. Regarding the Commission's suggestion that the secretariat prepare a list of necessary revisions to the Nodules Regulations, Ghana, Brazil and France suggested that all Regulations should be brought into line with best environmental practices, the protection of biodiversity, the further development of the precautionary approach and Principle 15 of the Rio Declaration.

Delegations welcomed the proposal that the Authority be charged with preparing model legislation to assist sponsoring States in fulfilling their obligations. Brazil said that the varied legal traditions of States must be taken into account when drafting the model, while Germany, supported by Russian Federation, Netherlands, Australia, Japan, Canada and China, said the model should have the character of non-binding guidelines, or elements, which States could adapt to their legal system.

The session will continue this afternoon with a presentation on cobalt-crusts mining by Chinese expert, and resumption of debate on the draft Regulations on Prospecting and Exploration for cobalt-rich ferromanganese.

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