



## Council

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### **Summary report of the Chairman of the Legal and Technical Commission on the work of the Commission during the fourteenth session**

1. During the fourteenth session of the Authority, the Legal and Technical Commission held 13 meetings. As agreed at the thirteenth session, the Commission held an extended session and commenced its work on 19 May, one week in advance of the meetings of the Council and Assembly. The following members attended the meetings: Frida Armas Pfirter, Jean-Marie Auzende, David Billet, Laleta Davis-Mattis, Walter de Sá Leitão, Baïdy Diène, Miguel Dos Santos Alberto Chissano, Elva Escobar, Kennedy Hamutenya, Said Hussein, Yoshiaki Igarashi, Emmanuel Kalngui, Woong-Seo Kim, Eusebio Lopera Caballero, Sudhakar Maruthadu, Sandor Mulsow Flores, Andrzej Przybycin, Mahmoud Samy, Elena Sciso and Zhang Hongtao. Following the practice observed in the past, Christian Reichert also participated in the meetings of the Commission prior to his formal election by the Council for the remainder of the term of office of Michael Wiedicke-Hombach, who had resigned from the Commission. The following members had informed the Secretary-General that they would be unable to attend the session: Sergey Fyodorov, Asif Inam, Adam Tugio and Isikeli Uluinairai Mataitoga.

2. The Commission elected Sandor Mulsow Flores as Chairman and Elva Escobar as Vice-Chairman.

3. The Commission adopted its agenda (ISBA/14/LTC/1) and decided to proceed on the basis of an annotated agenda and organization of work provided by the secretariat (ISBA/14/LTC/CRP.1). The Commission considered the following matters:

(a) Annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area;

(b) Selection of candidates for training by Germany in accordance with the contract for exploration between the Authority and the German Federal Institute for Geosciences and Natural Resources (BGR);

(c) Applications for approval of plans of work for exploration by Nauru Ocean Resources Inc. and Tonga Offshore Minerals Ltd.;

(d) Draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area;

(e) A proposal relating to the criteria for the establishment of preservation reference zones in the Clarion-Clipperton Zone;

(f) Update on progress on the geological model for the Clarion-Clipperton Zone;

(g) Recommendations of a workshop on polymetallic nodule mining technology held in Chennai, India, from 18 to 22 February 2008.

## **I. Consideration of the annual reports of contractors submitted pursuant to the Regulations**

4. The Commission carried out an evaluation of the annual reports that the contractors are required to submit pursuant to annex 4, section 10, of the Regulations. For this purpose, and following its usual practice, the Commission divided itself into four informal working groups to carry out a preliminary review of the annual reports. The work of the Commission was facilitated by a preliminary analysis of the annual reports prepared by the secretariat (ISBA/14/LTC/CRP.2). The working groups then reported to the full Commission.

5. The Commission noted that the annual reports were due by 31 March 2008. Although not all reports were submitted by that date, as at 19 May, annual reports had been received from all eight contractors: Deep Ocean Resources Development Co. Ltd., Yuzhmorgeologiya, the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Interoceanmetal Joint Organization, India, Institut français de recherche pour l'exploitation de la mer and BGR. The Commission once again stressed the importance of reports being submitted on time.

6. In addition to evaluating each of the annual reports, the Commission made several comments of a general nature. In particular, the Commission once again emphasized the need for reported expenditure to be properly itemized and to relate only to the actual and direct costs of exploration as established in section 10.2 (c) of annex 4 to the Regulations. In situations where lump-sum expenditures were reported without any breakdown, it was impossible for the Commission to equate the expenditures with the exploration work actually being carried out. Noting that this had been a persistent concern, the Commission requested the secretariat to prepare for the next session a more detailed report and analysis of the actual and proposed financial expenditures reported by contractors to date.

7. The Commission also noted with concern that there was still a lack of raw data being provided by contractors despite repeated requests from both the Commission and the Secretary-General. With respect to the classification into nodule types, the Commission noted that there was no uniformity in classifications used by different contractors and suggested that it might be useful for contractors to collaborate to standardize such classifications. The evaluation by the Commission is contained in document ISBA/14/LTC/6.

## **II. Selection of candidates for training by Germany in accordance with the contract for exploration between the Authority and the German Federal Institute for Geosciences and Natural Resources**

8. The Commission was informed that, as at 30 April 2008, the secretariat had received a total of 42 nominations from 18 different members of the Authority for the training programme proposed by Germany pursuant to the contract for exploration between the Authority and BGR.

9. After considering the applications in detail, the Commission selected eight candidates (four candidates and four alternates) for training. The details of the training programme and the selection process applied by the Commission, as well as the names of the selected candidates, are contained in document ISBA/14/LTC/7.

## **III. Review of two applications for approval of a plan of work for exploration in reserved areas**

10. The Commission received two applications for approval of a plan of work for exploration in reserved areas from Nauru Ocean Resources Inc. (sponsored by Nauru) and Tonga Offshore Mining Ltd. (sponsored by Tonga). The Commission met to consider the applications on 21, 22, 26 and 27 May 2008. The Commission has not reached consensus with respect to a recommendation to the Council in relation to the applications. The Commission will therefore continue its consideration of the applications at the next possible opportunity.

## **IV. Consideration of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area**

11. The Commission continued its work on the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (ISBA/13/LTC/WP.1), which had been prepared by the secretariat following the direction of the Council that separate draft regulations should be prepared for polymetallic sulphides and cobalt-rich crusts. The Commission recalled that during the thirteenth session, it had focused its consideration on two key issues, the size of the area to be allocated for exploration and the progressive fee system, but considered that the background information available at that time was not sufficient to provide a recommendation to the Council.

12. After reviewing all the information available to it, including additional material prepared by the secretariat and the document prepared for the Council relating to the draft regulations for prospecting and exploration for polymetallic sulphides (ISBA/14/C/4), the Commission decided that, in the light of the current state of knowledge, and taking into account the need to complete its work on the draft regulations in a timely manner, it was appropriate to proceed to finalize a recommendation to the Council. The Commission's recommendation to the Council

would be to adopt regulations for prospecting and exploration for cobalt-rich crusts on the basis of the draft regulations, but with the following proposed revisions:

(a) The basic unit for defining the exploration area should be a 20 square kilometre block. An applicant may apply for up to 100 such blocks, which may be arranged in non-contiguous clusters within a geographical area of 550 kilometres by 550 kilometres;

(b) A progressive fee system, as proposed, should apply, and the Council should be empowered to review the fee every five years;

(c) In view of the current state of knowledge in relation to both polymetallic sulphides and cobalt-rich crusts, the Commission endorsed the proposal to include a clause providing for an automatic review of the regulations every five years or at any time when the development of scientific knowledge so requires;

(d) The provisions relating to financial accounting should be revised in the light of experience in order to ensure that contractors maintain and provide information that fully discloses the actual and direct expenditures incurred by contractors on exploration work and facilitates effective audit;

(e) The Commission would also consider whether further elaboration of the requirement of effective control was required.

13. The Commission considered that, in the light of recent developments, it was important to include an anti-monopoly provision in the draft regulations. It was noted that the anti-monopoly provision contained in annex III to the Convention in relation to polymetallic nodules could not be applied effectively to either polymetallic sulphides or cobalt-rich crusts. In place of that provision, the Commission recommends that the regulations for both polymetallic sulphides and cobalt-rich crusts prevent multiple applications by affiliated applicants in excess of the overall size limitations referred to in regulation 12 (i.e. 2,000 square kilometres in the case of cobalt-rich crusts and 10,000 square kilometres in the case of polymetallic sulphides). For the purposes of this provision, applicants would be regarded as affiliated if they were directly or indirectly controlling, controlled by or under common control with one another.

14. The Commission requested the secretariat to prepare a revised text (to be issued as ISBA/14/LTC/CRP.6) of the proposed regulations for prospecting and exploration for cobalt-rich crusts incorporating the Commission's recommendations as set out in paragraphs 12 and 13 above and also fully aligning the text of the draft regulations with the adjustments to the text of the draft regulations on polymetallic sulphides agreed by the Council in 2007 (ISBA/13/C/CRP.1). The Commission would then review the revised text at its next session with a view to formally adopting it for submission to the Council at the fifteenth session, taking into account the requirements under articles 162(2) (o) (ii) of the Convention together with section 1, paragraph 15, of the annex to the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea that such rules, regulations and procedures were to be developed within three years of a request being made by a member of the Authority.

## **V. Consideration of a proposal relating to the criteria for the establishment of preservation reference zones in the Clarion-Clipperton Zone**

15. On 19 May, Craig Smith, the principal researcher on the Kaplan project, introduced a proposal relating to the criteria for the establishment of preservation reference zones in the Clarion-Clipperton Zone (ISBA/14/LTC/2). It was noted that the proposal had been developed by a scientific workshop held at the University of Hawaii in October 2007. In his presentation, Dr. Smith explained the underlying assumptions and rationale for the proposal and explained the general guidelines and criteria for the establishment of a network of preservation reference zones in the Zone. The Commission also had available to it a document prepared by the secretariat in response to a request by the Commission at the thirteenth session on considerations for an economic assessment of the marine environment in the Area and the use of area-based management tools to conserve biodiversity (ISBA/14/LTC/5).

16. The Commission discussed the proposal in general and also established a working group to consider the issues in more detail with a view to formulating a recommendation. It was noted that the basic proposal was for the Authority to set aside a network of ecologically related areas within the Zone where no exploration or mining activity should take place. They should not overlap with existing contract areas.

17. It was further noted that several legal mechanisms were available under the Convention and the 1994 Agreement that could be used to designate such areas, including the power under article 162(2) (x) of the Convention to disapprove areas for exploitation on the basis of environmental considerations. However, a number of complex issues needed to be considered in detail. These included the size and location of areas, criteria for their establishment and the coordination of such areas with the existing obligations of contractors, at the exploitation phase, to propose impact reference zones and preservation reference zones.

18. The Commission agreed to request a subgroup of ecological and legal experts from the Commission to continue to work on the proposal, with the assistance of the secretariat, with a view to formulating a complete proposal for consideration by the Commission at the fifteenth session. The Commission may then consider making a recommendation to the Council under article 165 of the Convention.

## **VI. Update on progress on the geological model for the Clarion-Clipperton Zone**

19. The Commission took note of the oral report on the progress on the geological model for the Clarion-Clipperton Zone. The Commission noted that the project had been running for the past three years and was in the completion phase. During the past year, the consultants on the volcanic and tectonic proxy data have presented a set of maps and figures. They are being analysed and a report is being prepared. A new 0.1 degree grid of metal content in the Zone has been prepared. Maps showing the distribution of nodules and metal content have been prepared. The consultant on biological proxy data has provided data on carbon and nitrogen flux. The sediment

proxy group will provide detailed lithological maps of the three regions in the Zone. During the year, COMRA will work on fuzzy logic and artificial neural network techniques to provide information on areas with no data. COMRA will also work on spatial decision support system techniques for data on the entire Zone. A final report on the geological model and the prospectors' guide will be ready by the end of 2008. The Commission noted that the project could not have succeeded without a great degree of cooperation from existing contractors and expressed its appreciation to them for their efforts to work with the Authority.

## **VII. Consideration of the recommendations of the workshop on polymetallic nodule mining technology**

20. The Commission was briefed on the outcomes of the Authority's international workshop held in Chennai, India, from 18 to 22 February 2008 (ISBA/14/LTC/CRP.4), which it noted with interest.

## **VIII. Other matters**

21. In the course of the discussions, several members of the Commission suggested that it would be appropriate to review the recommendations for the guidance of contractors for the assessment of possible impacts arising from exploration for polymetallic nodules, issued in 2001, in the light of advances in knowledge and sampling techniques that had taken place since then. The Commission decided to place the item on its agenda at its next session, in 2009.

22. The Commission expressed appreciation to the secretariat for its work in support of the meeting. The members of the Commission also considered that the meetings, while intensive, had been very productive. Much of this was due to the fact that the Commission had been able to work intensively, with full meeting services, for an entire week in advance of the meetings of the Council and the Assembly. All available meeting time had been fully utilized, which was a reflection of the extent and depth of the Commission's consideration of the important issues before it. The Commission recommended that similar working practices be adopted in 2009, when it would also be considering a broad range of issues, including the proposal to establish a network of reference areas in the Zone and the revision of its 2001 environmental recommendations.

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