



## Legal and Technical Commission

Distr.: General  
30 April 2007

Original: English

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### Thirteenth session

Kingston, Jamaica

9-20 July 2007

### Briefing note on the work of the Legal and Technical Commission

1. The present briefing note is provided by the Secretariat for the benefit of the incoming members of the Legal and Technical Commission (“the Commission”). Its purpose is to describe the functions and working practices of the Commission and to provide an indication of the anticipated scope of the work of the Commission over the next five years.

#### I. Status and functions of the Commission

2. The Commission is an organ of the Council of the International Seabed Authority. It was established in accordance with article 163 (1) (b) of the United Nations Convention on the Law of the Sea (“the Convention”).<sup>1</sup>

3. The members of the Commission are elected by the Council. They hold office for a term of five years and are eligible for re-election for a further term. They are required to have appropriate qualifications relevant to exploration for and exploitation of mineral resources, such as oceanology, protection of the marine environment, or economic or legal matters related to ocean mining and related fields of expertise. Upon election, members of the Commission are required to sign an undertaking that they shall have no financial interest in any activity relating to exploration and exploitation in the Area (see article 163 (8) of the Convention).<sup>2</sup>

4. The functions of the Commission are closely related to the functions of the Council, and they must be exercised in accordance with such guidelines and directives as the Council may adopt (article 163 (9) of the Convention). These functions are mainly of an advisory or recommendatory nature and the system is designed to ensure that the Council acts on the basis of the best available technical and legal advice. The Commission’s functions are set out in article 165 (2) of the Convention as amended by the Agreement relating to the implementation of Part XI

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1833, No. 31363.

<sup>2</sup> As experts on mission, members of the Commission are covered by article 9 of the Protocol on the Privileges and Immunities of the International Seabed Authority.

of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”). These functions are to:

(a) Make recommendations with regard to the exercise of the Authority’s functions upon the request of the Council;

(b) Review formal written plans of work for activities in the Area and submit appropriate recommendations to the Council;

(c) Supervise, upon the request of the Council, activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned and to report to the Council;

(d) Prepare assessments of the environmental implications of activities in the Area;

(e) Make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

(f) Formulate and submit to the Council the rules, regulations and procedures referred to in article 162 (2) (o) of the Convention, taking into account all relevant factors, including assessments of the environmental implications of activities in the Area;

(g) Keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;

(h) Make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, ensure that existing regulations are adequate and are complied with and coordinate the implementation of the monitoring programme approved by the Council;

(i) Recommend to the Council that proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber, in accordance with Part XI of the Convention and the relevant annexes, taking into account, in particular, article 187;

(j) Make recommendations to the Council with respect to measures to be taken, upon a decision by the Seabed Disputes Chamber in proceedings instituted in accordance with subparagraph (i) above;

(k) Make recommendations to the Council to issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. Such recommendations shall be taken up by the Council on a priority basis;

(l) Make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;

(m) Make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures

of the Authority and the terms and conditions of any contract with the Authority are being complied with.

5. These functions fall into four broad categories:

- (a) Functions relating to the approval of plans of work;<sup>3</sup>
- (b) Functions relating to the supervision of activities in the Area and the exercise of the functions of the Authority;<sup>4</sup>
- (c) Regulatory functions;<sup>5</sup>
- (d) Functions relating to the assessment of environmental impact of activities in the Area.<sup>6</sup>

In addition, the Commission exercises the functions of the Economic Planning Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation (Agreement, annex, sect. 1, para. 4).

## II. Working practices of the Commission

### A. Rules of procedure

6. The rules of procedure of the Commission were approved by the Council and entered into force on 13 July 2000.<sup>7</sup>

### B. Chairmanship

7. The rules of procedure provide that the Chairman and the Vice-Chairman shall be elected from among the members of the Commission for a term of one year; they are eligible for re-election.<sup>8</sup> The following individuals have served as Chairmen or Vice-Chairmen of the Commission.

<i>Chairman</i>	<i>Vice-Chairman</i>
Jean-Pierre Lenoble (France) (1997-1999)	Arne Bjørlykke (Norway) (1999)
Inge K. Zaamwani (Namibia) (2000-2001)	Boris Winterhalter (Finland) (2000-2001)
Arne Bjørlykke (Norway) (2002)	Frida Armas Pfirter (Argentina) (2002-2004)
Albert Hoffmann (South Africa) (2003-2004)	Lindsay Murray Parson (United Kingdom) (2005)

<sup>3</sup> Article 165 (2) (b) of the Convention; Agreement, annex, sect. 1, para. 6.

<sup>4</sup> Article 165 (2) (a), (c), (i), (j) and (m) of the Convention.

<sup>5</sup> Article 165 (f) and (g) of the Convention.

<sup>6</sup> Article 165 (d), (e), (f), (h), (k) and (l) of the Convention.

<sup>7</sup> ISBA/6/C/9; also reproduced in *Selected Decisions 6*, 73-83 and in the *ISA Basic Texts* (Kingston: ISA, 2003) 72-84. Rule 54 of the rules of procedure of the Commission.

<sup>8</sup> Rule 16 of the rules of procedure of the Commission.

Baïdy Diène (Senegal) (2005)

Yoshiaki Igarashi (Japan) (2006)

Lindsay Murray Parson (United Kingdom of Great Britain and Northern Ireland) (2006)

8. There is no formal requirement for the Chairman of the Commission to report to the Council. Nevertheless, a practice has developed whereby the Chairman of the Commission, or the Vice-Chairman in the absence of the Chairman, prepares an agreed report on the work of the Commission. This is then presented to the Council and the Chairman (and other members of the Commission if they are still present) responds to any questions from members of the Council.

### **C. Work patterns**

9. The schedule of meetings of the Commission is tailored in accordance with the principle of cost-effectiveness that governs the conduct of all the organs of the Authority and with the need for sequential consideration of matters by various organs.

10. Depending on its workload, the Commission has met for one or two weeks at a time. In some years, the first week of meetings takes place immediately prior to the opening of the main session of the Assembly. Informal subcommittees established for specific purposes, for example, to conduct a preliminary evaluation of contractors' reports, sometimes meet over the weekend preceding the opening of the meeting of the Commission (depending on the workload of the Commission).

### **D. Subcommittees and working groups**

11. There is no formal procedure for the establishment of subcommittees or working groups. However, depending on the subject-matter, the Commission has often divided itself into informal working groups for detailed consideration of the specialized or technical aspects of such matters, for example the plan of work for exploration submitted by the Federal Republic of Germany and the regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area.

12. In order to facilitate consideration and evaluation of contractors' reports, a practice has developed in recent years whereby an informal subcommittee is appointed before the end of each session and is tasked to arrive slightly ahead of schedule in Kingston the following year in order to conduct a preliminary evaluation of the contractors' reports. If the workload of the Commission becomes less intensive than in earlier years, it may become possible to facilitate meetings of the subcommittee during the Commission's regular session.

## **E. Decision-making**

13. As a general rule, decision-making in all the organs of the Authority should be by consensus.<sup>9</sup> If all efforts to reach a decision by consensus have been exhausted, decisions by voting are taken by a majority of members of the Commission present and voting. In practice, all decisions in the Commission to date have been taken by consensus.

## **F. Open and closed meetings**

14. The question of whether meetings of the Commission should be open or closed attracted controversy in the early years of the Authority. A compromise was reached in Rules 6 and 53 of the rules of procedure of the Commission. Rule 6 provides that the Commission should take into account the desirability of holding open meetings when issues of general interest to members of the Authority, which do not concern the discussion of confidential information, are being examined (for example, the drafting of regulations). Rule 53, *inter alia*, allows any member of the Authority, with the permission of the Commission, to send a representative to attend a meeting of the Commission when a matter particularly affecting that member is under consideration.

15. Since the adoption of the rules of procedure of the Commission, and pursuant to rule 6, the Commission has developed the practice of holding discussions on matters of general concern, such as the drafting of regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area, in open session, in order to allow members of the Council to follow the debate in the Commission.<sup>10</sup> At the same time, the Commission has been careful to preserve the confidentiality of its discussions on other issues, such as the consideration of the annual reports submitted by contractors. Meetings on these issues are generally closed.

## **G. Expertise from outside the membership of the Commission**

16. A practice much appreciated and encouraged in the Convention (article 165 (2) (e)) has been developed to provide expertise from outside the membership of the Commission to assist it in some highly technical matters. Members of the Commission also received the views of experts during the deliberations on the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area. In addition, the Commission is provided with a briefing on the technical workshops organized by the Secretariat.

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<sup>9</sup> Agreement, annex, sect. 3, paras. 2 and 13; in respect of the Commission, Rule 44 of the rules of procedure of the Commission.

<sup>10</sup> See, for example, ISBA/8/C/6, para. 7; also reproduced in *Selected Decisions* 8, 37. Issues relating to the biodiversity of the Area were also discussed in open session. See ISBA/9/C/4, para. 15; *Selected Decisions* 9, 26; ISBA/10/C/4, para. 20; also reproduced in *Selected Decisions* 10, 66-67.

### III. Substantive work of the Commission

17. Over the past 10 years, the Commission has carried out the following tasks:

(a) Reviewed the plans of work for exploration that were submitted by the registered pioneer investors in accordance with paragraph 6 (a) (ii), section 1, of the annex to the Agreement, and recommended them for approval to the Council on 21 August 1997;

(b) Reviewed an application for approval of a plan of work for exploration for polymetallic nodules submitted by the Federal Republic of Germany, represented by the German Federal Institute for Geosciences and Natural Resources, and recommended it for approval to the Council;<sup>11</sup>

(c) Prepared draft regulations on prospecting and exploration for polymetallic nodules and recommended them to the Council on 23 March 1998;

(d) Issued recommendations, in 2001, for the guidance of contractors in providing assessments on the possible environmental impacts arising from exploration for polymetallic nodules.<sup>12</sup> These recommendations, developed from the outcomes of an international workshop held in 1998, were intended to describe the procedures to be followed in the acquisition of baseline data by contractors, including the monitoring to be performed during or after any activities having the potential to cause serious harm to the environment;

(e) Prepared draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts and submitted them to the Council in 2004;

(f) Evaluated the annual reports of contractors (since 2002) and prepared reports on them for the Secretary-General;

(g) Provided advice of a general nature to the Secretary-General on technical aspects of the substantive work programme of the Authority, including on the outcomes of international workshops convened by the Authority.

18. The anticipated workload of the Commission over the next five-year period is set out in sections A to C below.

#### A. Evaluation of annual reports submitted by the contractors

19. There are presently eight contractors for exploration for polymetallic nodules in the Area. These are:

<i>Contractors</i>	<i>Date of contract</i>
Yuzhmorgeologiya (Russian Federation)	29 March 2001
Interoceanmetal Joint Organization (IOM) (Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia)	29 March 2001

<sup>11</sup> ISBA/11/C/7; also reproduced in *Selected Decisions 11*, 26-36.

<sup>12</sup> ISBA/7/LTC/1/Rev.1.

<i>Contractors</i>	<i>Date of contract</i>
Government of the Republic of Korea	27 April 2001
China Ocean Mineral Resources Research and Development Association (COMRA, China)	22 May 2001
Deep Ocean Resources Development Company Ltd. (DORD, Japan)	20 June 2001
Institut français de recherche pour l'exploitation de la mer (IFREMER, France)	20 June 2001
Government of India	25 March 2002
Federal Republic of Germany	19 July 2006

20. Each contractor is under an obligation to submit an annual report by the end of March each year. The reports cover the programme of activities during the reporting period. The objective of the reporting requirement is to inform the Commission of the activities of contractors so that it can perform its functions under the Convention, in particular those relating to the protection of the marine environment from the harmful effects of activities in the Area.

21. To facilitate reporting, in 2002 the Commission recommended a format and structure for annual reports, including a standardized contents list (general, exploration work, mining test and mining technology, training, environmental monitoring and assessment, financial statement, proposed adjustment to the programme of work, conclusions and recommendations), which is based on the standard clauses set out in annex 4 to the nodules regulations.<sup>13</sup> Additional assistance for contractors in preparing their annual reports appears in the recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area. These were issued by the Commission in 2001 pursuant to regulation 38 of the nodules regulations.

22. As noted above, the Commission has adopted a practice of appointing an informal subcommittee to carry out a preliminary review of the annual reports submitted by contractors and prepare a draft evaluation for consideration by the Commission as a whole. This is designed to facilitate a more expeditious and efficient consideration of the reports by the Commission. In addition, the Secretariat prepares a preliminary analysis of some of the more technical data and information contained in the contractors' reports, which is used as a starting point for the consideration of the reports by the subcommittee and the full Commission.

23. The findings and recommendations of the Commission on the annual reports are presented in a report to the Secretary-General, including, as appropriate, requests for clarification or further information. The Secretary-General conveys any such requests to the contractors by letter. Comments of a general nature with respect

<sup>13</sup> ISBA/8/LTC/2, annex. The standard clauses set out in annex 4 to the nodules regulations are incorporated in each contract and have effect as if therein set out at length. See also annex 3 to the nodules regulations.

to the evaluation of the annual reports of the contractors may also be included in the report on the work of the Commission that the Chairman of the Commission presents to the Council. The contents of the annual reports themselves are confidential.

## **B. Draft cobalt crusts regulations**

24. The Commission is expected to review a revised version of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (“the draft cobalt crusts regulations”) at its session in 2007. Much of the work on the draft regulations was done by the previous Commission and the regulations were submitted to the Council for its consideration in 2004. However, in 2006, the Council requested that the draft regulations (which covered both cobalt crusts and polymetallic sulphides) be separated into two sets of regulations. The cobalt crusts regulations were to be returned to the Commission for its further consideration of some aspects. The regulations are to be submitted to the Council in 2008. The Secretariat has prepared a revised version of the cobalt crusts regulations for consideration by the Commission during the thirteenth session (2007).<sup>14</sup> The draft regulations on prospecting and exploration for polymetallic sulphides in the Area (“the draft sulphides regulations”) will be taken up by the Council in 2007.

## **C. Recommendations for the guidance of contractors**

25. Having completed its initial work on draft regulations for polymetallic sulphides and cobalt crusts, the Commission commenced, in 2005, preliminary discussions on the establishment of environmental baselines and associated monitoring programmes for exploration for these types of resources.<sup>15</sup> In its discussions, the Commission reviewed the outcomes of an international workshop on the resources, their environment and considerations for the establishment of environmental baselines and monitoring programmes held in Kingston from 6 to 10 September 2004.<sup>16</sup> The Commission decided, however, to defer further consideration of the proposed recommendations for guidance until the regulations had been finalized by the Council.<sup>17</sup> At its meeting in 2006, the Commission again considered some of the principles behind the recommendations for guidance and emphasized the need to proceed with caution and to receive input from a wider audience than just academics, including from potential contractors.<sup>18</sup> The Commission may wish to further postpone consideration of the proposed recommendations until work on the sulphides and crusts regulations is complete.

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<sup>14</sup> ISBA/13/LTC/WP.1. The Secretariat has provided a background on the draft regulations contained in document ISBA/13/LTC/1.

<sup>15</sup> ISBA/11/LTC/2.

<sup>16</sup> Establishment of environmental baselines at deep seafloor cobalt-rich crusts and polymetallic sulphide mine sites in the workshop held in Kingston, 6-10 September 2004 (forthcoming).

<sup>17</sup> ISBA/11/C/8, para. 23, also reproduced in *Selected Decisions 11*, 40-41.

<sup>18</sup> ISBA/12/C/8, para. 27, also reproduced in *Selected Decisions 12*, 36.